



City of Killeen

Agenda

City Council

Tuesday, September 26, 2023

5:00 PM

City Hall
Council Chambers
101 N. College Street
Killeen, Texas 76541

Call to Order and Roll Call

<input type="checkbox"/> Debbie Nash-King, Mayor	<input type="checkbox"/> Jessica Gonzalez
<input type="checkbox"/> Ramon Alvarez	<input type="checkbox"/> Jose Segarra
<input type="checkbox"/> Michael Boyd	<input type="checkbox"/> Joseph Solomon
<input type="checkbox"/> Nina Cobb	<input type="checkbox"/> Riakos Adams

Invocation

Pledge of Allegiance

Approval of Agenda

Presentations

1. [PR-23-020](#) Killeen Star Award

Citizens Petitions

Comments should be limited to four (4) minutes. A majority vote of the City Council is required for any time extensions.

2. [CP-23-024](#) Nigel Dunn: Closure of homeless shelter concerns (Friends in Crisis)

Citizen Comments

This section allows members of the public to address the Council regarding any item(s), other than a public hearing item, on the agenda for Council's consideration. Each person shall sign up in advance, may speak only one time, and such address shall be limited to four (4) minutes. A majority of the City Council is required for any time extensions. The Mayor and Councilmembers shall have one (1) minute to respond to citizen comments with a statement or explanation without engaging in dialogue.

Discussion Items

3. [DS-23-091](#) Discuss the KTMPO Safe Streets & Roads for All (SS4A) Grant

Consent Agenda

4. [MN-23-023](#) Consider Minutes of Special City Council Meeting of September 5,

2023.

5. [RS-23-144](#) Consider a memorandum/resolution approving the investment reports for the quarter ended June 30, 2023.
Attachments: [Quarterly Investment Report](#)
[Presentation](#)
6. [RS-23-145](#) Consider a memorandum/resolution ratifying a Meet and Confer Agreement with Killeen Police Employee Association FOP Lodge 32.
Attachments: [Agreement](#)
[Presentation](#)
7. [RS-23-146](#) Consider a memorandum/resolution approving a Professional Services Agreement with Garver, LLC, for design of the Passenger Terminal Mechanical Improvements Project at Killeen-Fort Hood Regional Airport, in the amount of \$293,200.
Attachments: [Agreement](#)
[Certificate of Interested Parties](#)
[Presentation](#)
8. [RS-23-148](#) Consider a memorandum/resolution awarding Bid Number 23-44 for the Terminal Demolition Project at Skylark Field Airport to R&L Global Inc., in an amount of \$157,094.
Attachments: [Bid Proposal](#)
[Bid Tab](#)
[Contract](#)
[Certificate of Interested Parties](#)
[Presentation](#)
9. [RS-23-149](#) Consider a memorandum/resolution authorizing the agreement with Waste Management Inc. for the disposal of the City's municipal solid waste.
Attachments: [Agreement](#)
[Contract Verification](#)
[Certificate of Interested Parties](#)
[Presentation](#)
10. [RS-23-150](#) Consider a memorandum/resolution authorizing the agreement with Comal Transportation, LLC for transportation of the City's municipal solid waste.
Attachments: [Quote](#)
[Agreement](#)
[Contract Verification](#)
[Certificate of Interested Parties](#)
[Presentation](#)

11. [RS-23-151](#) Consider a memorandum/resolution authorizing the award of Bid No. 23-41, Wastewater Improvements for Chaparral Road Project to Arguijo Corporation with a contract in the amount of \$2,729,604.
Attachments: [Bid](#)
[Contract](#)
[Notice of Award](#)
[Letter of Recommendation](#)
[Certificate of Interested Parties](#)
[Presentation](#)
12. [RS-23-152](#) Consider a memorandum/resolution to approve an Interlocal Mutual Aid Agreement between the cities of Killeen and Nolanville for Fire Department services.
Attachments: [Agreement](#)
[Presentation](#)
13. [RS-23-153](#) Consider a memorandum/resolution to award RFQ 23-29, Fire Department Mental Health Clinician to A & L Solutions in the amount of \$45,000 annually.
Attachments: [RFQ 23-29 Evaluation Matrix](#)
[Contract](#)
[Presentation](#)
14. [RS-23-154](#) Consider a memorandum/resolution of support for the selection of Railhead Energy Resiliency as the FY 2024 Defense Economic Adjustment Assistance Grant (DEAAG) project.
Attachments: [Resolution of Support](#)
[Presentation](#)

Resolutions

15. [RS-23-147](#) Consider a memorandum/resolution renaming the Killeen-Fort Hood Regional Airport.
Attachments: [Presentation](#)
16. [RS-23-155](#) Consider a memorandum/resolution approving a fireworks display application from Big Dog Pyro, LLC on behalf of Advent Health Medical Center.
Attachments: [Application](#)
[Certificate of Insurance](#)
[Site Map](#)
[Material Safety Data Sheets](#)
[Licenses](#)
[Pyrotechnic Plan](#)

[Presentation](#)

17. [RS-23-156](#) Consider a memorandum/resolution appointing members to vacant and unexpired terms on various boards and commissions.

Attachments: [Presentation](#)

18. [RS-23-157](#) Consider a memorandum/resolution authorizing the remainder of funds previously approved for Fiscal Year 2023 to defend the Bell County lawsuit related to marijuana enforcement be carried forward into FY 2024.

Attachments: [Agreement](#)

[Presentation](#)

Public Hearings

19. [PH-23-052](#) HOLD a public hearing and consider an ordinance amending the FY 2023 Annual Budget of the City of Killeen to adjust revenue and expenditure accounts in multiple funds.

Attachments: [Ordinance](#)

[Presentation](#)

20. [PH-23-053](#) HOLD a public hearing and consider an ordinance submitted by Bianca Hall, on behalf of Rebecca Tinkshell, who is deceased (Case #Z23-19) to rezone Lot 1, Block 2, out of the Morris & Goode Survey, from "B-5" (Business District) to "R-1" (Single-Family Residential District). The property is locally addressed as 801 E. Avenue G, Killeen, Texas.

Attachments: [Maps](#)

[Site Photos](#)

[Letter of Request](#)

[Minutes](#)

[Ordinance](#)

[Considerations](#)

[Presentation](#)

Adjournment

I certify that the above notice of meeting was posted on the Internet and on the bulletin board at Killeen City Hall on or before 5:00 p.m. on September 22, 2023.

Laura J. Calcote, City Secretary

The public is hereby informed that notices for City of Killeen meetings will no longer

distinguish between matters to be discussed in open or closed session of a meeting. This practice is in accordance with rulings by the Texas Attorney General that, under the Texas Open Meetings Act, the City Council may convene a closed session to discuss any matter listed on the agenda, without prior or further notice, if the matter is one that the Open Meetings Act allows to be discussed in a closed session.

This meeting is being conducted in accordance with the Texas Open Meetings Law [V.T.C.A., Government Code, § 551.001 et seq.]. This meeting is being conducted in accordance with the Americans with Disabilities Act [42 USC 12101 (1991)]. The facility is wheelchair accessible and handicap parking is available. Requests for sign interpretive services are available upon requests received at least 48 hours prior to the meeting. To make arrangements for those services, please call 254-501-7717, City Secretary's Office, or TDD 1-800-734-2989.

Notice of Meetings

The Mayor and/or City Council have been invited to attend and/or participate in the following meetings/conferences/events. Although a quorum of the members of the City Council may or may not be available to attend this meeting, this notice is being posted to meet the requirements of the Texas Open Meetings Act and subsequent opinions of the Texas Attorney General's Office. No official action will be taken by Council.

- *Public Policy Council Luncheon, September 28, 2023, 11:30 a.m., Charis Church*
- *Greater Fort Cavazos Day of Prayer and Fellowship, September 30, 2023, 8:30 a.m., Main Post Chapel*
- *AUSA Central Texas Chapter Community Partner Dinner, 5:30 p.m., October 4, 2023, Killeen Civic and Conference Center*
- *Annual TML Conference, October 4-6, 2023, Kay Bailey Hutchison Convention Center, Dallas, TX*
- *AUSA Annual Meeting, October 9, 2023, Walter E. Washington Convention Center, Washington, DC*
- *Third Annual Fire Prevention Week Open House, October 14, 2023, 4:00 p.m., Central Fire Station*

Dedicated Service -- Every Day, for Everyone!



City of Killeen

Staff Report

File Number: PR-23-020

Killeen Star Award



City of Killeen

Staff Report

File Number: CP-23-024

Nigel Dunn: Closure of homeless shelter concerns (Friends in Crisis)



City of Killeen

Staff Report

File Number: DS-23-091

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Discuss the KTMPO Safe Streets & Roads for All (SS4A) Grant



City of Killeen

Staff Report

File Number: MN-23-023

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider Minutes of Special City Council Meeting of September 5, 2023.

City of Killeen
 Special City Council Meeting
 Killeen City Hall
 September 5, 2023 at 5:00 p.m.

Presiding: Mayor Debbie Nash-King

Attending: Mayor Protem Nina Cobb, Councilmembers Ramon Alvarez, Michael Boyd, Jessica Gonzalez, Jose Segarra, Joseph Solomon and Riakos Adams

Also attending were City Manager Kent Cagle, City Attorney Holli Clements, City Secretary Laura Calcote, and Sergeant-at-Arms Officer Mac Murray

Approval of Agenda

Motion was made by Councilmember Boyd to approve the agenda. Motion was seconded by Councilmember Solomon. The motion carried unanimously (7-0).

Citizen Comments

Mellisa Brown spoke regarding PH-23-049.

Gary Purser spoke regarding PH-23-049.

Public Hearings

PH-23-049 HOLD a public hearing on the proposed Fiscal Year 2024 Annual Budget.

Staff Comments: Miranda Drake, Assistant Director of Finance
 Ms. Drake presented the proposed Fiscal Year 2024 Annual Budget and provided an overview of the City's funds.

Mayor Nash-King opened the public hearing.

Michael Fornino spoke in opposition to PH-23-049.

Mellisa Brown spoke in opposition to PH-23-049.

Gary Purser spoke in opposition to PH-23-049.

Anca Neagu spoke in opposition to PH-23-049.

With no one else appearing, the public hearing was closed.

Motion was made by Mayor Protem Cobb to set the date of September 12, 2023 to consider adoption of the FY 2024 proposed budget at which meeting will start at 5:00 p.m. and will be held at 101 N. College Street, Killeen, Texas. Motion was seconded by Councilmember Solomon. The motion carried unanimously (7-0).

Adjournment

With no further business, upon motion being made by Councilmember Alvarez, seconded by Councilmember Adams, and unanimously approved, the meeting was adjourned at 5:43 p.m.



City of Killeen

Staff Report

File Number: RS-23-144

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution approving the investment reports for the quarter ended June 30, 2023.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Judith Tangalin, Executive Director of Finance

SUBJECT: Quarterly Investment Report

BACKGROUND AND FINDINGS:

The attached investment reports summarize all investment activity for the quarter ended June 30, 2023. The highlights of the report are as follows:

Quarter ended June 30, 2023:

	Jan. - March 2023	Apr. - June 2023	Change
Interest Income	\$2,033,928	\$2,220,192	9.16%
Investment Balance	\$245,694,328	\$235,515,996	-4.14%
Average Yield	3.47%	3.80%	9.51%

THE ALTERNATIVES CONSIDERED:

N/A

Which alternative is recommended? Why?

N/A

CONFORMITY TO CITY POLICY:

The City of Killeen’s investment policy requires that a quarterly report of investment activity be submitted to the City Council within a reasonable time after the end of each quarter. The quarterly report includes a detailed description of the investment position of the City, summarizes the investment activity in each pooled fund group, states the total rate of return on the investment portfolio, and contains information regarding the market value and book value of each separately invested asset.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

N/A

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

City Council approve the attached investment reports for the quarter that ended June 30, 2023.

DEPARTMENTAL CLEARANCES:

Legal

ATTACHED SUPPORTING DOCUMENTS:

Presentation



PUBLIC FUNDS ADVISORY

City of Killeen

Quarterly Investment Report

PRESENTED BY:

SCOTT GRUBER, CMT - DIRECTOR, ADVISORY SERVICES

JUNE 30, 2023



Compliance Certification



The undersigned have acknowledged that they have reviewed this quarterly investment report for the period ending June 30, 2023. The City officials designated as investment officers by the City’s Investment Policy attest that all investments are in compliance with the Texas Public Funds Investment Act and the City’s Investment Policy.

Executive Director of Finance

Assistant Director of Executive Finance

Controller

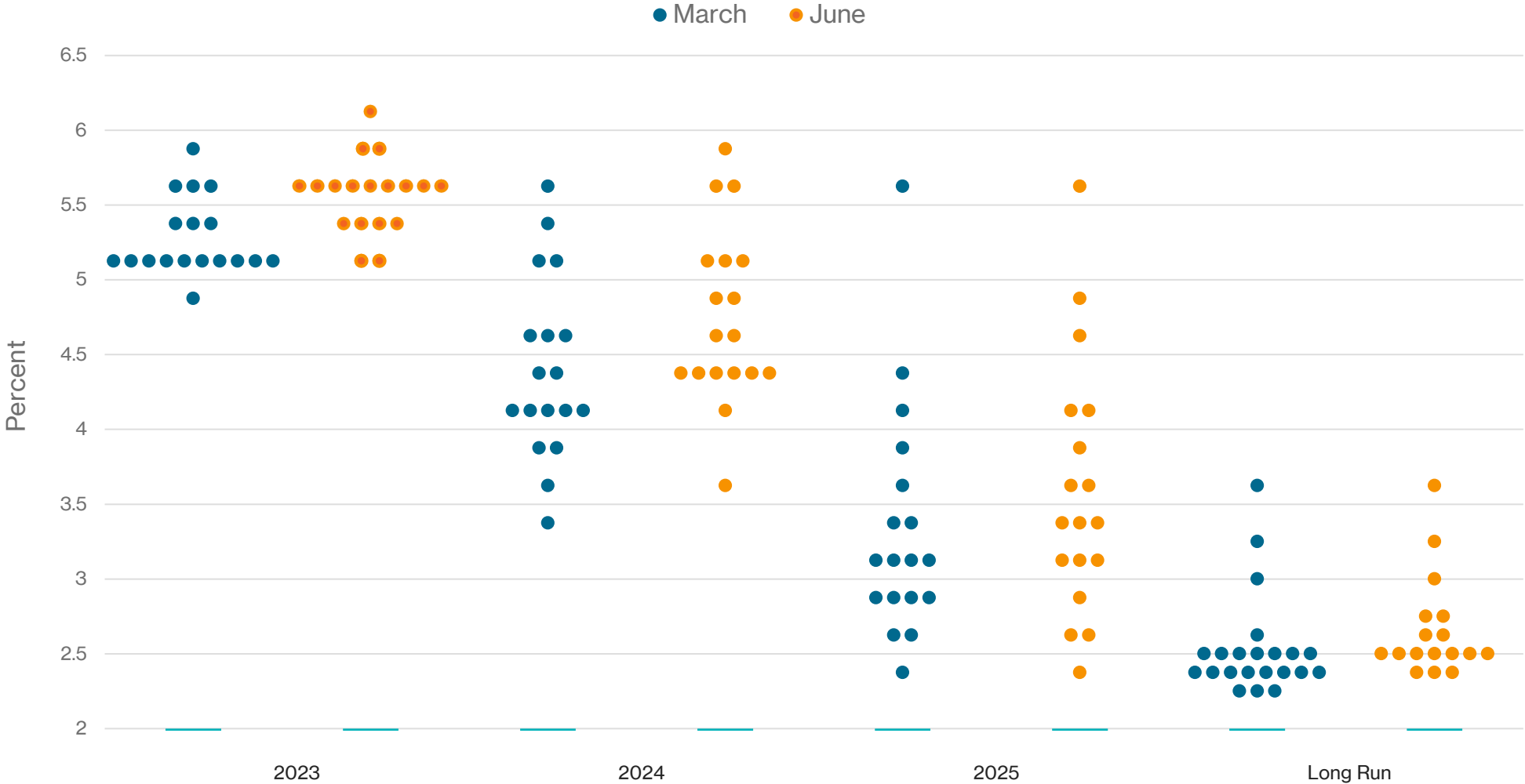
Executive Summary

- The second quarter of 2023 saw interest rates move higher as solid economic data led markets to believe the Federal Reserve would not cut rates until 2024. The Federal Reserve met twice during the quarter, where they hiked rates by 0.25% in May but chose to not change rates in June. However, verbal guidance from Chairman Jerome Powell indicated that the June decision was not a pause and that more monetary tightening was needed to get inflation under control.
- During the second quarter, we continued moving the portfolio closer to our core targets. We continued to target a mix of new issue high-coupon non-callable agencies as well as treasury bonds. We also worked with our dealer network to create new agency bonds specifically for your portfolio that picked up yield over comparable securities and helped us match known debt payments in the future.
- In the coming quarter, the City should expect the same areas of focus: continued cash flow analysis to identify the amount to be invested in the City's core portfolio, evaluating opportunities to rebalance positions in the 0-1 year maturity range with security swaps to take advantage of the higher-yielding bonds, and extending the portfolio to our targets while matching known future debt payments.



ECONOMIC UPDATE

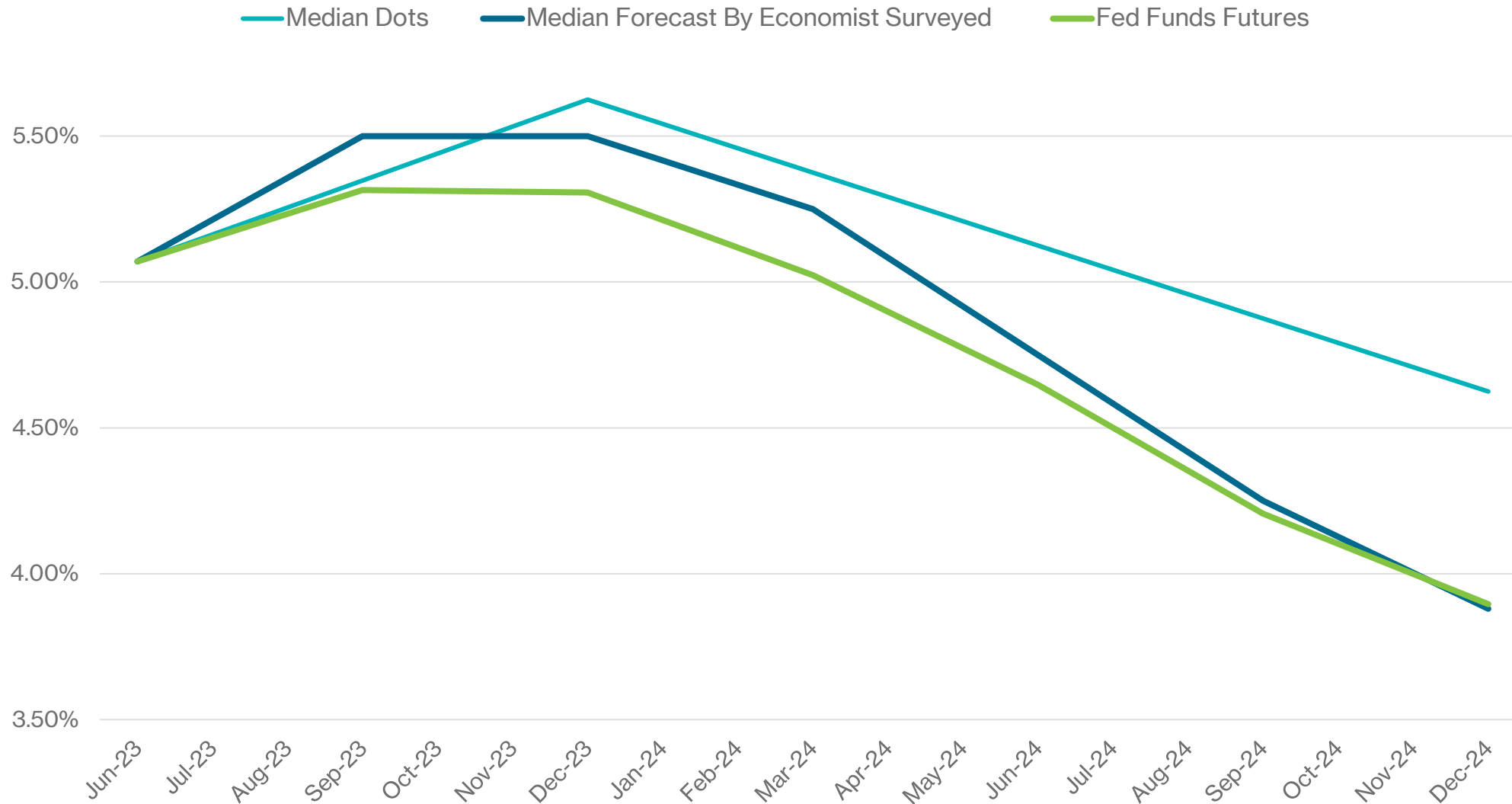
Federal Reserve Dot Plot Comparison



- Each dot represents projected year end rate by each member of the FOMC
- Long run represents projected rate to meet Federal Reserve mandates
- Median Dot Indicates FOMC to Cut Interest Rates by 100bps in 2024.

SOURCE: FEDERAL RESERVE

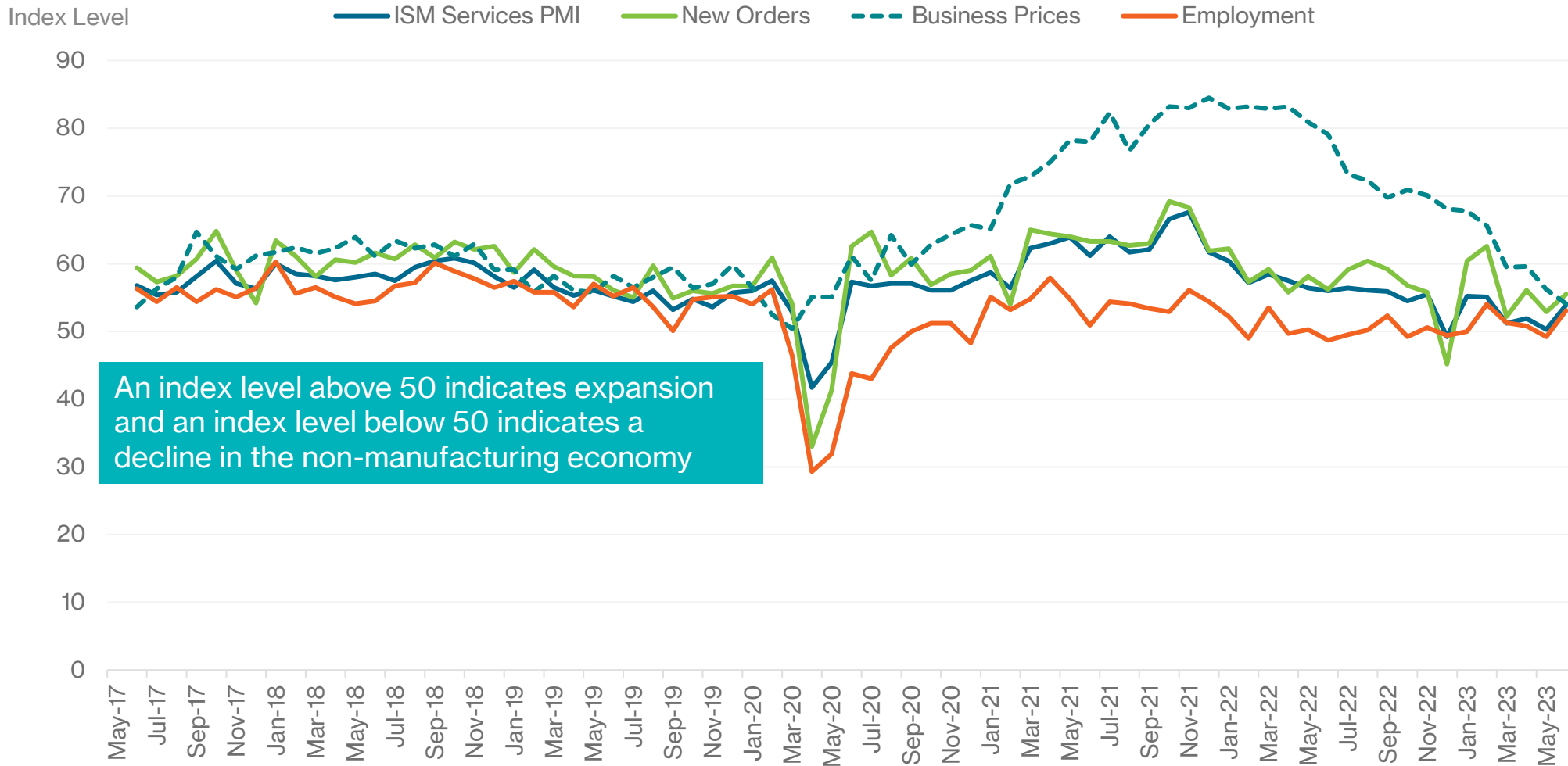
Federal Reserve, Markets, and Economists Expecting Lower Federal Funds Rate in 2024



- Federal Reserve: Median Dots project 2 additional hikes.
- Market implied probabilities price in 1 additional hike.
- FOMC, Market pricing, and Economist expectations for rate cuts in 2024 and beyond.

SOURCE: BLOOMBERG SURVEY OF ECONOMISTS, FEDERAL RESERVE, DATA AS OF 6/28/2023

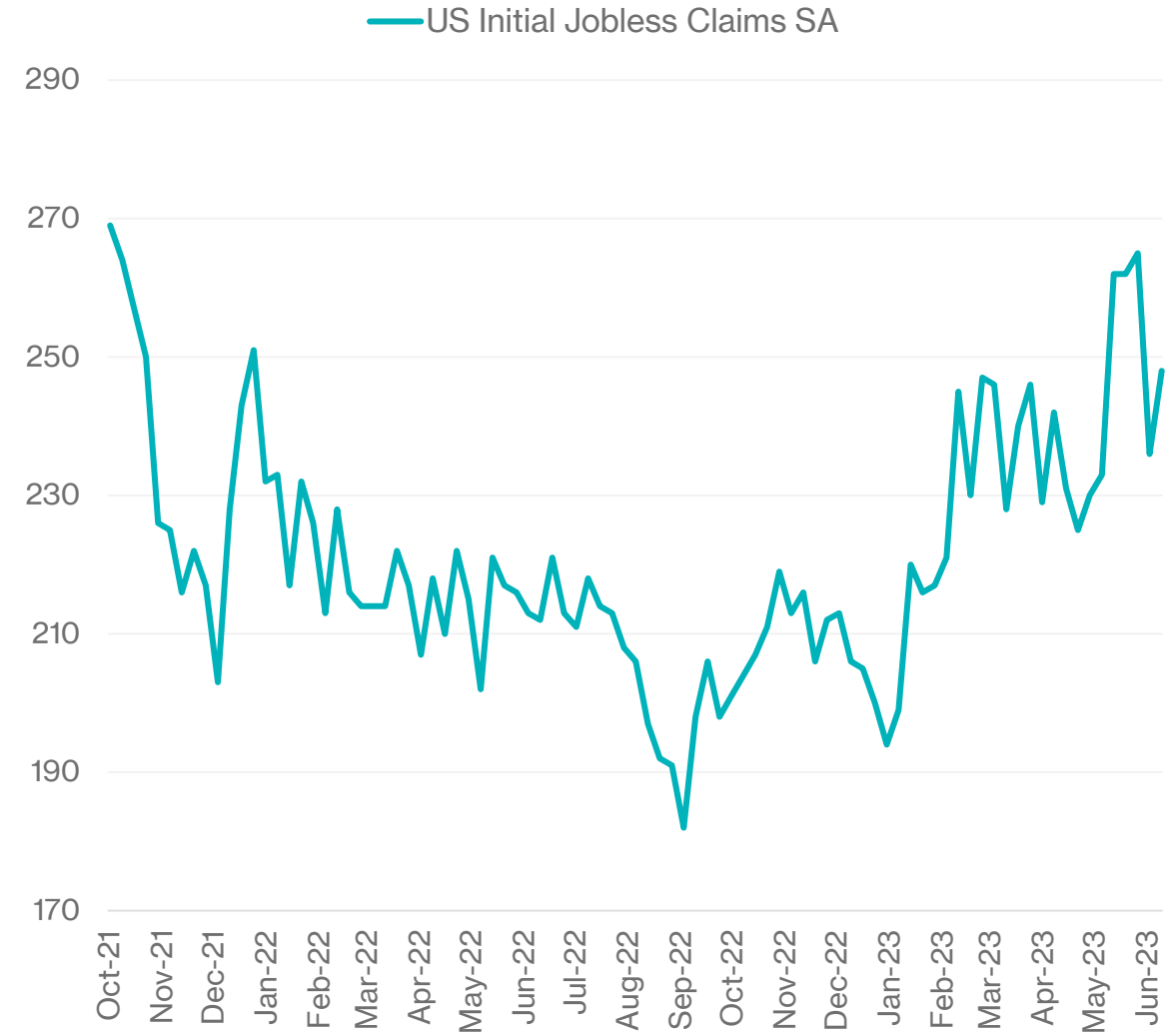
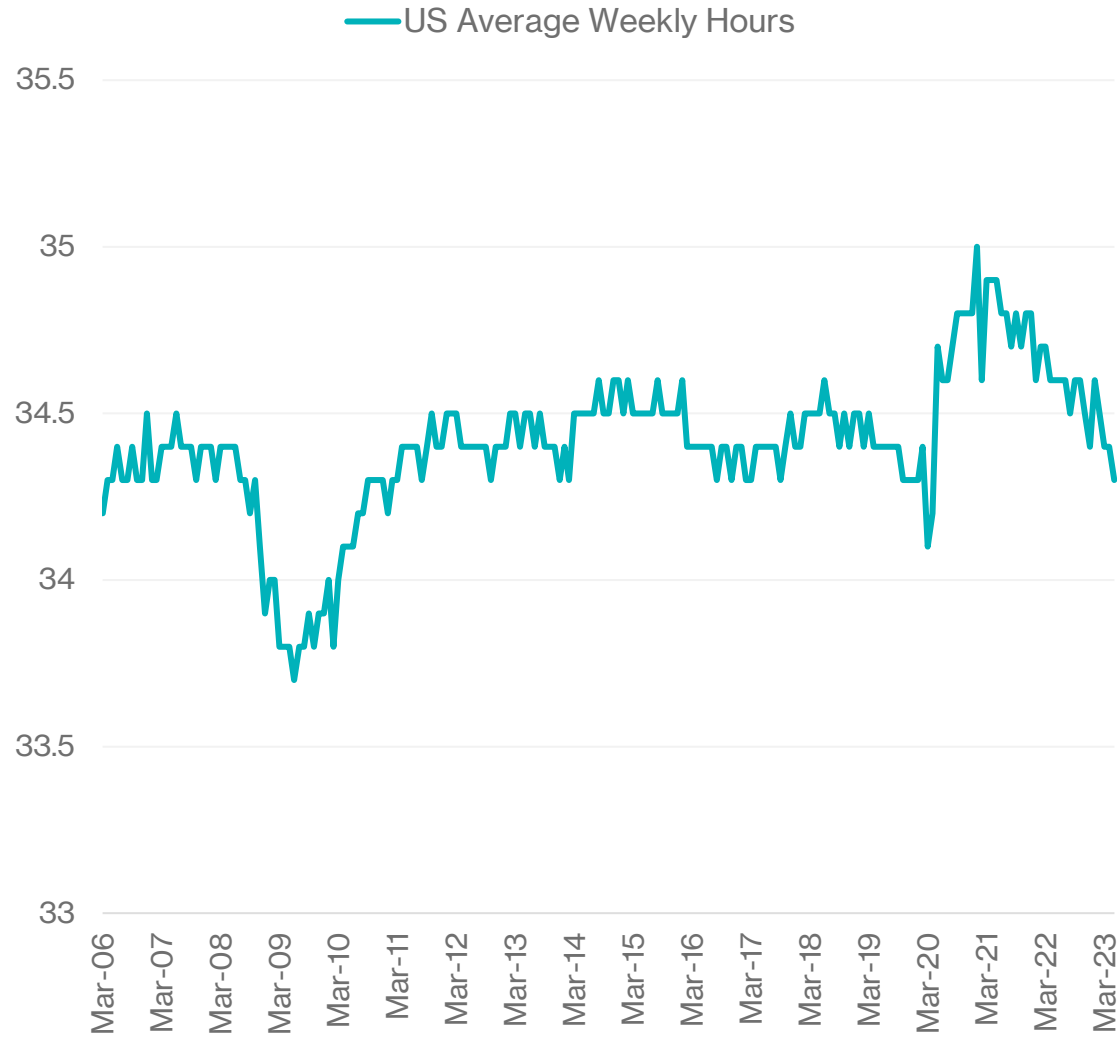
The ISM Services Report Indicates Growth in Nearly Every Segment of the Sector is Slowing.



- Service sector has proven more resilient, but pace of growth is easing as ISM index hovers around 50.
- Employment component of survey has been bouncing between contractionary and non-contractionary levels.
- Continued success with inflation battle as the price component continues to fall significantly from peak in 2022.

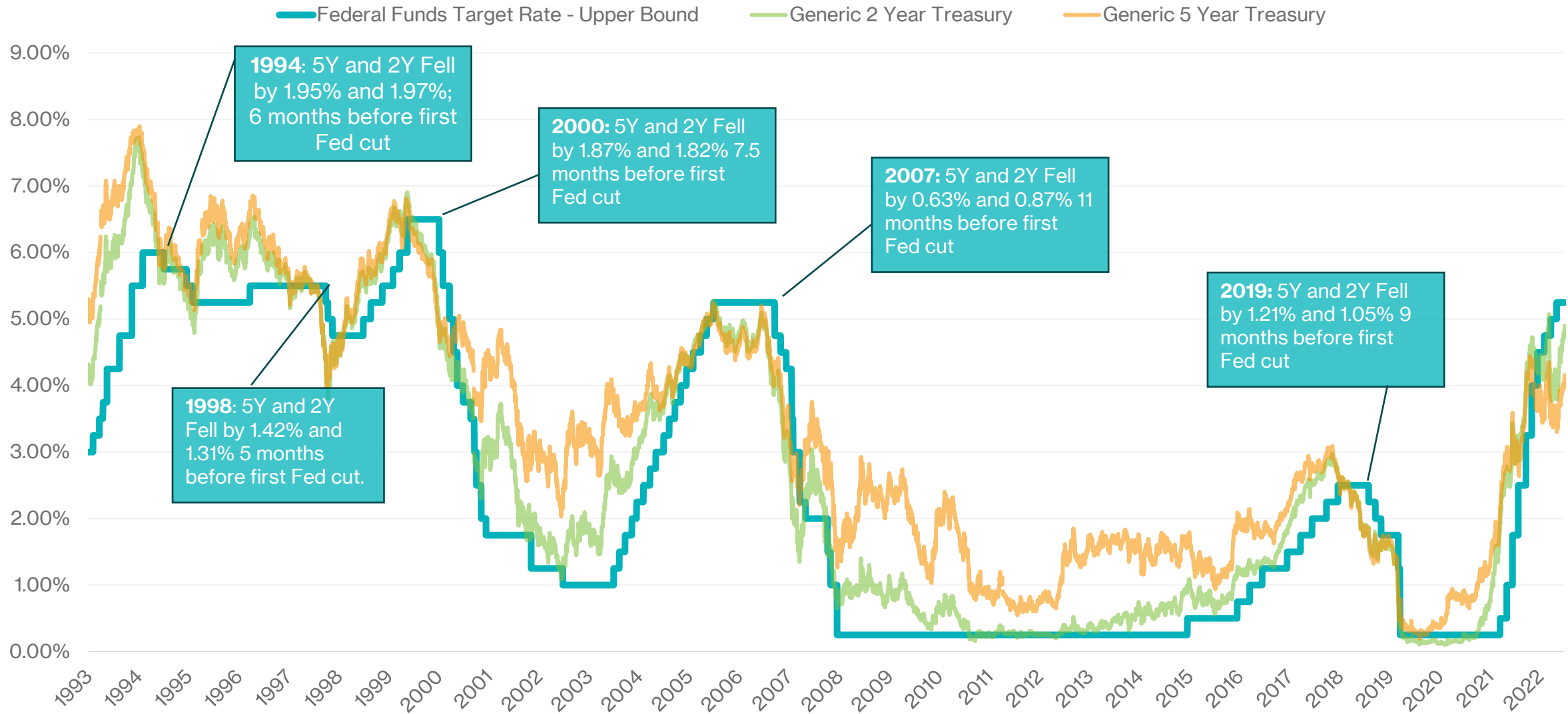
SOURCE: BLOOMBERG, INSTITUTE OF SUPPLY CHAIN MANAGEMENT AS OF 06/30/2023

US Labor Market Continuing to Show Signs of Cooling



SOURCE: BLOOMBERG AS OF 06/30/2023

Market Interest Rates Stop Rising and Fall Before Federal Rate Cuts Begin





PORTFOLIO REVIEW

Quarterly Portfolio Summary – All Funds



This quarterly report is prepared in compliance with the Investment Policy and Strategy of the City of Killeen and the Public Funds Investment Act (Chapter 2256, Texas Government Code).

Portfolio as of March 31, 2023		Portfolio as of June 30, 2023	
Beginning Book Value	\$246,378,007	Ending Book Value	\$236,365,821
Beginning Market Value	\$245,759,600	Ending Market Value	\$235,080,980
Unrealized Gain/(Loss)	(\$618,407)	Unrealized Gain/(Loss)	(\$1,284,841)
		Change in Unrealized Gain/(Loss)	(\$666,433)
Weighted Average Maturity	200 days	Weighted Average Maturity	386 days
Weighted Average Yield	3.46%	Weighted Average Yield	3.79%

Portfolio Market Value by Fund	3/31/2023	6/30/2023	Change
Pooled Investments	\$245,075,920.60	\$234,231,155.12	(\$10,844,765.48)
Internal Services Fund	\$77,911.09	\$107,286.71	\$29,375.62
Employee Benefits Trust Fund	\$128,118.11	\$157,439.18	\$29,321.07
Enterprise Funds	\$4,040.07	\$4,040.07	\$0.00
General Fund	\$94,101.53	\$201,550.87	\$107,449.34
Special Revenue Fund	\$379,508.31	\$379,508.31	\$0.00
Total	\$245,759,599.71	\$235,080,980.26	(\$10,678,619.45)

Portfolio Summary – Investment Pool

As of 6/30/2023

Your Portfolio

Cash/LGIPs	\$61,615,560
Securities Book Value	\$173,900,435
Total Portfolio Book Value	\$235,515,996

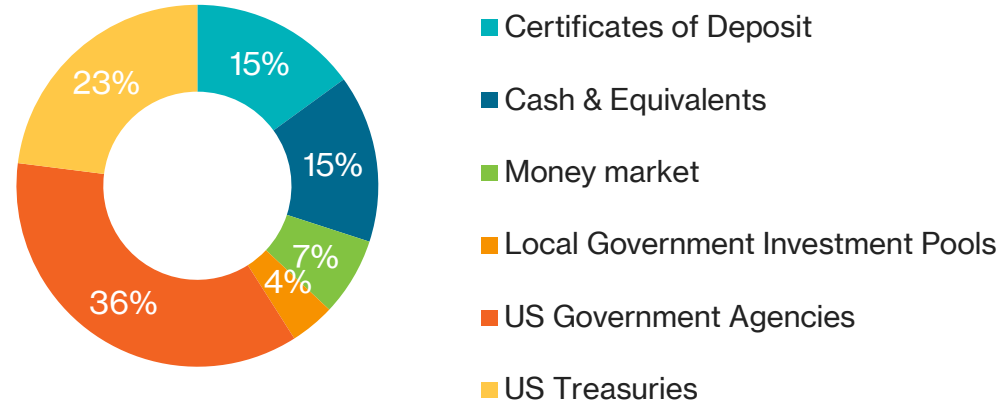
Your Securities

Weighted Average Maturity	1.06 years
Weighted Average Yield	3.80%

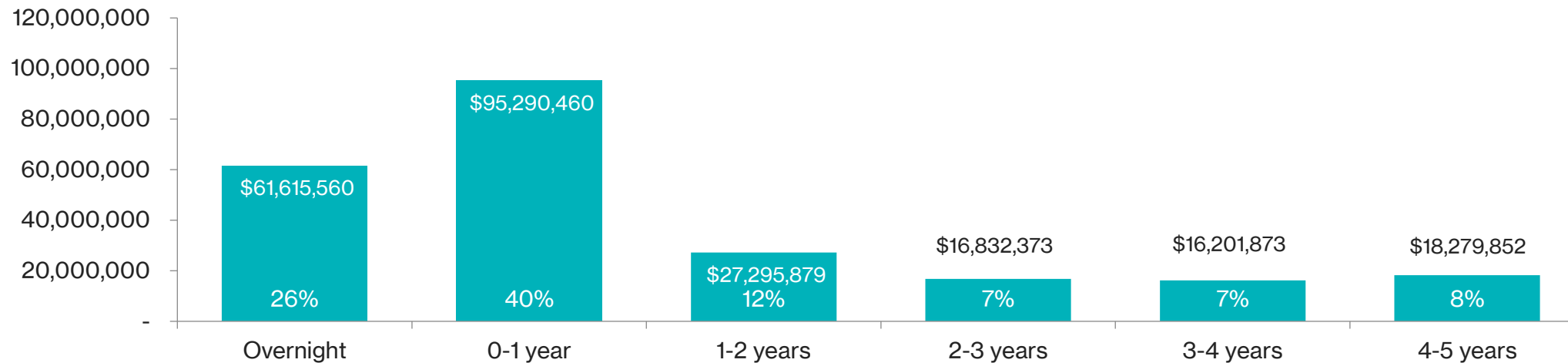
Interest Earnings:

Quarterly Interest Earned	\$2,220,192
Year-to-date Interest Earned	\$5,467,143

Your Asset Allocation

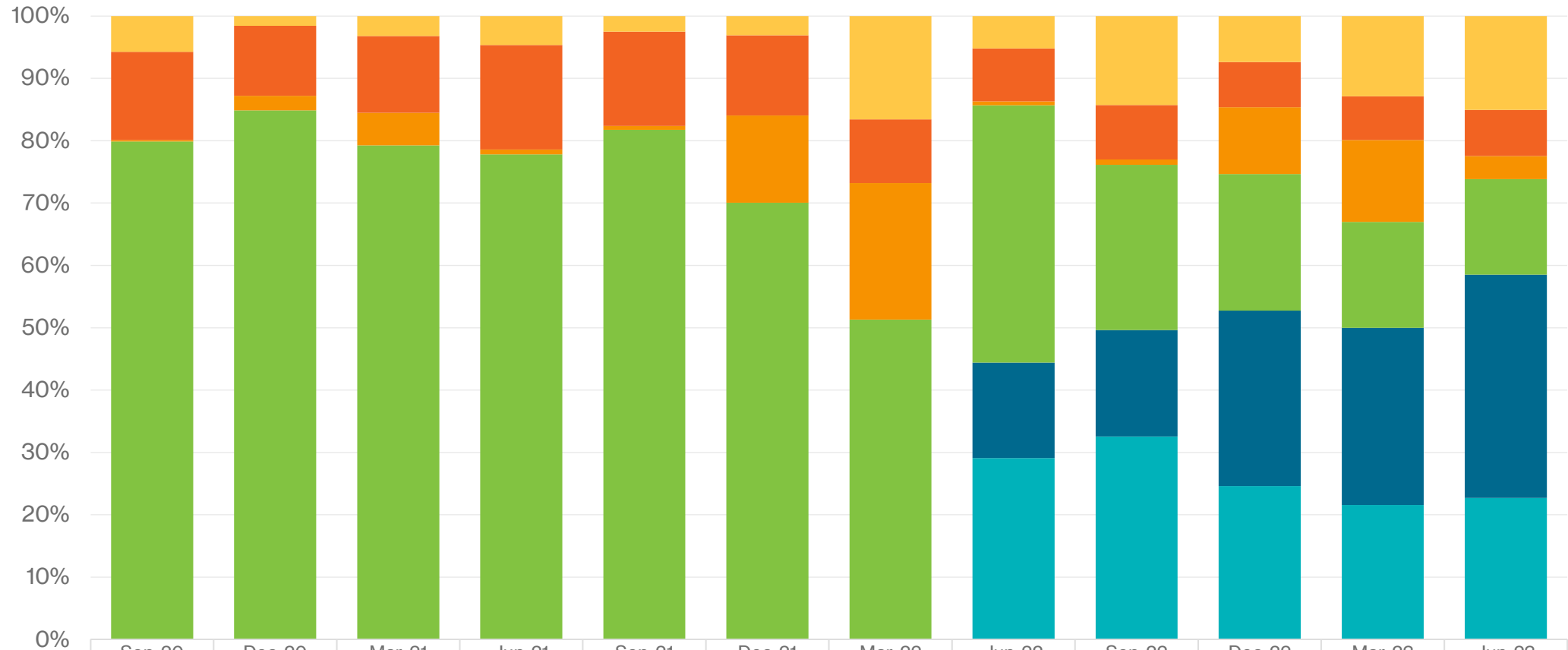


Your Maturity Distribution



YIELD AND INTEREST INCOME INFORMATION IS ANNUALIZED. ALL YIELD INFORMATION IS SHOWN GROSS OF ANY ADVISORY AND CUSTODY FEES AND IS BASED ON YIELD TO MATURITY AT COST. PAST PERFORMANCE IS NOT A GUARANTEE OF FUTURE RESULTS.

Asset Composition



	Sep-20	Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22	Mar-23	Jun-23
■ Cash	5.76%	1.58%	3.20%	4.66%	2.51%	3.11%	16.59%	5.19%	14.28%	7.38%	12.88%	15.07%
■ Money Market	14.14%	11.23%	12.32%	16.75%	15.13%	12.83%	10.18%	8.52%	8.71%	7.25%	7.01%	7.40%
■ LGIPs	0.24%	2.31%	5.23%	0.79%	0.59%	14.02%	21.93%	0.61%	0.87%	10.73%	13.14%	3.69%
■ Certificates of Deposit	79.86%	84.88%	79.26%	77.80%	81.76%	70.03%	51.29%	41.26%	26.53%	21.89%	17.00%	15.30%
■ U.S. Government Agencies	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	15.31%	17.04%	28.15%	28.39%	35.83%
■ U.S. Treasury Securities	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	29.11%	32.57%	24.59%	21.59%	22.70%

Meeder Public Funds, Inc. is a registered investment adviser with the Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940. Registration with the SEC does not imply a certain level of skill or training. The opinions expressed in this presentation are those of Meeder Public Funds, Inc. The material presented has been derived from sources considered to be reliable, but the accuracy and completeness cannot be guaranteed.

Past performance does not guarantee future results. Opinions and forecasts are all subject to change at any time, based on market and other conditions, and should not be construed as a recommendation of any specific security. Investing in securities involves inherent risks, including the risk that you can lose the value of your investment. Any forecast, projection, or prediction of the market, the economy, economic trends, and fixed-income markets are based upon current opinion as of the date of issue and are also subject to change. Opinions and data presented are not necessarily indicative of future events or expected performance. Meeder Public Funds, Inc. cannot and does not claim to be able to accurately predict the future investment performance of any individual security or of any asset class. There is no assurance that the investment process will consistently lead to successful results. The investment return and principal value of an investment will fluctuate, thus an investor's shares, or units, when redeemed, may be worth more or less than their original cost.

Meeder Public Funds
901 Mopac Expressway South
Building 1, Suite 300
Austin, TX 78746

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MEEDER

PUBLIC FUNDS

MeederPublicFunds.com



PUBLIC FUNDS ADVISORY

City of Killeen

Quarterly Investment Report

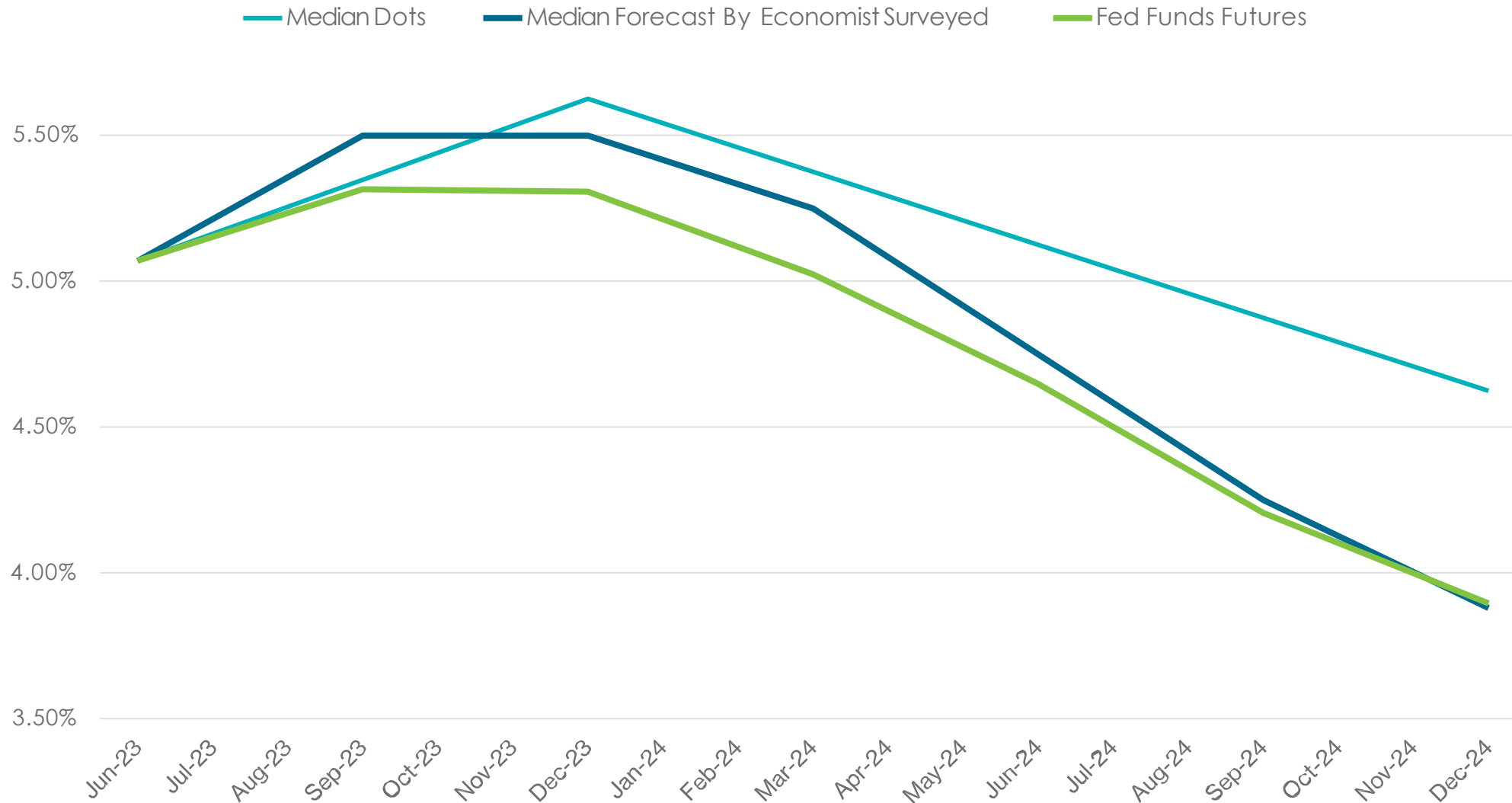
PRESENTED BY:

SCOTT GRUBER, CMT - DIRECTOR, ADVISORY SERVICES

JUNE 30, 2023



Federal Reserve, Markets, and Economists Expecting Lower Federal Funds Rate in 2024

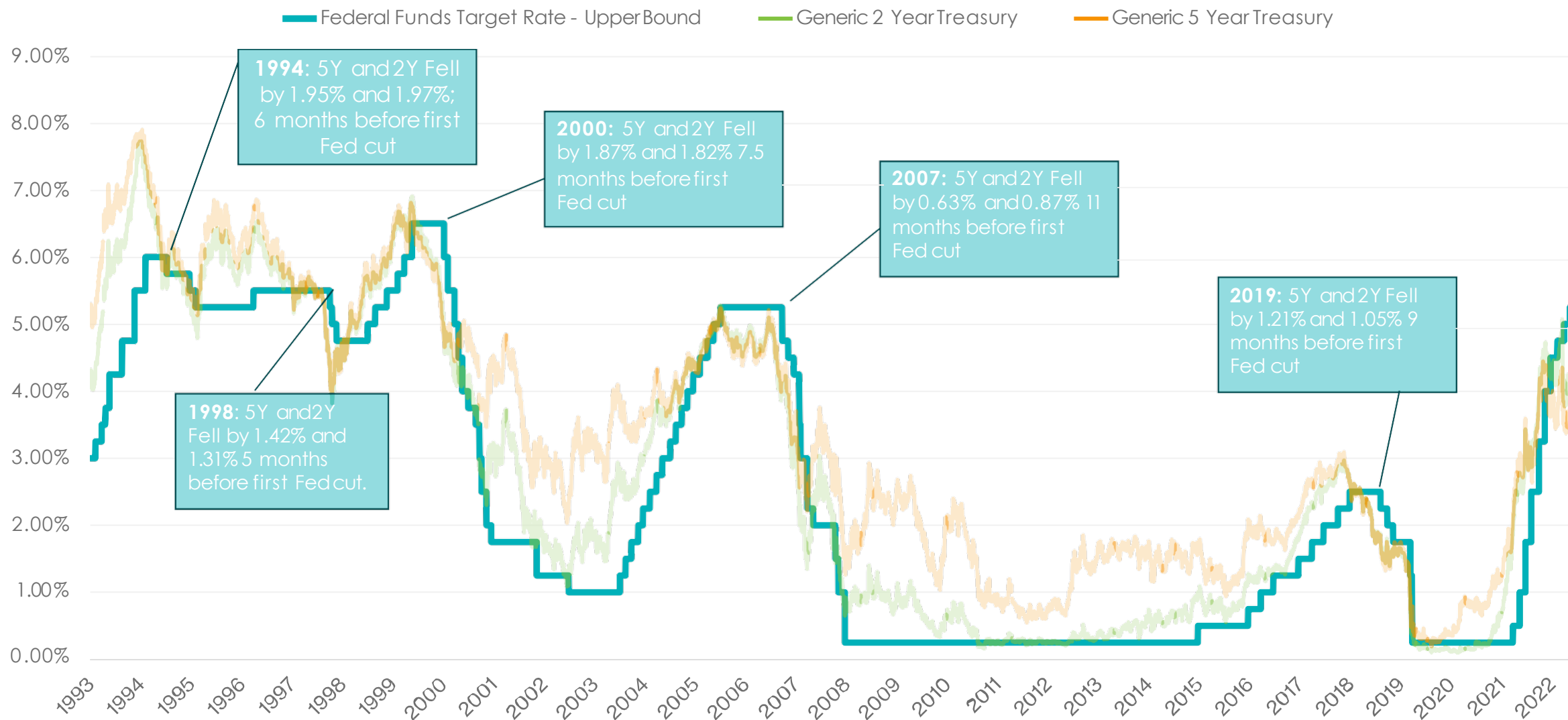


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SOURCE: BLOOMBERG SURVEY OF ECONOMISTS, FEDERAL RESERVE, DATA AS OF 6/28/2023

FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

Market Interest Rates Stop Rising and Fall Before Federal Rate Cuts Begin



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As of 6/30/2023

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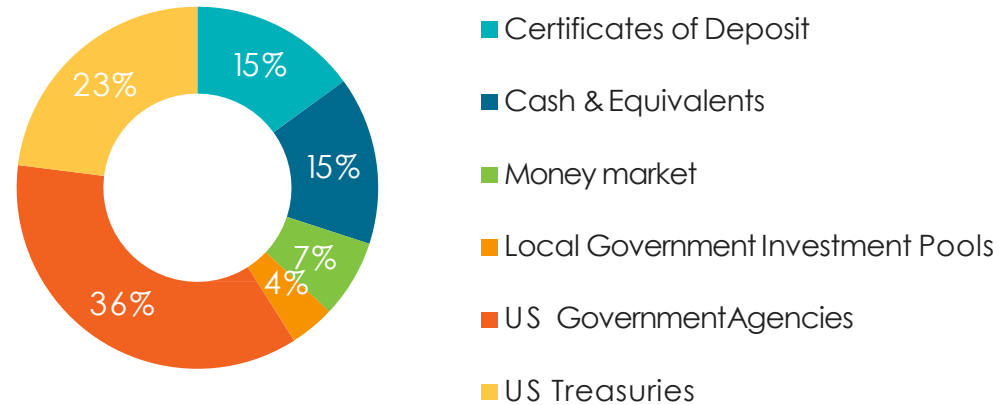
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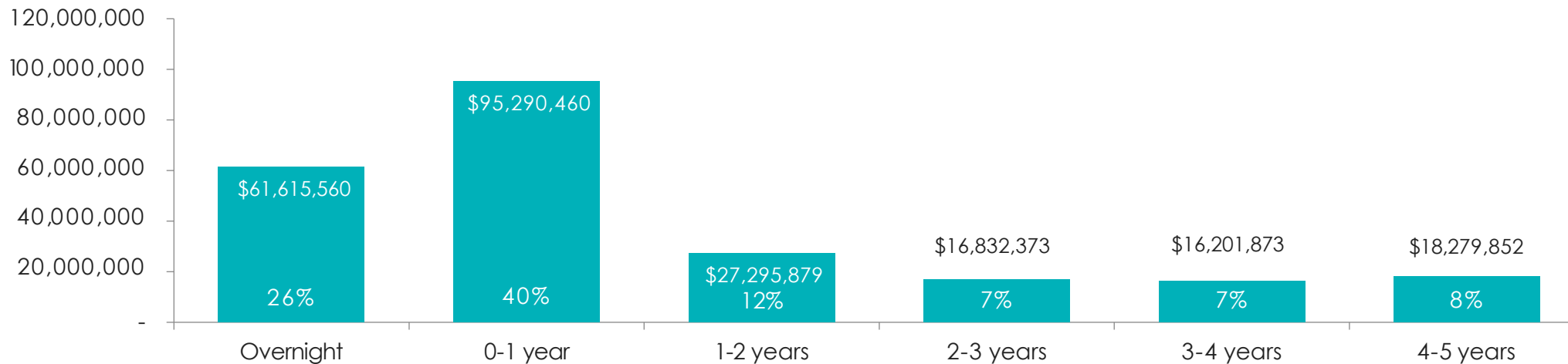
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Your Asset Allocation



Your Maturity Distribution



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City of Killeen

Staff Report

File Number: RS-23-145

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution ratifying a Meet and Confer Agreement with Killeen Police Employee Association FOP Lodge 32.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Holli Clements, City Attorney

SUBJECT: Meet and Confer Agreement with Killeen Police Employee Association FOP Lodge 32

BACKGROUND AND FINDINGS:

On May 24, 2022, City Council ratified a Meet and Confer Agreement with the Killeen Police Employee Association (KPEA) FOP Lodge 32. The main issue addressed in the Meet and Confer Agreement was the promotional process. Civil service provides that promotional positions other than the position immediately below the Chief are filled strictly by written exam, but the parties agreed that a process involving an assessment center would be a more productive promotional system and is included in the current agreement.

City staff began meeting with representatives of the KPEA-FOP in March 2023. The proposed changes include updating the term of the agreement, providing that the promotional eligibility list expires one year from the date on which the list is posted rather than the current one year from the date of the test, requiring that a candidate must complete both the written test and assessment center to be included on the promotional eligibility list for Sergeant and Lieutenant positions, removing addition of seniority points for the Captain position, allowing a candidate access to their own recorded video responses any time before the eligibility list expires, and allowing a Proctor designed by the Lodge to be present in the Assessment Center.

The current agreement will be in effect until September 30, 2023, unless extended for another six months or a new agreement is reached.

In order for a Meet and Confer agreement to be enforceable and binding, Texas Local Government Code 142 requires that the City Council and the police association ratify the agreement. KPEA-FOP 32 conducted an election and approved the agreement by a vote of 172 to 41.

THE ALTERNATIVES CONSIDERED:

The City Council may decline to ratify the Meet and Confer Agreement, or it may ratify the Meet and Confer Agreement.

Which alternative is recommended? Why?

Staff recommend that the City Council ratify the Meet and Confer Agreement.

CONFORMITY TO CITY POLICY:

This item conforms to state law and city policy.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

N/A

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

Staff recommends that the City Council ratify the Meet and Confer Agreement with the Killeen Police Employee Association FOP Lodge 32.

DEPARTMENTAL CLEARANCES:

Legal

ATTACHED SUPPORTING DOCUMENTS:

Meet and Confer Agreement

**Meet and Confer
Agreement**

Between the

Killeen Police Employee Association FOP Lodge 32

and the

City of Killeen, Texas

Effective _____, 2023

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DEFINITIONS

AGREEMENT shall mean this Meet and Confer Agreement, negotiated between the City of Killeen and Killeen Police Employee Association FOP Lodge 32.

CITY shall mean the City of Killeen.

CIVIL SERVICE DIRECTOR shall mean the Director of the Killeen Civil Service Commission.

CLASSIFIED OFFICER or **POLICE OFFICER** shall mean a peace officer as defined by Article 2.12, Texas Code of Criminal Procedure and for purposes of this agreement means full-time personnel holding the rank of Police Officer, Sergeant, Lieutenant or Captain.

LODGE shall mean the Killeen Police Employee Association FOP Lodge 32.

PARTIES shall mean the City of Killeen and the Killeen Police Employee Association FOP Lodge 32.

QUALIFIED VOTERS shall mean an employee of the City who is a peace officer commissioned by the Killeen Police Department. This term excludes the Chief of Police and those appointed by the Chief of Police to the position immediately below the Chief of Police pursuant to section 143.014.

TEXAS LOCAL GOVERNMENT CODE or **TLGC** shall mean the Texas Local Government Code.

ARTICLE 1

PURPOSE OF AGREEMENT

It is the intent and purpose of this Meet and Confer Agreement (the “Agreement”), entered into by and between the CITY OF KILLEEN (hereinafter referred to as the “CITY”) and the KILLEEN POLICE EMPLOYEE ASSOCIATION FOP LODGE #32 (hereinafter referred to as the “LODGE”, to achieve and maintain harmonious relations between the parties related to working conditions and other conditions of employment in accordance with Subchapter B of Chapter 142 Texas Local Government Code.

ARTICLE 2

TERM OF AGREEMENT AND OBLIGATIONS FOR SUBSEQUENT AGREEMENTS

SECTION 1: This Agreement shall be effective upon ratification in accordance with Local Government Code §142.064(a). This Agreement shall remain in full force and effect for one year from the effective date, or until a new agreement is reached by the parties, whichever occurs first. Should a new agreement not be reached within one year of the effective date, the parties may agree in writing to extend this agreement for an additional six months.

SECTION 2: Both parties agree that should either party request a change or amendment to this agreement at any time other than as provided in Article 2, section 3, the requesting party shall provide notice to the other party in writing. This notification shall clearly describe the desired change(s) and/or additions requested. The parties further agree to work together each year to reach a new agreement.

SECTION 3: In the calendar year in which this agreement expires, the City agrees to provide the Lodge with no less than three (3) dates on which the City is prepared to meet during the month of June. This notice shall include dates that are least forty-five (45) days from the date of the notice unless the Lodge agrees to a shorter time in writing. The Lodge agrees to select a primary and secondary date from the list provided by the City and to provide notice to the City on the selected dates within fourteen (14) days.

The parties agree to the following terms during the negotiations of future agreements:

1. During the initial meeting, the Parties agree to:
 - a. identify housekeeping issues and establish mutually agreed upon resolutions to those issues;
 - b. provide the other party with any known items on which the party wishes to confer during the agreement seeking process;
 - c. establish future meeting dates, times and locations;
 - d. establish a mutually agreed upon date on which no new items will be considered during the confer process; and
 - e. communicate any other items or issues either party feels are necessary.
2. Working from shared information, particularly within the economic realm, is the most efficient means of reaching an agreement. The parties agree to share data, including financials, studies, reports and research. Neither party shall be required to share information that is protected from disclosure by any privilege or by state or federal statute.
3. The parties agree to be prepared for each meeting and work together to achieve effective use of time spent in the meetings.
4. Caucuses will be kept to a minimum.
5. Side-bar conversations between members of one negotiation team and one or more persons of the other negotiating team shall not occur without at least one other member of

the negotiators party being present. The parties agree this concept will be adhered to during formal meetings of the parties as well as the time between formal meetings. This subsection does not apply to situations in which a mutually agreed upon concept has been previously established in a formal meeting and the lead negotiators are working toward language sufficient to achieve the desired outcome.

6. The City agrees to allow the lodge the use the City email system for the following purposes:
 - a. To provide an electronic copy of the agreement document to be ratified;
 - b. To provide notice of when, where and how an employee affected by the agreement may vote to either approve or reject the agreement; and
 - c. In such cases where the Lodge determines online voting is to be used, provide the link to the online system in which a vote may be cast.
7. The Lodge agrees to provide notice to the City on the timeframe in which the lodge plans to open the voting process for the agreement. The City agrees to provide the Lodge with the total number of qualified voters, along with their City-issued email address, who are employed by the City on the normal workday immediately before the date in which the voting will commence.
8. The Lodge agrees to provide the City with a written notice declaring the total number of qualified voters, the total number of votes cast for, the total number of votes cast against, and the date and time in which the Lodge officially ratified the agreement. This notice shall be delivered as soon as possible; however, it shall be provided within two (2) working days of the date in which the vote closes.

ARTICLE 3

AUTHORITY AND RECOGNITION

SECTION 1: The City and the Lodge have voluntarily met and reached agreement on the conditions set out in this Agreement pursuant to the provisions of the Texas Local Government Code Chapter 142 et. seq., Subchapter B.

SECTION 2: The CITY recognizes the Lodge as the sole and exclusive bargaining agent for all Killeen Police Officers as that term is defined in Chapter 142, Local Government Code, with the exception of the Chief of Police and the Assistant Chiefs of Police. The term *Police Officer* includes only permanent paid employees of the Killeen Police Department who have been hired in substantial compliance with provisions of the Local Government Code, Chapter 143, but does not include the Chief of Police, the Assistant Chiefs of Police, jailers, communications specialists, other civilians or any other City of Killeen employees.

ARTICLE 4

PREVAILING RIGHTS

No employee shall be unfavorably affected by the signing of this agreement as to wages, hours, or other conditions of employment that he or she now enjoys, except as otherwise covered in this Agreement.

ARTICLE 5

PREEMPTION

The parties agree that all applicable state laws, including without limitation Chapters 141, 142 and 143, Local Government Code, and Chapters 614 and 617, Government Code, the Rules and Regulations of the Civil Service Commission of the City of Killeen, and City ordinances, shall still be in full force and effect unless they conflict with provisions of this Agreement, in which case the terms of this Agreement shall prevail. This preemption provision is authorized by Section 142.067 of the Texas Local Government Code, and the Parties have agreed expressly that each and every provision involving or creating such a conflict shall have the effect of superseding the statutory standard or result which would otherwise obtain, in the absence of this Agreement. This provision is of the essence to the bargain and Agreement which has been reached.

ARTICLE 6

Alternate Promotional System

SECTION 1: General provisions: The parties agree to an alternate promotional system for the Killeen Police Department. The parties further agree that any promotional eligibility list which is not expired or exhausted will remain in effect until it is either exhausted or it expires after one year from the date on which the promotional eligibility list is posted. Nothing in this agreement shall be construed as a waiver of the provisions in Chapter 143 unless expressly stated within this agreement.

SECTION 2: Promotion to Sergeant: Each promotional examination for the position of Sergeant is open to each Police Officer who has been a full-time, licensed police officer in the Killeen Police Department, excluding any probationary period, for at least two (2) years immediately before the examination date. In order to be included on the promotional eligibility list, a candidate must complete both the written test and assessment center. The development of the promotion eligibility list shall consist of the following:

1. Written examination. The written test shall consist of up to one hundred (100) multiple choice questions. The candidate must pass the written test with a score of seventy (70) points. The written test score shall count towards forty (40) percent of the total score. The written test score shall not be made known to the assessors in the assessment center.
2. Assessment Center. The assessment Center shall be conducted in accordance with Appendix A, which is attached to and made a part of this agreement. The Assessment counts for sixty (60) percent of the total score.
3. Seniority Points: After the written examination, the candidate will receive any seniority points earned. Seniority Points shall be awarded in accordance with Appendix B, which is attached to and made a part of this agreement.

SECTION 3: Promotion to Lieutenant: Each promotional examination for the position of Lieutenant is open to each Sergeant who has served as a Sergeant in the Killeen Police Department for at least two (2) years immediately before the date of the promotional examination. In order to be included on the promotional eligibility list, a candidate must complete both the written test and assessment center. The development of the promotion eligibility list shall consist of the following:

1. Written examination. The written exam shall consist of up to one hundred (100) multiple choice questions. The candidate must pass the written exam with a score of seventy (70) points. The written exam score shall count towards thirty (30) percent of the total score. The written test score shall not be made known to the assessors in the assessment center.
2. Assessment Center. The assessment Center shall be conducted in accordance with Appendix A, which is attached to and made a part of this agreement. The Assessment counts for seventy (70) percent of the total score.

3. Seniority Points. After the written examination, the candidate will receive any seniority points earned. Seniority Points shall be awarded in accordance with Appendix B, which is attached to and made a part of this agreement.

SECTION 4: Promotion to Captain (Commander): Each promotional examination for the position of Captain is open to each Lieutenant who has served as a Lieutenant in the Killeen Police Department for at least two (2) years prior to the date of the promotional examination. The development of the promotion eligibility list shall consist of the following:

1. Assessment Center. The assessment center shall be conducted in accordance with Appendix A, which is attached to and made a part of this agreement.
2. The Chief of Police will determine the contents of the assessment center; however, at a minimum, the assessment center shall include the portions found in Appendix A, Section 5b, 5c and 5f.

Section 5: Tie-Breaking procedures: In an event there is a tie with two or more candidates for the same ranking on a promotional list, the following shall prevail in determining whose name shall appear on any promotional list first:

1. Highest Raw Test Score – If a tie exists, the candidates shall be ranked in the order according to which candidate had the highest examination raw score prior to the addition of seniority/time in grade points and after the Commission’s determination of appeals, if any.
2. Time in Rank – If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most recent continuous seniority in the position immediately below the position for which the examination was given.
3. Seniority in the Department - If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most seniority with the Department in a classified position, whether interrupted or uninterrupted.
4. Total Years of Experience as a Texas Certified Police Officer- If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most years of experience as an active, full-time, paid peace officer for a position in a Texas Police Department.
5. Total Years Experience as a Certified Police Officer – If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most years of experience as an active, full-time, paid peace officer for a position in a federal or out-of-state law enforcement agency.
6. Total City Service – If a tie still exists, the candidates shall be ranked in order according to which candidate has the most total service time with the City, including time in a non-classified position.
7. Earliest Date of Initial Application – If a tie still exists, the candidates shall be ranked in order according to the earliest stamped date and time of initial application for the promotion.
8. By Lot – If a tie still exists, the candidates shall be ranked by lot as determined by the Civil Service Director.

Section 6: Promotion to Assistant Chief: The positions of Assistant Chief shall be filled in accordance with current law and Civil Service Rules. This agreement shall make no changes to the manner in which this position is filled.

Section 7: Procedures for Making Appointments: The provisions contained in Chapter 143.036, LGC, shall remain in full force and effect unless any such provision conflicts with this agreement. In any such case, this agreement shall prevail.

ARTICLE 7

MISCELLANEOUS PROVISIONS

SECTION 1: Savings Clause.

If any provision of this Agreement is rendered invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this Agreement, which shall continue to be in full force and effect for the duration of the Agreement, and the parties shall meet as soon as possible to agree on a substitute provision. However, if the parties are unable to agree within thirty (30) days following commencement of this initial meeting, then the matter shall be postponed until subsequent Meet and Confer negotiations are resumed. To this end, the provisions of this Agreement are severable. This agreement may be amended by written mutual agreement.

Effective this _____ day of _____, 2023.

KILLEEN POLICE EMPLOYEE ASSN FOP LODGE 32:

BY: _____
CHRISTOPHER STICKLES, ITS PRESIDENT

CITY OF KILLEEN, TEXAS

BY: _____
DEBBIE NASH-KING, ITS MAYOR

APPENDIX A

Assessment Center

1. The Human Resources Department, in coordination with the Department, will hire a consultant to develop an assessment center process in advance of the need to create an eligibility list for a promotional rank using an assessment center process. If an assessment center has not been developed or an existing assessment center needs to be revised to include new or different scenarios or situations and exercises, then following the posting of a vacancy announcement for the written examination, the assessment center development or revision process should be initiated.

Due to the complexities and time involved in choosing a qualified vendor to participate in the development of an assessment center based on the essential job functions of the rank or the revision of an existing assessment center, a significant amount of time may pass between creating an eligibility list based on a written exam and conducting the assessment center.

The portions of the assessment center that require verbal communication from the Officer, such as Structured Interviews, Role-Playing, Oral Presentation, etc., will be video recorded. An individual candidate may review, but may not copy, their recorded video responses after executing a confidentiality non-disclosure form any time after the individual's assessment until the promotional eligibility list is exhausted or expires. The Lodge shall be entitled which shall include the materials associated with rater training and performance, and any candidate orientation materials. After such meeting, if the Lodge raises a concern about failure to comply with the provisions of this Agreement, they may request access to the video recorded assessments, which shall be considered by the Chief. If denied by the Chief, an arbitrator appointed in connection with a contract grievance shall be authorized to require production of the relevant materials. This paragraph shall not prevent access by the Lodge to any materials that are public records under state law.

2. The Parties agree to allow a Proctor designated by the Lodge to be present in the Assessment Center for promotions to maintain transparency in the process and ensure no significant discrepancies or changes exist in the interviews of each candidate. The following guidelines shall apply:
 - a. The designated Proctor shall be of equivalent rank or above to the rank being assessed and shall not be related within the second degree of affinity or third degree of consanguinity to any candidate for promotion.
 - b. The Proctor will not interject or interfere in the assessment.
 - c. The Proctor will report any observations that may conflict with the interviews of candidates to the Human Resources representative in the assessment immediately following the observation during the next corresponding break, and before the next candidate is interviewed.

- d. The Proctor will not be permitted to use any form of a recording device, computer, or digital aid to document the observations.
 - e. If note-taking is utilized, all notes or documents created during the assessment will be turned over to the Human Resources representative upon the conclusion of the day for disposal.
 - f. The Proctor will not be someone who is currently on a promotion list.
 - g. The Proctor will be the same for the entire Assessment Center if it lasts multiple days.
3. The assessment center will be developed based on the professional guidelines for assessment centers advocated by the American Psychological Association. The Department will follow City purchasing requirements to select one or more consultants to design and develop an assessment center for the ranks of Sergeant, Lieutenant, and Captain/Commander. The consultant shall make all final decisions concerning the design and implementation of the assessment center. Revision of an existing assessment center to avoid “familiarization” of assessment center content may be done by the same or different consultant. If necessary, an assessment center will be revised by a consultant if the revision involves removing unnecessary exercises or adjusting rating scales.
 4. The Consulting Company shall also select the assessors who shall meet each of the following criteria:
 - a. Equivalent rank to the promotion, or above.
 - b. Shall not reside within 100 miles of the city of Killeen.
 - c. Shall be at an agency that serves a city of 75,000 population or more.
 - d. Shall not be related to any candidate for promotion.
 - e. Shall not personally know any candidate for promotion.
 - f. Shall have at least two (2) years of experience in the rank being assessed or an equivalent rank.
 - g. Shall not be a current or former employee of the City, Department, or any other entity legally related to or controlled by the City of Killeen.
 5. The consultant will utilize, as appropriate, the following types of exercises typically found in assessment centers:
 - a. In-Basket
 - b. Problem Solving/Analysis
 - c. Written and Oral Resumes/Structured Interviews
 - d. Role-Playing
 - e. Memo/Report Writing
 - f. Oral Presentation/Plan Preparation
 - g. Staff Meeting
 - h. Special Event/Operations.

The consultant may utilize other types of assessment exercises or methods for use with assessing the rank of Captain/Commander if there is documented research on the validity of the exercise or method.

6. The consultant will have responsibility or oversight of the following administrative functions:
 - a. Collect data on the essential job duties of the tested rank for test and exercise development.
 - b. Conduct transportability study for use of standard assessment exercise or methods for use with the tested rank.
 - c. Provide any documentation or research supporting the validity of the exercises or methods used.
 - d. Provide an Administrator's manual if the assessment center is administered by the Human Resources Department. This should not be construed as granting authority for Human Resources to write, control or grade the test.
 - e. Provide guidance on the selection of assessors.
 - f. Conduct or provide a training manual for training assessors to objectively evaluate candidate performance or behavior and rate candidates on the appropriate rating scales.
 - g. Provide rating scales and criteria for evaluating candidates on the appropriate assessment dimensions and a methodology to combine assessment center scores to place candidates on a rating scale with 100 points.
 - h. Conduct or provide materials and information for an orientation to the assessment center process for candidates.
 - i. Provide guidance or conduct any other administrative function deemed necessary to insure the fairness or efficiency of the assessment process.
7. The number of Officers on the written examination eligibility list who will move to the second step of the promotion process (assessment center) will be based on only those Officers who pass the written examination with a certified score of seventy percent (70) or higher, without the addition of seniority points or time in grade points.
8. The assessment center will have a total point value of 100 points. Scoring in assessment centers relies on human observation and judgment. Assessors will receive training on the assessment center process. Assessors will also be provided with rating standards for use in the scoring process. While matters relating to the written examination can be appealed under TLGC 143.034, due to the subjective nature of assessment center scores, assessment center contents and results are not appealable to the Civil Service Commission, a hearing examiner, or District Court.
9. During the term of this Agreement either party may in writing request to meet and confer about amending the assessment process, and any other promotional issues. If the parties reach an agreement on amending this Appendix, the agreement is effective only if the members of the bargaining unit ratify and the City Council approves the agreement.

END OF APPENDIX "A"

APPENDIX “B”

SENIORITY POINT SYSTEM

Section 1: Promotion to Sergeant. An officer who passes the written examination shall have one (1) seniority point for each year of service (following the probationary period) as an officer with the Killeen Police Department. The maximum number of seniority points shall not exceed ten (10) points.

Section 2: Promotion to Lieutenant. A Sergeant who passes the written examination shall be entitled to one (1) seniority point for each year of service as a Sergeant within the Killeen Police Department. The maximum number of seniority points added shall not exceed ten (10) points.

END OF APPENDIX “B”



MEET AND CONFER AGREEMENT

RS-23-145

September 19, 2023

Background

2

- On May 24, 2022, the City Council ratified a Meet and Confer Agreement with the Killeen Police Employee Association FOP Lodge 32.
- The main issue addressed in the agreement was the promotional process.
 - ▣ Civil Services provides that promotional positions other than the position immediately below the Chief are filled solely by written exam, but the agreement allows for a process involving an assessment center.

Proposed Changes

3

- Provides that the promotional eligibility list expires one year from the date on which list is posted rather than the current one year from the date of the test
- Clarifies that a candidate must complete both the written test and assessment center to be included on promotional list for Sergeant and Lieutenant
- Removes the addition of seniority points for the Captain position
- Allows candidate access to their own recorded video responses any time before eligibility list expires
- Allows a proctor designated by the Lodge to be present in the Assessment Center

Ratification

4

- In order for the Meet and Confer Agreement to be binding and enforceable:
 - ▣ The City Council must ratify the agreement by majority vote.
 - ▣ The police association must ratify
 - KPEA-FOP 32 conducted an election and the agreement was ratified.

Recommendation

5

- Staff recommends that the City Council ratify the Meet and Confer Agreement.



City of Killeen

Staff Report

File Number: RS-23-146

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution approving a Professional Services Agreement with Garver, LLC, for design of the Passenger Terminal Mechanical Improvements Project at Killeen-Fort Hood Regional Airport, in the amount of \$293,200.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Mike Wilson, Executive Director of Aviation

SUBJECT: Professional Services Agreement with Garver, LLC

BACKGROUND AND FINDINGS:

The Bipartisan Infrastructure Law (BIL) signed into law on November 15, 2021, provides \$15 billion in Airport Infrastructure Grants (AIG) over a five (5) year period for airport-related projects as defined under the existing Airport Improvement Grant and Passenger Facility Charge (PFC) criteria.

The City has been offered a Federal Aviation Administration (FAA) BIL Airport Infrastructure Grant in the amount of \$267,322 to fund 90% of the Design Services, Project Administration, and Bidding Services of the Passenger Terminal Mechanical Improvements Project at the Killeen-Fort Hood Regional Airport (KFHRA). Matching funds, in the amount of \$29,703, will come from the FAA PFC Application that was approved by the FAA on February 16, 2023.

The project is comprised of various components including replacing the baggage claim carousels and associated belt system; upgrading the baggage system control hardware and software; replacing the preconditioned air units on boarding bridges 1 and 6; and replacing the terminal emergency generator.

Staff has negotiated a professional services agreement with Garver, LLC, in the amount of \$293,200, for the project administration, design services, and bidding services for the Passenger Terminal Mechanical Improvements project at KFHRA.

THE ALTERNATIVES CONSIDERED:

1. Disapprove the agreement.
2. Approve the agreement.

Which alternative is recommended? Why?

Alternative 2 is recommended because:

1. The Garver team is the Airport engineer of record and was selected via a competitive process.
2. This choice offers the most experienced team fully cognizant of FAA requirements for projects at KFHRA.
3. Project is fully funded through Grant and PFC funds with no impact to the operating fund or fund balance.

CONFORMITY TO CITY POLICY:

This item conforms to local and state policies.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

The expenditure for Alternative 2 in the current fiscal year is \$293,200.

Is this a one-time or recurring expenditure?

This is a one-time expenditure.

Is this expenditure budgeted?

Yes, funds will be available in the AIP Grant Fund in account 524-0515-521.69-01 and PFC Fund in account 529-0510-521.69.07, upon approval of the budget amendment.

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes, upon approval of the budget amendment.

RECOMMENDATION:

Staff recommends that the City Council approve a professional service agreement with Garver, LLC, in the amount of \$293,200 and recommends that the City Council authorize the City Manager, or designee, to execute all contract documents and any and all change orders or actions within the amounts set by state and local law.

DEPARTMENTAL CLEARANCES:

Finance
Legal
Purchasing

ATTACHED SUPPORTING DOCUMENTS:

Contract

Digital Contract

Certificate of Interested Parties



285 SE Inner Loop
Suite 110
Georgetown, TX 78626
TEL 512.485.0020
FAX 512.485.0021
www.GarverUSA.com

July 20, 2023

Mike Wilson
Killeen-Fort Hood Regional Airport (KFHRA)
8101 S Clear Creek Road
Killeen, TX 76549

Re: Engineering Design Services Proposal and Contract for
Killeen-Fort Hood Regional Airport (GRK) Terminal Mechanical Improvements Design

Dear Mr. Wilson,

We appreciate the opportunity to serve the Killeen-Fort Hood Regional Airport with the Terminal Mechanical Improvements project. We have developed a proposed contract including the scope of services and fee.

Please call me if you have any questions.

Sincerely,

GARVER

Jacob Green, P.E.
Project Manager

Attachments: GRK Terminal Mechanical Improvements Design Contract



THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made as of the Effective Date by and between the **City of Killeen** (hereinafter referred to as **“Owner”**), and **Garver, LLC** (hereinafter referred to as **“Garver”** or **“Engineer”**). Owner and Garver may individually be referred to herein after as a **“Party”** and/or **“Parties”** respectively.

RECITALS

WHEREAS, Owner intends to **replace and improve mechanical equipment and system hardware throughout the terminal at Killeen- Fort Hood Regional Airport (GRK)** (the **“Project”**).

WHEREAS, Garver will provide professional Services related to the Project as further described herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS GARVER

In addition to other defined terms used throughout this Agreement, when used herein, the following capitalized terms have the meaning specified in this Section

“Effective Date” means the date last set forth in the signature lines below.

“Damages” means any and all damages, liabilities, or costs (including reasonable attorneys’ fees recoverable under applicable law).

“Hazardous Materials” means any substance that, under applicable law, is considered to be hazardous or toxic or is or may be required to be remediated, including: (i) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, (ii) any chemicals, materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” or any words of similar import pursuant to applicable law; or (iii) any other chemical, material, substance or waste, exposure to which is now or hereafter prohibited, limited or regulated by any governmental instrumentality, or which may be the subject of liability for damages, costs or remediation.

“Personnel” means affiliates, directors, officers, partners, members, employees, and agents.

2. SCOPE OF SERVICES

2.1. Services. Owner hereby engages Garver to perform the scope of service described in Exhibit A attached hereto (**“Services”**). Execution of this Agreement by Owner constitutes Owner’s written authorization to proceed with the Services. In consideration for such Services, Owner agrees to pay Garver in accordance with Section 3 below.

3. PAYMENT

3.1. Fee.



For the Services described under Section 2.1, Owner will pay Garver in accordance with this Section 3 and Exhibit B. Owner represents that funding sources are in place with the available funds necessary to pay Garver in accordance with the terms of this Agreement.

3.2. Invoicing Statements. Garver shall invoice Owner on a monthly basis. Such invoice shall include supporting documentation reasonably necessary for Owner to know with reasonable certainty the proportion of Services accomplished.

3.3. Payment.

3.3.1. Due Date. Owner shall pay Garver all undisputed amounts within thirty (30) days after receipt of an invoice. Owner shall provide notice in writing of any portion of an invoice that is disputed in good faith within fifteen (15) days of receipt of an invoice. Garver shall promptly work to resolve any and all items identified by Owner relating to the disputed invoice. All disputed portions shall be paid promptly upon resolution of the underlying dispute.

3.3.2. If any undisputed payment due Garver under this Agreement is not received within forty-five (45) days from the date of an invoice, Garver may elect to suspend Services under this Agreement without penalty.

3.3.3. Payments due and owing that are not received within thirty (30) days of an invoice date will be subject to interest at the lesser of a one percent (1%) monthly interest charge (compounded) or the highest interest rate permitted by applicable law.

4. AMENDMENTS

4.1. Amendments. Garver shall be entitled to an equitable adjustment in the cost and/or schedule for circumstances outside the reasonable control of Garver, including modifications in the scope of Services, applicable law, codes, or standards after the Effective Date ("Amendment"). As soon as reasonably possible, Garver shall forward a formal Amendment to Owner with backup supporting the Amendment. All Amendments should include, to the extent know and available under the circumstances, documentation sufficient to enable Owner to determine: (i) the factors necessitating the possibility of a change; (ii) the impact which the change is likely to have on the cost to perform the Services; and (iii) the impact which the change is likely to have on the schedule. All Amendments shall be effective only after being signed by the designated representatives of both Parties. Garver shall have no obligation to perform any additional services created by such Amendment until a mutually agreeable Amendment is executed by both Parties.

5. OWNER'S RESPONSIBILITIES

5.1. In connection with the Project, Owner's responsibilities shall include the following:

5.1.1. Those responsibilities set forth in Exhibit A.

5.1.2. Owner shall be responsible for all requirements and instructions that it furnishes to Garver pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Garver pursuant to this Agreement. Garver may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement,



subject to any express limitations or reservations applicable to the furnished items as further set forth in Exhibit A.

5.1.3. Owner shall give prompt written notice to Garver whenever Owner observes or otherwise becomes aware of the presence at the Project site of any Hazardous Materials or any relevant, material defect, or nonconformance in: (i) the Services; (ii) the performance by any contractor providing or otherwise performing construction services related to the Project; or (iii) Owner's performance of its responsibilities under this Agreement.

5.1.4. Owner agrees to allow the contractor to include "Garver, LLC" as an additional insured under the contractor's indemnity obligations included in the construction contract documents.

5.1.5. Owner will not directly solicit any of Garver's Personnel during performance of this Agreement.

6. GENERAL REQUIREMENTS

6.1. Standards of Performance.

6.1.1. Industry Practice. Garver shall perform any and all Services required herein in accordance with generally accepted practices and standards employed by the applicable United States professional services industries as of the Effective Date practicing under similar conditions and locale. Such generally accepted practices and standards are not intended to be limited to the optimum practices, methods, techniques, or standards to the exclusion of all others, but rather to a spectrum of reasonable and prudent practices employed by the United States professional services industry.

6.1.2. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Garver's services. Garver shall promptly correct deficiencies in technical accuracy without the need for an Amendment unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

6.1.3. On-site Services. Garver and its representatives shall comply with Owner's and its separate contractor's Project-specific safety programs, which have been provided to Garver in writing in advance of any site visits.

6.1.4. Relied Upon Information: Garver may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

6.1.5. Aside from Garver's direct subconsultants, Garver shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Garver have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any such contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's services. Garver shall not be responsible for the acts or omissions of any contractor for whom it does not have a direct contract. Garver neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the construction contract documents applicable to the contractor's work, even when Garver is performing construction phase services.



6.1.6. In no event is Garver acting as a “municipal advisor” as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission. Consequently, Garver’s Services expressly do not include providing advice pertaining to insurance, legal, finance, surety-bonding, or similar services.

6.2. Instruments of Service.

6.2.1. Deliverables. All reports, specifications, record drawings, models, data, and all other information provided by Garver or its subconsultants, which is required to be delivered to Owner under Exhibit A (the “**Deliverables**”), shall become the property of Owner subject to the terms and conditions stated herein.

6.2.2. Electronic Media. Owner hereby agrees that all electronic media, including CADD files (“**Electronic Media**”), are tools used solely for the preparation of the Deliverables. Upon Owner’s written request, Garver will furnish to Owner copies of Electronic Media to the extent included as part of the Services. In the event of an inconsistency or conflict in the content between the Deliverables and the Electronic Media, however, the Deliverables shall take precedence in all respects. Electronic Media is furnished without guarantee of compatibility with the Owner’s software or hardware. Because Electronic Media can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that, to the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver’s subconsultants, and their Personnel harmless from and against any and all claims, liabilities, damages, losses, and costs, including, but not limited to, costs of defense arising out of changes or modifications to the Electronic Media form in Owner’s possession or released to others by Owner. Garver’s sole responsibility and liability for Electronic Media is to furnish a replacement for any non-functioning Electronic Media for reasons solely attributable to Garver within thirty (30) days after delivery to Owner.

6.2.3. Property Rights. All intellectual property rights of a Party, including copyright, patent, and reuse (“**Intellectual Property**”), shall remain the Intellectual Property of that Party. Garver shall obtain all necessary Intellectual Property from any necessary third parties in order to execute the Services. Any Intellectual Property of Garver or any third party embedded in the Deliverables shall remain so imbedded and may not be separated therefrom.

6.2.4. License. Upon Owner fulfilling its payment obligations under this Agreement, Garver hereby grants Owner a license to use the Intellectual Property, but only in the operation and maintenance of the Project for which it was provided. Use of such Intellectual Property for modification, extension, or expansion of this Project or on any other project, unless under the direction of Garver, shall be without liability to Garver and Garver’s subconsultants. To the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver’s subconsultants, and their Personnel harmless from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense arising out of Owner’s use of the Intellectual Property contrary to the rights permitted herein.

6.3. Opinions of Cost.



- 6.3.1. Since Garver has no control over: (i) the cost of labor, materials, equipment, or services furnished by others; (ii) the contractor or its subcontractor(s)' methods of determining prices; (iii) competitive bidding; (iv) market conditions; or (v) similar material factors, Garver's opinions of Project costs or construction costs provided pursuant to Exhibit A, if any, are to be made on the basis of Garver's experience and qualifications and represent Garver's reasonable judgment as an experienced and qualified professional engineering firm, familiar with the construction industry; but Garver cannot and does not guarantee that proposals, bids, or actual Project or construction costs will not vary from estimates prepared by Garver.
- 6.3.2. Owner understands that the construction cost estimates developed by Garver do not establish a limit for the construction contract amount. If the actual amount of the low construction bid or resulting construction contract exceeds the construction budget established by Owner, Garver will not be required to re-design the Services without additional compensation. In the event Owner requires greater assurances as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- 6.4. Underground Utilities. Except to the extent expressly included as part of the Services, Garver will not provide research regarding utilities or survey utilities located and marked by their owners. Furthermore, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, Garver is not responsible for knowing whether underground utilities are present or knowing the exact location of such utilities for design and cost estimating purposes. In no event is Garver responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical conditions, potholing, construction, or other contractors or subcontractors working under a subcontract to this Agreement.
- 6.5. Design without Construction Phase Services.
- 6.5.1. If the Owner requests in writing that Garver provide any specific construction phase services or assistance with resolving disputes or other subcontractor related issues, and if Garver agrees to provide such services, then Garver shall be compensated for the services as an Amendment in accordance with Sections 4 and 10.2.
- 6.5.2. Garver shall be responsible only for those construction phase Services expressly set forth in Exhibit A, if any. With the exception of such expressly required Services, Garver shall have no responsibility or liability for any additional construction phase services, including review and approval of payment applications, design, shop drawing review, or other obligations during construction. Owner assumes all responsibility for interpretation of the construction contract documents and for construction observation and supervision and waives any claims against Garver that may be in any way connected thereto.
- 6.5.3. Owner agrees, to the fullest extent permitted by law, to indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such construction phase services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments, or changes made to the construction contract documents to reflect changed field or other conditions, except to the extent such claims arise from the negligence of Garver in performance of the Services.



- 6.6. Hazardous Materials. Nothing in this Agreement shall be construed or interpreted as requiring Garver to assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any Hazardous Materials. Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, Owner shall indemnify and hold Garver and Garver's subconsultants, and their Personnel harmless from and against any and all losses which arise out of the performance of the Services and relating to the regulation and/or protection of the environment including without limitation, losses incurred in connection with characterization, handling, transportation, storage, removal, remediation, disturbance, or disposal of Hazardous Material, whether above or below ground.
- 6.7. Confidentiality. Owner and Garver shall consider: all information provided by the other Party that is marked as "Confidential Information" or "Proprietary Information" or identified as confidential pursuant to this Section 6.7 in writing promptly after being disclosed verbally to be Confidential Information. Except as legally required, Confidential Information shall not be discussed with or transmitted to any third parties, except on a "need to know basis" with equal or greater confidentiality protection or written consent of the disclosing Party. Confidential Information shall not include and nothing herein shall limit either Party's right to disclose any information provided hereunder which: (i) was or becomes generally available to the public, other than as a result of a disclosure by the receiving Party or its Personnel; (ii) was or becomes available to the receiving Party or its representatives on a non-confidential basis, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary duty; (iii) was independently developed by the receiving Party without the use of any Confidential Information of the disclosing Party; or (iv) is required to be disclosed by applicable law or a court order. All confidentiality obligations hereunder shall expire three (3) years after completion of the Services. Nothing herein shall be interpreted as prohibiting Garver from disclosing general information regarding the Project for future marketing purposes. Notwithstanding anything to the contrary, City is a governmental entity subject to Texas Public Information Act and shall abide by said Act and opinions of the Attorney General interpreting the same.

7. INSURANCE

7.1. Insurance.

7.1.1. Garver shall procure and maintain insurance as set forth in Exhibit C until completion of the Service. Garver shall name Owner as an additional insured on Garver's General Liability policy to the extent of Garver's indemnity obligations provided in Section 9 of this Agreement.

7.1.2. Garver shall furnish Owner a certificate of insurance evidencing the insurance coverages required in Exhibit C.

8. DOCUMENTS

- 8.1. Audit. Garver shall maintain all required records for the later of three (3) years after completion of the Services or Owner makes final payment and all other pending matters are closed. FAA, Owner, Comptroller General of the United States or any of their duly authorized representatives shall have access to any books, documents, papers and records of Garver which are directly pertinent to a specific grant program for the purpose of audit, examination, excerpts, and transcription. In no event shall Owner be entitled to audit the makeup of lump sum or other fixed prices (e.g., agreed upon unit or hour rates).



8.2. Delivery. After completion of the Project, and prior to final payment, Garver shall deliver to the Owner all original documentation prepared under this Agreement, and one (1) set of the record drawing construction plans updated to reflect changes. One (1) set of the record drawing construction plans will also be delivered to the FAA airport region office. In the event the Owner does not have proper storage facilities for the protection of the original drawings, the Owner may request Garver to retain the drawings with the provision that they will be made available upon written request.

9. INDEMNIFICATION / WAIVERS

9.1. Indemnification.

9.1.1. Garver Indemnity. Subject to the limitations of liability set forth in Section 9.2, Garver agrees to indemnify and hold Owner, and Owner's Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent such Damages are caused by the negligent acts, errors, or omissions of Garver or any other party for whom Garver is legally liable, in the performance of the Services under this Agreement.

9.1.2. Owner Indemnity. Subject to the limitations of liability set forth in Section 9.2, to the extent allowed by law, Owner agrees to indemnify and hold Garver and Garver's subconsultants and their Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent caused by the negligent acts, errors, or omissions of Owner or any other party for whom Owner is legally liable, in the performance of Owner's obligations under this Agreement.

9.1.3. In the event claims or Damages are found to be caused by the joint or concurrent negligence of Garver and the Owner, they shall be borne by each Party in proportion to its own negligence.

9.2. Waivers. Notwithstanding any other provision to the contrary, the Parties agree as follows:

9.2.1. THE PARTIES AGREE THAT ANY CLAIM OR SUIT FOR DAMAGES MADE OR FILED AGAINST THE OTHER PARTY WILL BE MADE OR FILED SOLELY AGAINST GARVER OR OWNER RESPECTIVELY, OR THEIR SUCCESSORS OR ASSIGNS, AND THAT NO PERSONNEL SHALL BE PERSONALLY LIABLE FOR DAMAGES UNLESS THE INDIVIDUAL IS DETERMINED TO BE ACTING OUTSIDE THE SCOPE OF EMPLOYMENT.

9.2.2. MUTUAL WAIVER. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER OWNER, GARVER, NOR THEIR RESPECTIVE PERSONNEL SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES, OR DAMAGES ARISING FROM OR IN CONNECTION WITH LOSS OF USE, LOSS OF REVENUE OR PROFIT (ACTUAL OR ANTICIPATED), LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED COST OF CONSTRUCTION, COST OF CAPITAL, COST OF REPLACEMENT POWER OR CUSTOMER CLAIMS, AND OWNER HEREBY RELEASES GARVER, AND GARVER RELEASES OWNER, FROM ANY SUCH LIABILITY.

9.2.3. LIMITATION. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE OWNER AND GARVER, OWNER HEREBY AGREES THAT



GARVER'S AND ITS PERSONNEL'S TOTAL LIABILITY UNDER THE AGREEMENT SHALL BE LIMITED TO PROCEEDS RECEIVED FROM INSURANCE PROVIDED UNDER EXHIBIT C OF THIS AGREEMENT.

9.2.4. NO OTHER WARRANTIES. NO OTHER WARRANTIES OR CAUSES OF ACTION OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE) SHALL APPLY. OWNER'S EXCLUSIVE REMEDIES AND GARVER'S ONLY OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH DEFECTIVE SERVICES (PATENT, LATENT OR OTHERWISE), WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, SHALL BE THOSE STATED IN THE AGREEMENT.

9.2.5. THE LIMITATIONS SET FORTH IN SECTION 9.2 APPLY REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, OR NEGLIGENCE INCLUDING GROSS NEGLIGENCE, STRICT LIABILITY, WARRANTY, INDEMNITY, ERROR AND OMISSION, OR ANY OTHER CAUSE WHATSOEVER.

10. DISPUTE RESOLUTION

10.1. Any controversy or claim ("**Dispute**") arising out of or relating to this Agreement or the breach thereof shall be resolved in accordance with the following:

10.1.1. Any Dispute that cannot be resolved by the project managers of Owner and Garver may, at the request of either Party, be referred to the senior management of each Party. If the senior management of the Parties cannot resolve the Dispute within thirty (30) days after such request for referral, then either Party may request mediation. If both Parties agree to mediation, it shall be scheduled at a mutually agreeable time and place with a mediator agreed to by the Parties. Should mediation fail, should either Party refuse to participate in mediation, or should the scheduling of mediation be impractical, either Party may file for arbitration in lieu of litigation.

10.1.2. If both Parties agree to arbitration, said arbitration of the Dispute shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules. The arbitration shall be conducted by a single arbitrator, agreed to by the Parties. In no event may a demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations.

10.1.3. The site of the arbitration shall be Bell County, Texas. Each Party hereby consents to the jurisdiction of the federal and state courts within whose district the site of arbitration is located for purposes of enforcement of this arbitration provision, for provisional relief in aid of arbitration, and for enforcement of any award issued by the arbitrator.

10.1.4. To avoid multiple proceedings and the possibility of inconsistent results, either Party may seek to join third parties with an interest in the outcome of the arbitration or to consolidate arbitration under this Agreement with another arbitration. Within thirty (30) days of receiving written notice of such a joinder or consolidation, the other Party may object. In the event of such an objection, the arbitrator shall decide whether the third party may be joined and/or whether the arbitrations may be consolidated. The arbitrator shall consider whether any entity will suffer prejudice as a result of or denial of the



proposed joinder or consolidation, whether the Parties may achieve complete relief in the absence of the proposed joinder or consolidation, and any other factors which the arbitrators conclude should factor on the decision.

10.1.5. The arbitrator shall have no authority to award punitive damages. Any award, order or judgment pursuant to the arbitration is final and may be entered and enforced in any court of competent jurisdiction.

10.1.6. The prevailing Party shall be entitled to recover its attorneys' fees, costs, and expenses, including arbitrator fees and costs and AAA fees and costs.

10.1.7. The foregoing arbitration provisions shall be final and binding, construed and enforced in accordance with the Federal Arbitration Act, notwithstanding the provisions of this Agreement specifying the application of other law. Pending resolution of any Dispute, unless the Agreement is otherwise terminated, Garver shall continue to perform the Services under this Agreement that are not the subject of the Dispute, and Owner shall continue to make all payments required under this Agreement that are not the subject of the Dispute.

10.2. Litigation Assistance. This Agreement does not include costs of Garver for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by Owner, unless litigation assistance has been expressly included as part of Services. In the event Owner requests such services of Garver, this Agreement shall be amended in writing by both Owner and Garver to account for the additional services and resulting cost in accordance with Section 4.

11. TERMINATION

11.1. Termination for Convenience. Owner shall have the right at its sole discretion to terminate this Agreement for convenience at any time upon giving Garver ten (10) days' written notice. In the event of a termination for convenience, Garver shall bring any ongoing Services to an orderly cessation. Owner shall compensate Garver in accordance with Exhibit B for: (i) all Services performed and reasonable costs incurred by Garver on or before Garver's receipt of the termination notice, including all outstanding and unpaid invoices, (ii) all costs reasonably incurred to bring such Services to an orderly cessation.

11.2. Termination for Cause. This Agreement may be terminated by either Party in the event of failure by the other Party to perform any material obligation in accordance with the terms hereof. Prior to termination of this Agreement for cause, the terminating Party shall provide at least seven (7) business days written notice and a reasonable opportunity to cure to the non-performing Party. In all events of termination for cause due to an event of default by the Owner, Owner shall pay Garver for all Services properly performed prior to such termination in accordance with the terms, conditions and rates set forth in this Agreement.

11.3. Termination in the Event of Bankruptcy. Either Party may terminate this Agreement immediately upon notice to the other Party, and without incurring any liability, if the non-terminating Party has: (i) been adjudicated bankrupt; (ii) filed a voluntary petition in bankruptcy or had an involuntary petition filed against it in bankruptcy; (iii) made an assignment for the benefit of creditors; (iv) had a trustee or receiver appointed for it; (v) becomes insolvent; or (vi) any part of its property is put under receivership.



12. MISCELLANEOUS

- 12.1. Governing Law. This Agreement is governed by the laws of the State of Texas, without regard to its choice of law provisions.
- 12.2. Successors and Assigns. Owner and Garver each bind themselves and their successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; neither Owner nor Garver shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other, which shall not be unreasonably withheld or delayed.
- 12.3. Independent Contractor. Garver is and at all times shall be deemed an independent contractor in the performance of the Services under this Agreement.
- 12.4. No Third-Party Beneficiaries. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Owner and Garver. This Agreement does not contemplate any third-party beneficiaries.
- 12.5. Entire Agreement. This Agreement constitutes the entire agreement between Owner and Garver and supersedes all prior written or oral understandings and shall be interpreted as having been drafted by both Parties. This Agreement may be amended, supplemented, or modified only in writing by and executed by both Parties.
- 12.6. Severance. The illegality, unenforceability, or occurrence of any other event rendering a portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision of this Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.
- 12.7. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one Agreement. Delivery of an executed counterpart of this Agreement by fax or transmitted electronically in legible form, shall be equally effective as delivery of a manually executed counterpart of this Agreement.

13. EXHIBITS

- 13.1. The following Exhibits are attached to and made a part of this Agreement:

- Exhibit A – Scope of Services
- Exhibit B – Compensation Schedule
- Exhibit C – Insurance
- Exhibit D – Mandatory Federal Contract Provisions for Professional Services Contracts
- Exhibit E – State of Texas Requirements
- Exhibit F – Certification of Engineer
- Exhibit G – Conceptual Layout

Owner and Garver, by signing this Agreement, acknowledges that they have independently assured themselves and confirms that they individually have examined all Exhibits, and agrees that all of the aforesaid Exhibits shall be considered a part of this Agreement and agrees to be bound to the terms, provisions, and other requirements thereof, unless specifically excluded.



Acceptance of this proposed Agreement is indicated by an authorized agent of the Owner signing in the space provided below. Please return one signed original of this Agreement to Garver for our records.

IN WITNESS WHEREOF, Owner and Garver have executed this Agreement effective as of the date last written below.

City of Killeen, TX

Garver, LLC

By: _____
Signature

By: Mitchell McAnally
Signature

Name: Kent Cagle
Printed Name

Name: Mitchell McAnally
Printed Name

Title: City Manager

Title: Senior Project Manager

Date: _____

Date: 07/20/2023

Attest: _____

Attest: Kendall Smith



EXHIBIT A (SCOPE OF SERVICES)

Generally, the Scope of Services includes the following professional services for improvements to the terminal mechanical systems at Killeen-Fort Hood Regional Airport (GRK). Improvements will consist primarily of replacing pre-conditioned air units (PCAIR) on gates 1 and 6 jet bridges, replacing terminal emergency backup generator, and replacing baggage claim carousels as shown in Exhibit G.

- Project Administration
- Design Services
 - Preliminary Engineering Report
 - 60% Preliminary Design
 - 90% Final Design
 - 100% Issued for Bid
- Bidding Services
 - Issued for Construction

1. PROJECT ADMINISTRATION

- 1.1. Garver will serve as the Owner's representative for the project and furnish consultation and advice to the Owner during the performance of this service. Garver will attend conferences alone or with Owner's representatives, local officials, state and federal agencies, and others regarding the scope of the proposed project, its general design, functions, and impacts.

2. DESIGN SERVICES

- 2.1. General: Garver will prepare detailed construction drawings, specifications, instructions to bidders, and general provisions and special provisions, all based on guides furnished to Garver by the Owner and FAA, or internally developed by Garver. Contract Documents (Plans, Specifications, and Estimates) will be prepared for award of one (1) construction contract. These designs shall conform to the standards of practice ordinarily used by members of Garver's profession practicing under similar conditions and shall be submitted to the FAA office from which approval must be obtained.
- 2.2. Owner / Agency Coordination: Garver's project manager and/or design team will coordinate with the Owner as necessary to coordinate design decisions, site visits, document procurement, or other design needs.
- 2.3. Project Management Plan / Quality Control Procedures
 - 5.3.1 Garver will develop a project specific project management plan. The project management plan will include the project background, scope of work, stakeholder contact information, project team organization and roles, design criteria, project schedule, deliverables, and quality control procedures.
 - 5.3.2 Garver will complete quality control reviews for each deliverable prior to any design submission to Owner and/or FAA. Quality control reviews will be completed by qualified peer engineers, design team, and project manager. Weekly internal progress meetings will be held during all design phases to ensure adequate quality control throughout the design phases.



2.4. Construction Safety and Phasing Plan

2.4.1. Garver will develop a construction safety and phasing plan (CSPP) for the project. During development of the CSPP, Garver will hold a meeting with Airport staff and other stakeholders at the Airport's request to obtain feedback regarding operations during each proposed phase of construction.

2.4.2. After receiving comments from the meeting, Garver will develop a preliminary CSPP for the Owner's review prior to submission to the FAA. After incorporating Owner comments, the CSPP will be submitted to FAA for review through the OE/AAA website.

2.5. Existing Conditions Review

2.5.1. Record Document Review: Garver will review record document data from the vicinity of the construction site to evaluate existing conditions. Record document data may include record drawings, record surveys, utility maps, GIS data, and previous design reports.

2.5.2. Site Visits: Garver's engineers and subconsultants will perform up to two (2) site visits to the project site to review existing conditions and evaluate record document data.

2.6. Mechanical Engineering Design: Garver will perform all necessary mechanical engineering design associated with the replacement of pre-conditioned air units (PCAIR) on gates 1 and 6 jet bridges and replacing the terminal emergency backup generator. This includes analysis of the existing equipment's requirements and providing design for the new and replaced equipment.

2.7. Electrical Engineering Design: Garver will perform all necessary electrical engineering design associated with the replacement of pre-conditioned air units (PCAIR) on gates 1 and 6 jet bridges and replacing the terminal emergency backup generator. Design scope will include:

- Analysis of the existing and new PCAIR electrical loads
- Analysis of electrical loads needing generator support
- Verification of site clearances for new generator
- Automatic transfer switch design
- Generator and generator enclosure design
- Supporting electrical system design
- Phasing analysis to reduce construction impacts to existing system support

2.8. Specialty Design

2.8.1. Baggage: Swanson Rink, as a subconsultant to Garver, will be responsible for providing baggage handling systems (BHS) design for replacing baggage claim carousels and the baggage handling systems. Design scope will include:

- Analysis of systems loads
- Systems layout and spatial coordination
- BHS control and power distribution design
- Building interfaces for power
- IT systems
- Fire alarm and security
- Identification of structural requirements



2.9. Plan Set Development

The following matrix details the plan drawings to be included in each design submittal.

Plan Set	Design Phase		
	60% Preliminary	90% Final	100% Issued for Bid
Cover Sheet	X	X	X
Sheet Index	X	X	X
General Notes	X	X	X
Project Layout Plan	X	X	X
Construction Safety Plans	X	X	X
Construction Safety Details	X	X	X
Existing Conditions Plans	X	X	X
Electrical Notes	X	X	X
Electrical Plans	X	X	X
Electrical Details	X	X	X
Mechanical Notes	X	X	X
Mechanical Plans	X	X	X
Mechanical Details	X	X	X
Baggage Handling System Notes	X	X	X
Baggage Handling System Plans	X	X	X
Baggage Handling System Details	X	X	X

2.10. Specifications and Contract Documents

2.10.1. Technical Specifications: Detailed specifications shall be developed using FAA "Standards for Specifying Construction for Airports" AC 150/5370-10 (latest edition) or other appropriate standards approved for use by the FAA. Additional supplementary specifications will be developed for project requirements not covered by FAA AC150/5370-10 or when state or local standards are approved by the FAA.

2.10.2. Construction Contract Documents: Garver will develop construction contract documents based on EJCDC standards and Owner provided template. A specimen copy of the General Provisions and applicable prevailing wage rates will be obtained by Garver from the FAA and/or Department of Labor as appropriate for incorporation into the specifications for the proposed project. Final construction contract documents will be submitted to the Owner for final review and approval.

2.11. Preliminary Engineering Report: Garver will prepare a brief Engineer's Report to outline the project's design criteria and design considerations. The report will discuss design decisions of all major project parameters and will primarily be used to document the conceptual design and approach for the project.



2.12. Quantities and Engineer's Opinion of Probable Cost: Garver will develop detailed quantities in PDF format for use in construction cost estimating for each design phase. Quantities will be completed by pay item. Upon the completion of quantity development, Garver will review previous cost data and market conditions and complete an Engineer's Opinion of Probable Cost.

2.13. Design Services Submission and Meeting Summary: The following design submittal phases shall be included in the fee summary. A summary of each design phase and the associated review meetings is included below.

2.13.1. Preliminary Engineering Report

2.13.1.1. Garver will develop Preliminary Engineering Report and Conceptual Engineer's Opinion of Probable Cost and submit to the Owner for review. It is anticipated that the Owner will review the design submission within four weeks.

2.13.1.2. At the completion of the Owner review period, Garver will meet with the Owner to review the Preliminary Engineering Report and Engineer's Opinion of Probable Cost and to receive Owner comments and direction.

2.13.2. 60% Preliminary Design

2.13.2.1. Garver will develop 60% preliminary design plans, specifications, and engineer's report and submit these to the Owner for review. It is anticipated that the Owner will review the design submission within four weeks.

2.13.2.2. At the completion of the Owner review period, Garver will meet with the Owner to review the 60% preliminary design plans, specifications, and Engineer's Opinion of Probable Cost and to receive Owner comments and direction.

2.13.3. 90% Final Design

2.13.3.1. Garver will develop 90% final design plans, specifications, and engineer's report and submit these to the Owner for review. It is anticipated that the Owner will review the design submission within four weeks.

2.13.3.2. At the completion of the Owner review period, Garver will meet with the Owner to review the 90% final design plans, specifications, and Engineer's Opinion of Probable Cost and to receive Owner comments and direction.

2.13.4. 100% Issued for Bid (IFB): Garver will develop 100% IFB plans and specifications, Engineer's Opinion of Probable Cost, and final Preliminary Engineer Report and submit these to the Owner for review. It is anticipated that the Owner will review the IFB submission within two weeks.

3. BIDDING SERVICES

3.1. Bidding. Garver will assist the Owner in advertising for bids for one prime contract for construction, materials, equipment and services; and, where applicable, maintain a record of



prospective bidders to whom Bidding Documents have been issued, attend a pre-bid conference and issue meeting minutes. The Owner will pay advertising costs outside of this contract. It is assumed that the Owner is accepting perspective Bidder proposals.

3.2. Garver will issue addenda as appropriate to interpret, clarify or expand the Bidding Documents. Garver will consult with and advise the Owner as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents. Garver will consult with the Owner concerning the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

3.3. Garver will attend the bid opening, prepare a bid tabulation, and assist the Owner in evaluating bids or proposals and in assembling and awarding contracts for construction. Garver will assist the Owner in the execution of all contract documents and furnish executed documents for the Owner as noted in Project Deliverables below.

3.4. Issued for Construction (IFC) Documents

3.4.1. Garver will compile bid addendums and any other necessary plan changes due to post-bid project updates and/or funding changes into a final Issued for Construction (IFC) set of plans and specifications.

4. PROJECT DELIVERABLES

4.1. The following deliverables will be submitted to the parties identified below. Unless otherwise noted below, all deliverables shall be electronic.

- Preliminary Engineering Report, Conceptual Engineer's Opinion of Probable Cost
 - Up to 4 hard copies if requested to Owner.
 - Electronic copies to Owner and FAA.
- 60% Preliminary Design Plans, Specifications, and Engineer's Opinion of Probable Cost
 - Up to 4 hard copies if requested to Owner.
 - Electronic copies to Owner and FAA.
- 90% Final Design Plans, Specifications, and Engineer's Opinion of Probable Cost
 - Up to 4 hard copies if requested to Owner.
 - Electronic copies to Owner and FAA.
- 100% Issued for Bid Plans, Specifications, Engineer's Opinion of Probable Cost, and Final Preliminary Engineer's Report
 - Up to 4 hard copies if requested to Owner.
 - Electronic copies to Owner and FAA.
- Issued for Construction Plans and Specifications
 - Up to 4 hard copies if requested to Owner.
 - Electronic copies to Owner and FAA.
- Other Electronic files as requested

5. ADDITIONAL SERVICES

5.1. The following items are not included under this agreement but will be considered as additional services to be added under Amendment if requested by the Owner.



- Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
- Deliverables beyond those listed herein.
- Engineering, architectural, or other professional services beyond those listed herein.
- Preparation of a Storm Water Pollution Prevention Plan (SWPPP).
- Construction Administration Services, On-Site Construction Observation, and/or Construction Materials Testing.
- Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
- Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
- Services after construction, such as warranty follow-up, operations support, and Part 139 inspection support.
- Survey services of any kind (e.g. design/field surveys, property surveys, utility easements, interior to terminal or other facilities, LIDAR scanning, etc.)
- Geotechnical Engineering services of any kind.
- Modeling of existing terminal building.
- Detailed routing of utilities throughout terminal not pertaining to scope of work or design services associated with project.
- Grant application services.
- Pavement design beyond those listed herein.
- Design of any utility relocation beyond those indicated herein.
- The development of demolition documents for existing above – or under – ground structures beyond those indicated herein.
- Lease negotiations.
- Specialty lighting design.
- Asbestos, mold, or lead paint survey or report.
- Construction means and methods.
- LEED and/or Green Building Programs documentation and analyses.
- Communications, Security, and Audio Visual design services beyond those listed herein.
- City Review and Filing Fees, Taxes, TAS review fees, and COM check fees.
- Permitting fees.
- Drainage Study services
- Retaining walls or other significant structural design beyond those listed herein.
- Site visits other than those listed herein.
- On-site Resident Project Representative services.
- Development of a new FAA design and/or construction Reimbursable Agreement(s)
- Development and/or preparation of a modification to standard (MOS)
- Development of separate procurement documents required by the AIP Handbook.
- Airspace Analysis services.
- DBE Program Administration services.
- Safety Risk Management (SRM) services.
- Pavement Management Plan services.
- Hangar Design services.
- Fuel Farm Design services.
- Land Acquisition services.
- Closeout support services.

6. SCHEDULE

- 6.1. Garver shall begin work under this Agreement within ten (10) days of execution of this Agreement and shall complete the work in accordance with the schedule below:

Exhibit A – Scope of Services

GRK – Terminal Mechanical Improvements Design

Garver Project No. A06-2301160



Design Phase	Calendar Days
Preliminary Engineering Report	45 Days from Notice to Proceed from Owner or Project Kickoff Meeting, whichever is later
60% Preliminary Design	60 Days from Receipt of Preliminary Engineering Report Comments from All Parties Participating in Review
90% Final Design	45 Days from Receipt of 60% Preliminary Design Comments from All Parties Participating in Review
100% Issued for Bid	14 Days from Receipt of 90% Final Design Comments from All Parties Participating in Review
Bidding	As Necessary

*Note, any holidays and holiday adjacent days (includes Friday after Thanksgiving, Christmas Eve, and New Year's Eve) that occur within a design phase will extend the phase by the number of holidays that occur during the proposed phase.



**EXHIBIT B
(COMPENSATION SCHEDULE)**

The table below presents a summary of the fee amounts and fee types for this Agreement.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Preliminary Engineers Report	\$49,800.00	LUMP SUM
60% Preliminary Design	\$114,400.00	LUMP SUM
90% Final Design	\$65,700.00	LUMP SUM
100% Issued For Bid	\$32,800.00	LUMP SUM
Bidding Services	\$30,500.00	LUMP SUM
TOTAL FEE	\$293,200.00	

The lump sum amount to be paid under this Agreement is \$293,200.00. For informational purposes, a breakdown of Garver's estimated costs is included in this Exhibit B with approximate current hourly rates for each employee classification.

Additional Services (Extra Work). For services not described or included in Exhibit A, but requested by the Owner in writing or otherwise permitted in this Agreement, the Owner will pay Garver as expressly set forth in the applicable Amendment, or in the event the Amendment is silent, for the additional time spent on the Project, at the agreed upon rates for each classification of Garver's personnel (may include contract staff classified at Garver's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction of contract documents, and travel.

Exhibit B

Killeen-Fort Hood Regional Airport Terminal Mechanical Improvements

FEE SUMMARY

Fee Type	Title I Service	Estimated Fees
Lump Sum	Preliminary Engineers Report	\$ 49,800.00
Lump Sum	60% Preliminary Design	\$ 114,400.00
Lump Sum	90% Final Design	\$ 65,700.00
Lump Sum	100% Issued For Bid	\$ 32,800.00
Lump Sum	Bidding Services	\$ 30,500.00
	Subtotal for Title I Service	\$ 293,200.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES:	\$1,372.00
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SUBTOTAL:	\$49,800.00
SUBCONSULTANTS FEE:	\$0.00
<hr/>	
TOTAL FEE:	\$49,800.00

Exhibit B

**Killeen-Fort Hood Regional Airport
Terminal Mechanical Improvements**

60% Preliminary Design

WORK TASK DESCRIPTION	E-5	E-4	E-3	E-2	E-1	AM-2
	hr	hr	hr	hr	hr	hr
1. Project Management						
Project Administration						9
Coordination with FAA				2		
Coordination with Client				4		
Coordination with City				2		
Internal Weekly Progress Meetings				9		9
Coordination with Design Team				18		
Attend Preliminary Plan Review Meeting (1 person on-site, 1 person virtual)	2			8		
Prepare and Distribute Preliminary Review Meeting Minutes and Tasks				2		
Subtotal - Project Management	2	0	0	45	0	18
2. Civil Engineering						
Base Map Setup				2		
Preliminary Plans						
Cover Sheet, Sheet Index, and General Notes				1		
Project Layout Plan				2		
Construction Safety Plans and Details				2		
Existing Conditions Plans				2		
Develop Preliminary Construction Contract Documents						4
Develop Preliminary Front End Specifications				8		
Develop Preliminary Opinions of Probable Construction Costs				4		
Internal Quality Control (QC) Review	4			4		2
Incorporate QC Review Comments				4		
Incorporate PER (Owner/FAA/State) Review Comments				4		
Subtotal - Civil Engineering	4	0	0	33	0	6
3. Mechanical Engineering						
Mechanical Drawings		1			2	
Mechanical Calcs		1			2	
Mechanical Specs		2			2	
Develop Preliminary Opinions of Probable Construction Costs		1				
Internal Quality Control (QC) Review	2					
Incorporate QC Review Comments		2			4	
Incorporate PER (Owner/FAA/State) Review Comments		2			2	
Subtotal - Mechanical Engineering	2	9	0	0	12	0
4. Electrical Engineering						
Utility Coordination			4	6		
Generator & ATS Calculations	1		2	4		
General Electrical Calculations	1		6	8		
Contract Documents						
Removal Plans			4	6		
Installation Plans	2		4	20		
One-Line Diagram	1		2	6		
Details			4	8		
Panel Schedules	1		2	4		
Specifications	1		8	2		
Quantities			1	2		
Develop Preliminary Opinions of Probable Construction Costs			1	2		
Internal Quality Control (QC) Review	4		2	2		
Incorporate QC Review Comments			4	8		
Preliminary Design Review Meeting (Virtual)			2	2		
Incorporate PER (Owner/FAA/State) Review Comments			2	2		

Exhibit B

**Killeen-Fort Hood Regional Airport
Terminal Mechanical Improvements**

90% Final Design

WORK TASK DESCRIPTION	E-5	E-4	E-3	E-2	E-1	AM-2
	hr	hr	hr	hr	hr	hr
1. Project Management						
Project Administration						7
Coordination with FAA				2		
Coordination with Client				4		
Coordination with City				2		
Internal Weekly Progress Meetings				7		7
Coordination with Design Team				14		
Attend Final Plan Review Meeting (1 person on-site, 1 person virtual)	2			8		
Prepare and Distribute Final Review Meeting Minutes and Tasks				2		
Subtotal - Project Management	2	0	0	39	0	14
2. Civil Engineering						
CSPP Submission to FAA Through OEAAA				2		
Final Plans						
Cover Sheet, Sheet Index, and General Notes				1		
Project Layout Plan				1		
Construction Safety Plans and Details				1		
Existing Conditions Plans				1		
Develop Final Construction Contract Documents						4
Develop Final Front End Specifications				4		
Develop Final Opinions of Probable Construction Costs				2		
Internal Quality Control (QC) Review	4			4		2
Incorporate QC Review Comments				4		
Incorporate Preliminary (Owner/FAA/State) Review Comments				4		
Subtotal - Civil Engineering	4	0	0	24	0	6
3. Mechanical Engineering						
Mechanical Drawings		1			4	
Mechanical Calcs		1			2	
Mechanical Specs		2			4	
Develop Final Opinions of Probable Construction Costs		1				
Internal Quality Control (QC) Review	2					
Incorporate QC Review Comments		2			4	
Incorporate Preliminary (Owner/FAA/State) Review Comments		2			2	
Subtotal - Subtotal - Civil Engineering	2	9	0	0	16	0
4. Electrical Engineering						
Additional Utility Coordination			2	2		
Update Generator & ATS Calculations			1	2		
Update General Electrical Calculations			2	6		
Update Contract Documents						
Removal Plans			2	4		
Installation Plans			4	12		
One-Line Diagram			2	6		
Details			2	4		
Panel Schedules			1	2		
Specifications			4			
Update Quantities			1	1		
Develop Final Opinions of Probable Construction Costs			1	1		
Internal Quality Control (QC) Review	4		2	2		
Incorporate QC Review Comments			4	8		
Incorporate Preliminary (Owner/FAA/State) Review Comments			2	2		
Final Design Review Meeting (Virtual)			2	2		

Exhibit B

**Killeen-Fort Hood Regional Airport
Terminal Mechanical Improvements**

100% Issued for Bid

WORK TASK DESCRIPTION	E-5	E-4	E-3	E-2	E-1	AM-2
	hr	hr	hr	hr	hr	hr
1. Project Management						
Project Administration						2
Coordination with FAA						
Coordination with Client				2		
Coordination with City				1		
Internal Weekly Progress Meetings				2		2
Coordination with Design Team				8		
Attend IFB Plan Review Meeting (1 person on-site, 1 person virtual)	2			8		
Prepare and Distribute IFB Review Meeting Minutes and Tasks				2		
Subtotal - Project Management	2	0	0	23	0	4
2. Civil Engineering						
IFB Plans						
Cover Sheet, Sheet Index, and General Notes				1		
Project Layout Plan				1		
Construction Safety Plans and Details				1		
Existing Conditions Plans				1		
Develop IFB Construction Contract Documents						4
Develop IFB Front End Specifications				1		
Develop IFB Opinions of Probable Construction Costs				1		
Develop Final Preliminary Engineer's Report				2		
Internal Quality Control (QC) Review	4			4		2
Incorporate QC Review Comments				1		
Incorporate Final (Owner/FAA/State) Review Comments				1		
Subtotal - Civil Engineering	4	0	0	14	0	6
3. Mechanical Engineering						
Mechanical Drawings		1			2	
Mechanical Calcs		1			1	
Mechanical Specs		1			2	
Develop IFB Opinions of Probable Construction Costs		1				
Internal Quality Control (QC) Review	2					
Incorporate QC Review Comments		2			2	
Incorporate Final (Owner/FAA/State) Review Comments		2			2	
Subtotal - Mechanical Engineering	2	8	0	0	9	0
4. Electrical Engineering						
Update Contract Documents						
Removal Plans			1	2		
Installation Plans			1	2		
One-Line Diagram			1	1		
Details			1	1		
Panel Schedules			1	1		
Specifications			2			
Update Quantities			1	1		
Develop IFB Opinions of Probable Construction Costs			1	1		
Internal Quality Control (QC) Review	2		1	1		
Incorporate QC Review Comments			2	2		
Incorporate Final (Owner/FAA/State) Review Comments			2	2		
Subtotal - Electrical Engineering	2	0	14	14	0	0
Hours	10	8	14	51	9	10

Salary Costs	\$3,220.00	\$2,120.00	\$3,150.00	\$9,639.00	\$1,449.00	\$1,200.00
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SUBTOTAL - SALARIES:	\$20,778.00					
<u>DIRECT NON-LABOR EXPENSES</u>						
Document Printing/Reproduction/Assembly	\$662.00					
Postage/Freight/Courier	\$100.00					
Office Supplies/Equipment	\$100.00					
Computer Modeling/Software Use	\$100.00					
Travel Costs	\$250.00					
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SUBTOTAL - DIRECT NON-LABOR EXPENSES:	\$1,212.00					
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SUBTOTAL:	\$21,990.00					
SUBCONSULTANTS FEE:	\$10,810.00					
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TOTAL FEE:	\$32,800.00					



**EXHIBIT C
(INSURANCE)**

Pursuant to Section 7.1 of the Agreement, Garver shall maintain the following schedule of insurance until completion of the Services:

Worker's Compensation	Statutory Limit
Automobile Liability Combined Single Limit (Bodily Injury and Property Damage)	\$500,000
General Liability Each Occurrence	\$1,000,000
Aggregate	\$2,000,000
Professional Liability Each Claim Made	\$1,000,000
Annual Aggregate	\$2,000,000
Excess of Umbrella Liability Per Occurrence	\$1,000,000
General Aggregate	\$1,000,000



APPENDIX D

MANDATORY FEDERAL CONTRACT PROVISIONS FOR PROFESSIONAL SERVICES CONTRACTS

1. ACCESS TO RECORDS AND REPORTS

The Engineer must maintain an acceptable cost accounting system. The Engineer agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the Engineer which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Engineer agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

2. CIVIL RIGHTS - GENERAL

In all its activities within the scope of its airport program, the Engineer agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, creed, color, national origin (including limited English proficiency), sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

This provision binds the Engineer and subconsultants from the solicitation period through the completion of the contract.

3. CIVIL RIGHTS – TITLE VI ASSURANCE

During the performance of this contract, the Engineer, for itself, its assignees, and successors in interest (hereinafter referred to as the “Engineer”) agrees as follows:

- I. Compliance with Regulations: The Engineer (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- II. Non-discrimination: The Engineer, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Engineer will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- III. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the Engineer of the Engineer’s



obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- IV. Information and Reports: The Engineer will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Engineer is in the exclusive possession of another who fails or refuses to furnish the information, the Engineer will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- V. Sanctions for Noncompliance: In the event of an Engineer's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- a. Withholding payments to the Engineer under the contract until the Engineer complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- VI. Incorporation of Provisions: The Engineer will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Engineer will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Engineer becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, the Engineer may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Engineer may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);



- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

4. DEBARMENT AND SUSPENSION

By submitting a bid/proposal under this solicitation, the Engineer certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

5. EQUAL EMPLOYMENT OPPORTUNITY (E.E.O.)

I. During the performance of this contract, the Engineer agrees as follows:

- (1) The Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex,



sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Engineer will, in all solicitations or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Engineer will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Engineer's legal duty to furnish information.
- (4) The Engineer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the said labor union or workers' representatives of the Engineer's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Engineer's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Engineer will include the portion of the sentence immediately preceding paragraph (1)



and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event an Engineer becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction by the administering agency the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

II. Standard Federal Equal Employment Opportunity Contract Specifications

(1) As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
 - i. Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the Engineer, or any subconsultant at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(3) If the Engineer is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an



association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Engineers shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Engineer or subconsultant participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Engineers or subconsultants toward a goal in an approved Plan does not excuse any covered Engineer's or subconsultant's failure to take good faith efforts to achieve the Plan goals and timetables.

- (4) The Engineer shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Engineer should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Engineers performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Engineer is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- (5) Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Engineer has a collective bargaining agreement to refer either minorities or women shall excuse the Engineer's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
- (6) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Engineer during the training period, and the Engineer shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.
- (7) The Engineer shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Engineer's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Engineer shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Engineer's employees are assigned to work. The Engineer, where possible, will assign two or more women to each construction project. The Engineer shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Engineer's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to



community organizations when the Engineer or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Engineer by the union or, if referred, not employed by the Engineer, this shall be documented in the file with the reason therefore along with whatever additional actions the Engineer may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Engineer has a collective bargaining agreement has not referred to the Engineer a minority person or female sent by the Engineer, or when the Engineer has other information that the union referral process has impeded the Engineer's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Engineer's employment needs, especially those programs funded or approved by the Department of Labor. The Engineer shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Engineer's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Engineer in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Engineer's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Engineer's EEO policy with other Engineers and subconsultants with whom the Engineer does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Engineer's



recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Engineer shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Engineer's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Engineer's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Engineers and suppliers, including circulation of solicitations to minority and female Engineer associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Engineer's EEO policies and affirmative action obligations.
- (8) Engineers are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of an Engineer association, joint Engineer union, Engineer community, or other similar groups of which the Engineer is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Engineer actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Engineer's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Engineer. The obligation to comply, however, is the Engineer's and failure of such a group to fulfill an obligation shall not be a defense for the Engineer's noncompliance.
- (9) A single goal for minorities and a separate single goal for women have been established. The Engineer, however, is required to provide equal employment opportunity and to take



affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Engineer has achieved its goals for women generally, the Engineer may be in violation of the Executive Order if a specific minority group of women is underutilized.)

- (10) The Engineer shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (11) The Engineer shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- (12) The Engineer shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Engineer who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- (13) The Engineer, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Engineer fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- (14) The Engineer shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Engineers shall not be required to maintain separate records.
- (15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

6. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.



The Engineer has full responsibility to monitor compliance to the referenced statute or regulation. The Engineer must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

7. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Engineer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Engineer retains full responsibility to monitor its compliance and their subconsultant's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Engineer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

8. TERMINATION OF CONTRACT

- I. Termination for Convenience. The Owner may, by written notice to the Engineer, terminate this Agreement for its convenience and without cause or default on the part of Engineer. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Engineer must immediately discontinue all services affected.

Upon termination of the Agreement, the Engineer must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Engineer for satisfactory work completed up through the date the Engineer receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Engineer harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

- II. Termination for Default. Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) Termination by Owner: The Owner may terminate this Agreement in whole or in part, for the failure of the Engineer to:



1. Perform the services within the time specified in this contract or by Owner approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project;
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Engineer must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Engineer must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Engineer for satisfactory work completed up through the date the Engineer receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Engineer harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

- b) Termination by Engineer: The Engineer may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Engineer in accordance with the terms of this Agreement;
3. Suspends the Project for more than 180 days due to reasons beyond the control of the Engineer.

Upon receipt of a notice of termination from the Engineer, Owner agrees to cooperate with Engineer for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Engineer cannot reach mutual agreement on the termination settlement, the Engineer may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Engineer through the effective date of termination action. Owner agrees to hold Engineer harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

9. TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Engineer certifies that with respect to this solicitation and any resultant



contract, the Engineer –

- (1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR.);
- (2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- (3) has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, § 1001.

The Engineer must provide immediate written notice to the Owner if the Engineer learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The Engineer must require subconsultants provide immediate written notice to the Engineer if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to an Engineer or subconsultant:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR. or
- (2) whose subconsultants are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- (3) who incorporates in the public works project any product of a foreign country on such USTR list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of an Engineer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Engineer agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Engineer may rely on the certification of a prospective subconsultant that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Engineer has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Engineer or subconsultant knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of



the contract or subcontract for default at no cost to the Owner or the FAA.

10. VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Engineer and all sub-tier Engineers must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

11. TAX DELINQUENCY AND FELONY CONVICTIONS

The Engineer agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

- 1) The Engineer represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The Engineer represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

12. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Engineer and Subconsultants agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

13. DOMESTIC PREFERENCES FOR PROCUREMENTS

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.



EXHIBIT E

STATE OF TEXAS REQUIREMENTS

I. PROHIBITION ON CONTRACTS WITH FOREIGN TERRORIST ORGANIZATIONS

Consultant's Acknowledgement of Prohibition on Contracts with Foreign Terrorist Organizations Effective September 1, 2017, Consultant acknowledges, in accordance with Chapter 2252 of the Texas Government Code, that (a) Consultant does not engage in business with Iran, Sudan, or any foreign terrorist organizations and (b) Consultant is not listed by the Texas Comptroller as a terrorist organization as defined by Chapter 2252 of the Texas Government Code. Consultant further acknowledges that this provision is hereby incorporated by reference, as if written word for word, into any subsequent contract entered into between the City and Consultant for (1) professional or consulting services subject to the Professional Services Act – Chapter 2254 of the Texas Government Code, (2) general construction, (3) an improvement, (4) a service, (5) a public works project, or (6) for a purchase of supplies, materials or equipment.

II. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

Consultant's Acknowledgement of Prohibition on Contracts with Companies Boycotting Israel Effective September 1, 2017 and as amended May 7, 2019, Consultant acknowledges, in accordance with Chapter 2271 of the Texas Government Code, that Consultant does not boycott Israel and will not boycott Israel during the term of any contract with the City of Killeen to provide goods and services to the City. Consultant further acknowledges that this provision is hereby incorporated by reference, as if written word for word, into any subsequent contract entered into between the City and Consultant for goods and services.

III. PROHIBITION ON CONTRACTS WITH CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE

Consultant's Acknowledgement of Prohibition on Contracts with Certain Foreign-Owned Companies in Connection with Critical Infrastructure Effective June 18, 2021, Consultant acknowledges, in accordance with Chapter 2274 of the Texas Government Code, that Consultant does not and will not engage in contracts with certain foreign-owned companies in connection with critical infrastructure during the term of any contract with the City of Killeen to provide goods and services to the City. Consultant further acknowledges that this provision is hereby incorporated by reference, as if written word for word, into any subsequent contract entered into between the City and Consultant for goods and services.

IV. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES

The Consultant must verify that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required



from a sole source provider or when the city does not receive any bids from a company able to provide the required verification. Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274

V. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES

The Consultant verifies that it does not have a practice, policy, guidance or directive that discriminates against certain energy companies as defined in Chapter 809 of the Texas Government Code. The Consultant verifies that it:

- a) Does not boycott energy companies; and
- b) Will not boycott energy companies during the term of the contract



EXHIBIT F

AIRPORT IMPROVEMENT AID PROJECT: TBD
STATE: TEXAS

CERTIFICATION OF ENGINEER

I hereby certify that I am Mitchell McAnally, PE, PMP and duly authorized representative of the firm of GARVER, LLC, whose address is 285 SE Inner Loop, Georgetown, TX 78626, and that neither I nor the above firm I here represent has:

(a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me of the above consultant) to solicit or secure this contract.

(b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; or

(c) Paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for, or in connection with, procuring or carrying out the contract; except as here expressly stated (if any).

I acknowledge that this certificate is to be furnished to the Federal Aviation Administration of the United States Department of Transportation, in connection with this contract involving participation of Airport Improvement Program (AIP) funds and is subject to applicable State and Federal laws, both criminal and civil.

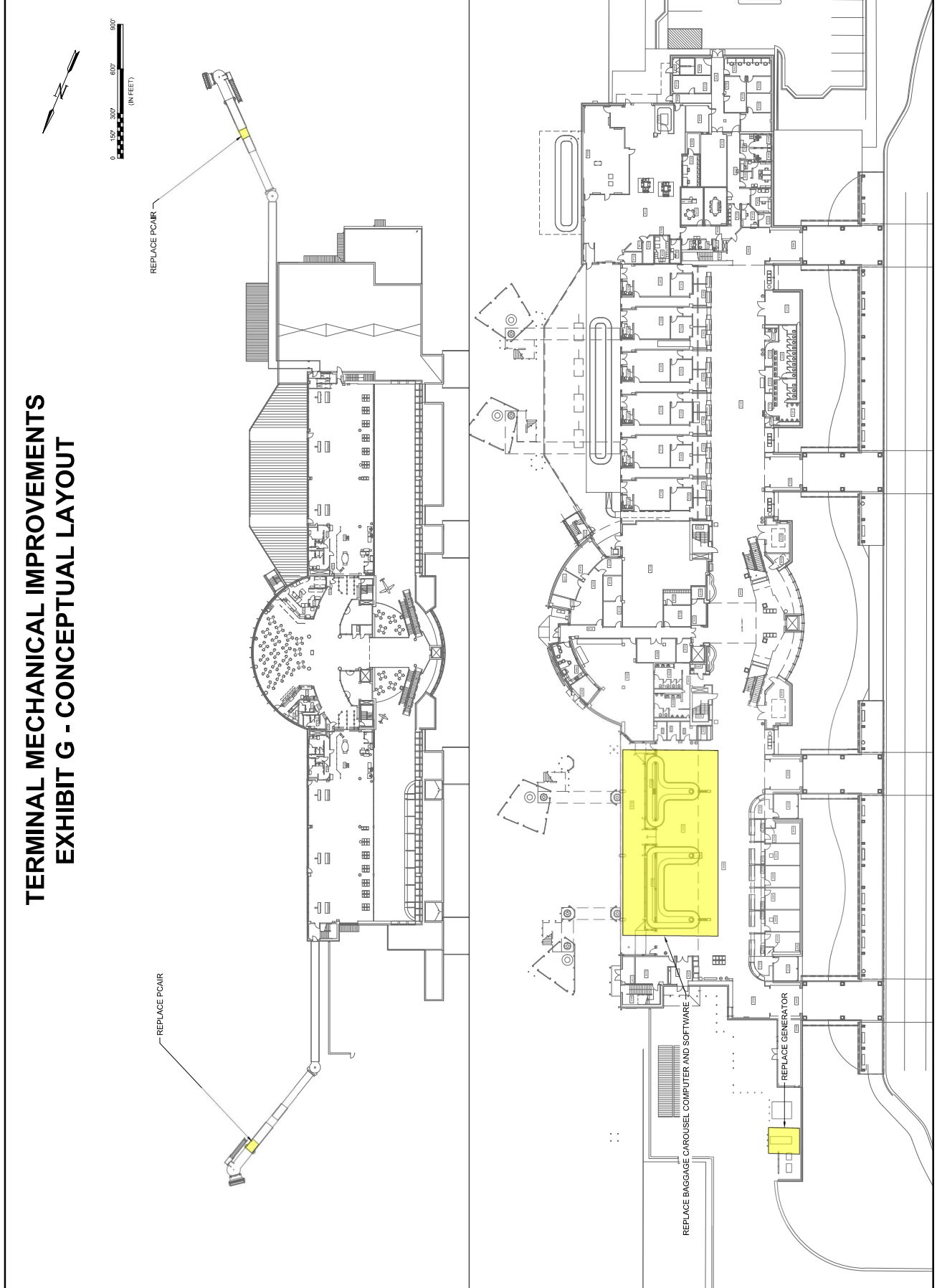
GARVER, LLC

By 

DATE:

07/20/2023

TERMINAL MECHANICAL IMPROVEMENTS EXHIBIT G - CONCEPTUAL LAYOUT



GARVER
ARCHITECTS

THIS DOCUMENT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. IT IS NOT TO BE USED FOR ANY OTHER PROJECT OR SITE WITHOUT THE WRITTEN CONSENT OF GARVER ARCHITECTS. ANY REPRODUCTION OR TRANSMISSION OF THIS DOCUMENT, IN ANY FORM OR BY ANY MEANS, WITHOUT THE WRITTEN CONSENT OF GARVER ARCHITECTS IS PROHIBITED. GARVER ARCHITECTS SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT AND SHALL NOT BE RESPONSIBLE FOR THE DESIGN OR CONSTRUCTION OF ANY OTHER PROJECT OR SITE.

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF CONTRACTING UNDER THE AUTHORITY OF JACOB C. GREEN, P.E. 142326 ON JULY 12, 2023. IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING, OR PERMITTING PURPOSES.

REV.	DATE	DESCRIPTION

KILLEEN-FORT HOOD REGIONAL AIRPORT
KILLEEN, TX

TERMINAL MECHANICAL IMPROVEMENTS
EXHIBIT G - CONCEPTUAL LAYOUT

JOB NO. _____
DATE: JULY 2023
DESIGNED BY: DWM
DRAWN BY: JCG

EXG
DRAWING NUMBER

SHEET NUMBER
1

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**

Certificate Number:
2023-1052447

Date Filed:
07/28/2023

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
GARVER LLC
GEORGETOWN, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
City of Killeen

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
Bid No. 24-09
Engineering Design Services for Killeen-Fort Hood Regional Airport (GRK) Terminal Mechanical Improvements Project.

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	SOBER, JEFFERY	GEORGETOWN, TX United States	X	
	HOLDER, JR, JERRY	GEORGETOWN, TX United States	X	
	MOTT, JR., WM. EARL	GEORGETOWN, TX United States	X	
	HOSKINS, BROCK	GEORGETOWN, TX United States	X	
	SCHNIERS, BRENT	GEORGETOWN, TX United States	X	
	MCILLWAIN, FRANK	GEORGETOWN, TX United States	X	
	GRAVES, MICHAEL	GEORGETOWN, TX United States	X	

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is Mitchell McAnally, and my date of birth is 07/02/1986.

My address is 3000 Internet Blvd, Ste 400, Frisco, TX, 75034, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Collin County, State of Texas, on the 31 day of July, 2023.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)



PROFESSIONAL SERVICES AGREEMENT WITH
GARVER, LLC FOR THE PASSENGER TERMINAL
MECHANICAL IMPROVEMENTS DESIGN

RS-23-146

September 19, 2023

109

Background

2

- The Bipartisan Infrastructure Law (BIL) signed into law on November 15, 2021, provides \$15 billion in Airport Infrastructure Grants (AIG) over a five (5) year period for airport-related projects as defined under the existing Airport Improvement Grant and Passenger Facility Charge (PFC) criteria.

Background

3

- The City has been offered a Federal Aviation Administration (FAA) BIL Airport Infrastructure Grant in the amount of \$267,322 to fund 90% of the Design Services, Project Administration and Bidding Services of the Passenger Terminal Mechanical Improvements Project at the Killeen-Fort Hood Regional Airport (KFHRA). Matching funds, in the amount of \$29,703, will come from the FAA PFC Application that was approved by the FAA on February 16, 2023.

Background

4

- ❑ The project is comprised of various components including the replacement of the baggage claim carousels and associated belt system; upgrading the baggage system control hardware and software; replacing the Preconditioned Air (PCAir) on boarding bridges 1 and 6; and the replacement of the emergency generator.
- ❑ No impact to the operational fund or fund balance.

Discussion

5

- Staff negotiated a professional services agreement with Garver, LLC for project administration, design services and bidding services in the amount of \$293,200
- \$263,880 federally funded
- \$29,320 funded by PFC funds
- Garver, LLC is the Airport's engineer of record and was selected via a competitive process

Alternatives

6

- Do not approve the agreement
- Approve the agreement

Recommendation

7

- Approve the professional services agreement with Garver, LLC in the amount of \$293,200 and authorize the City Manager or designee to execute all agreement documents and any and all amendments or actions within the amounts set by federal, state and local law



City of Killeen

Staff Report

File Number: RS-23-148

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution awarding Bid Number 23-44 for the Terminal Demolition Project at Skylark Field Airport to R&L Global Inc., in an amount of \$157,094.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Mike Wilson, Executive Director of Aviation

SUBJECT: Award Bid No. 23-44 Terminal Demolition Project at Skylark Field Airport

BACKGROUND AND FINDINGS:

The previous airline terminal building at Skylark Field is 44 years old and has been vacant for the past 19 years. Numerous attempts to repurpose the building have failed due, in part, to the size, configuration, and the overall condition of the interior of the building. Recent storm damage has caused a portion of an exterior wall and a portion of the roof to collapse, rendering it uninhabitable and structurally unsafe. The Skylark Field Master Plan, that was approved in October of 2016, calls for the demolition of the terminal building to make way for future aviation related development.

The funding for this project will come from the Aviation Capital Improvement Plan (CIP) fund.

The Terminal Demolition project was advertised on August 6 & 13, 2023. Advertising appeared in the local newspaper as well as the City’s website. Additionally, it was advertised on multiple statewide electronic bidding websites.

Bids were opened on August 23, 2023, and the City of Killeen received six (6) bids as follows:

Vendor	Base Bid	Additive Alternate 1	Total
R&L Global Inc.	103,456	53,638	157,094.00
AAR Incorporated	131,200	68,400	199,600.00
RNDI Companies, Inc.	173,670	96,622.50	270,292.50
Tejas Destructors, LLC	204,500	93,250	297,750.00
JR Ramon Demolition	274,000	55,000	329,000.00
American Abatement LLC	448,194	155,600	603,794.00

A thorough review of each bid package was completed by the airport staff. R&L Global Inc. was the lowest responsive and responsible bidder. Therefore, the staff’s recommendation is to award the contract, with additive alternate 1, to R&L Global Inc. in the amount of \$157,094.

THE ALTERNATIVES CONSIDERED:

1. Reject the bid.
2. Authorize award of contract to R&L Global Inc. for Base Bid.
3. Authorize award of contract to R&L Global Inc. for Base Bid and Additive Alternate 1.

Which alternative is recommended? Why?

Staff recommends Alternative 3 because:

1. R&L Global Inc. was the lowest responsible bidder whose proposal was the most advantageous to the City.
2. The terminal building is uninhabitable, structurally unsafe, and beyond repair.
3. Demolition of the terminal building furthers the goals of the Skylark Field Master Plan.

CONFORMITY TO CITY POLICY:

This item conforms to local and state policies.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

The expenditure for Alternative 3 in the current fiscal year is \$157,094.

Is this a one-time or recurring expenditure?

This is a one-time expenditure.

Is this expenditure budgeted?

Yes, funds are available in the Aviation CIP Fund account 523-8905-493.69-03.

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes

RECOMMENDATION:

Staff recommends City Council authorize Bid Number 23-44 for the Terminal Demolition project to R&L Global Inc. for the Base Bid and Additive Alternate 1 in the amount of \$157,094 and recommends that the City Council authorize the City Manager, or designee, to execute all contract

documents and any and all change orders or actions within the amounts set by state and local law.

DEPARTMENTAL CLEARANCES:

Finance
Legal
Purchasing

ATTACHED SUPPORTING DOCUMENTS:

Bid Proposal
Bid Tab
Contract
Digital Contract
Certificate of Interested Parties



City of Killeen
Purchasing

Lorianne Luciano, Director of Procurement
802 N 2nd St, Killeen, TX 76541

PROPOSAL DOCUMENT REPORT

Bid No. 23-44

Skylark Field Airport Terminal Demolition

RESPONSE DEADLINE: August 23, 2023 at 2:00 pm

Report Generated: Wednesday, August 23, 2023

R&L Global Inc Proposal

CONTACT INFORMATION

Company:

R&L Global Inc

Email:

tim@rlglobalinc.com

Contact:

Tim Rogers

Address:

3527 Mansfield
Houston, TX 77091

Phone:

(713) 201-6675

Website:

<https://rlglobalinc.com/>

Submission Date:

Aug 22, 2023 11:27 AM

ADDENDA CONFIRMATION

Addendum #1

Confirmed Aug 22, 2023 11:27 AM by Tim Rogers

QUESTIONNAIRE

1. Conflict of Interest Questionnaire (Form CIQ)*

Please download the below documents, complete, and upload.

- [Conflict of Interest Questi...](#)

COI_8-21-23.pdf

2. Certificate of Interested Parties (Form 1295)*

If awarded, vendor must submit the Certificate of Interested Parties Form 1295 online.

Texas Government Code Section 2252.908 requires that parties contracting with governmental entities submit a disclosure of interested parties form for contracts entered into after January 1, 2016. Successful bidders shall electronically submit the form at the following website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and provide the City with a certified copy prior to Council approval of the award.

Please confirm that you shall file the Certificate of Interested Parties (Form 1295) if awarded the contract.

Confirmed

3. Acknowledgement – “Boycott Israel”*

By submitting this proposal the vendor hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. Boycotting Israel is defined in Texas Government Code section 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically

with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Confirmed

4. Acknowledgement – "Boycott Energy Companies"*

By submitting this proposal the vendor hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. "Boycott energy company" is defined in Texas Government Code section 809.001 to mean, without an ordinary business purpose, refusing to deal with terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A).

Confirmed

5. Acknowledgement – "Prohibition on contracts with companies that discriminate against firearm and ammunition industries"*

By submitting this proposal the vendor hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Discriminate against a firearm entity or a firearm trade association are defined in Texas Government Code section 2274.001 as (A) with respect to the entity or association, to (i) refuse to engage in the trade of any goods or services; (ii) refrain from continuing an existing business relationship; (iii) terminate an existing business relationship; or (iv) otherwise express a prejudice against the entity or association; and (B) does not include the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories.

Confirmed

6. Antitrust Law Certification*

The vendor hereby certifies that neither the vendor nor the entity represented by the vendor, or anyone acting for such entity has violated the antitrust laws of the State of Texas, codified in Section 15.01 et seq., Texas Business and Commerce Code, or the Federal

antitrust laws, nor communicated directly or indirectly, prior to the solicitation opening with any competitor or any other person engaged in such line of business.

No

7. Litigation Disclosure*

Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

No

8. Has the company been in bankruptcy, reorganization, or receivership in the last 5 years?*

No

9. Has the company been disqualified or debarred by any public agency, including the Federal Government, from participation in public contracts?*

No

10. Does any City of Killeen employee or official have any financial or other interest in your company?*

No

11. Can service be accomplished as specified in the specifications?*

Yes

12. When can service commence after award (number of days)?*

15

13. Point of contact to resolve issues (delivery or invoice):*

Please provide the name, title, address, email, and phone number of contact.

Tim Rogers
(Project Manager)
3527 Mansfield Dr Houston, TX 77091
tim@rlglobalinc.com
(713) 201-6675

14. Copyrighted Material*

Texas Public Information Act

Steps to Assert Information Confidential or Proprietary

All bids or proposals, data, and information submitted to the City of Killeen are subject to release under the Texas Public Information Act ("Act") unless exempt from release under the Act. You are not encouraged to submit data and/or information that you consider to be confidential or proprietary unless it is absolutely required to understand and evaluate your submission.

On each page where confidential or proprietary information appears, you must label the confidential or proprietary information. Do not label every page of your submission as confidential as there are pages (such as the certification forms and bid sheet with pricing) that are not confidential. It is recommended that each page that contains either confidential or proprietary information be printed on colored paper (such as yellow or pink paper). At a minimum the pages where the confidential information appears should be labeled and the information you consider confidential or proprietary clearly marked.

Failure to label the actual pages on which information considered confidential appears will be considered as a waiver of confidential or proprietary rights in the information.

In the event a request for public information is filed with the City which involves your submission, you will be notified by the City of the request so that you have an opportunity to present your reasons for claims of confidentiality to the Texas Attorney General.

The proposal/bid submitted to the City contains NO confidential information and may be released to the public if required under the Texas Public Information Act.

15. If your proposal contains confidential information identify where it is located.

Where in your proposal is the confidential information? Please be specific.

N/A

16. Does bidder maintain insurance as specified herein (see insurance requirements within the specifications and terms and conditions)?*

Answer YES or

If your answer is NO, then please describe the differences here.

Yes

17. Insurance Broker Information*

Please provide your Insurance Broker's Name, contact name, phone number, fax number, and email address.

Adam Koch

The Kock Insurance Group

(281) 918-4974

akoch@kochig.com

18. Are there claims that are pending against this insurance policy?*

Answer No or

If yes, please describe:

NO

19. List the most recent services that you have had with other public agencies, if any, and/or other customers (up to five) that are same/similar to this project.*

We have not worked for Government Agencies.

20. Proposal Requirements*

Did you read through and confirm that you met all of the proposal requirements in the specifications and contract documents?

Yes

21. Proposal Documents*

Please Upload your COMPLETE Proposal here.

RL_Global_Killeen_Skylark_Airport_Deom_8-22-23.pdf

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

N/A

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

N/A

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

N/A

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

N/A

Signature of vendor doing business with the governmental entity

Date



RESTORATION · CONSTRUCTION

YOUR BUSINESS UNINTERRUPTED

For years, R&L Global Inc has been a preferred mitigation and restoration partner in Texas. Our clients include HOA companies, insurance companies, property management companies, high-rises, and more. We offer fast response times, industry-leading equipment, and an experienced team who will stop at nothing to ensure you and your property are safe.



RESTORATION SERVICE

- Fire Damage Restoration
- Storm Damage Restoration
- Water Damage Restoration
- Mold Removal
- Air Duct Cleaning
- Corrosion Control
- Content Restoration
- Deodorization
- Data Restoration
- Electronics Restoration
- Emergency Power
- Equipment Decontamination
- Structural Decontamination
- Water Extraction

COMMERCIAL CONSTRUCTION

- Demolition
- Electrical / Mechanical
- Engineering & Surveying
- Excavation
- Full-Scale Carpentry
- General Construction
- High-Rise Reconstruction
- Interior Build-Out
- Land Acquisition
- Land Clearing
- Landscaping
- Permitting
- Perimeter Control
- Plumbing
- Roofing
- Site Design
- Structural Repair
- Temporary Shoring
- Temporary Board-Up

ENVIRONMENTAL SERVICES

- Asbestos Abatement
- Chemical Spill Response
- Forensics Cleanup
- Hazardous Waste Removal
- Lead Abatement
- Laboratory Cleanup
- Mold Abatement
- Oil Spill Response



1-844-RL1-STOP | 713-686-8899 | rlglobalinc.com





SATISFACTION GUARANTEED

"Very professional people. They keep in touch, let you know every detail about the process and answer every question in the most understandable way. Trustworthy guys, as well."

- Customer Review

ROOFING SERVICE

- Damage Assessment
 - Disaster Assessment
 - Leak Detection
 - New Roofing Install
 - Roofing Repair
 - Temporary Roofs
 - Warranty Inspection
- Roofing System Install and Warranty Including:**
 - Architectural
 - Coating
 - EPDM
 - Metal
 - TPO

ADDITIONAL SERVICES

- Disaster Planning
- Dumpster Service
- Land Development
- Project Management
- Staffing
- Training / Drills
- Property Service
- Small Projects



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ICRC
CERTIFIED



ACCREDITED
BUSINESS

**Skylark Field Airport
Terminal Demolition**

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END OF INSTRUCTION TO BIDDERS

00 22 13 BIDDER'S CHECKLIST OF REQUIRED ITEMS

This Bidder's Checklist is provided to ensure all required forms are completed and returned as part of the Bid submission. All forms must be included as indicated for a Bid to be considered a complete, responsive Bid. Appropriate signatures and date are required on each document. If an item is missing, the Bid may be declared unresponsive and therefore rejected as further set forth in the Instructions to Bidders. **This sheet will serve as the cover sheet for the Bid submission.**

	Completed*	Spec. Section
Acknowledgement of All Addenda	<input type="checkbox"/>	00 41 00
Bid contains the following forms:		
1. Bid Form/Proposal	<input checked="" type="checkbox"/>	00 41 00
2. Bid Bond	<input checked="" type="checkbox"/>	00 43 13
3. List of Proposed Subcontractors	<input checked="" type="checkbox"/>	00 43 36
4. Qualifications Statement	<input checked="" type="checkbox"/>	00 45 13
5. Conflict of Interest Questionnaire	<input checked="" type="checkbox"/>	00 46 01
6. No Boycott of Israel**	<input checked="" type="checkbox"/>	GTC
7. No Boycott of Energy Companies**	<input checked="" type="checkbox"/>	GTC
8. No Boycott of Firearm and Ammunition Industries**	<input checked="" type="checkbox"/>	GTC
*Check when filled out, signed, and included with submission of bid packet.		
**At end of City General Terms and Conditions		

Within three (3) days after Bid Opening:

Bidder acknowledges to provide within three (3) days after Bid Opening (Low Bidder Only):

1. Bidder's Qualifications of Subcontractor (if requested)
2. Bidder's Safety Records (if requested)
3. Form 1295

Within fifteen (15) days after Notice of Award:

Bidder acknowledges that within fifteen (15) days after Notice of Award, Successful Contractor is required to complete the following before execution and award of the Contract:

1. Section 00 52 00, Contract (all pages and supporting documents)
2. Section 00 61 13, Performance Bond
3. Section 00 61 16, Payment Bond
4. Completed Certificates of Insurance

Prior to Construction (Awarded Contractor):

1. Construction Schedule - before preconstruction conference

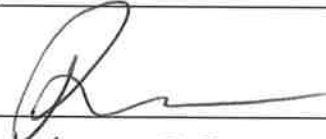
**Skylark Field Airport
Terminal Demolition**

Seal (if incorporated)

Bidder Name: R&L Global Inc
Address: 3527 Mansfield St
Houston, TX 77091
City, State, Zip Code: (713) 686-8899
Contractor Number: Tim Rogers
Project Manager
(713) 201-6675
Contact Name: tim@rlglobalinc.com
Title: 8/22/23
Contact Number: _____
Contact Email: _____

Signature of Authorized Agent for Bidder:

Date:

 Ricardo Romero
8/22-23

00 41 00 BID FORM

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

**CITY OF KILLEEN PURCHASING DIVISION
802 N. 2nd Street
Building E, 2nd Floor, Room 215
Killeen, Texas 76541**

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for **90** days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

2.02 In submitting this Bid, Bidder acknowledges and accepts Contractor’s representations as more fully set forth in the Contract.

2.03 In submitting this Bid, Bidder certifies Bidder is qualified to do business in the State of Texas as required by laws, rules, and regulations or, if allowed by statute, covenants to obtain such qualification prior to contract award.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following addenda:

<u>Addendum No.</u>	<u>Addendum Date</u>
01	8/22/23
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all laws and regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Special Provisions, especially with respect to Technical Data in such reports and drawings, and (2) reports and

Skylark Field Airport
Terminal Demolition

UNIT PRICE SCHEDULE
SKYLARK FIELD AIRPORT (ILE)
TERMINAL DEMOLITION
BID SCHEDULE SUMMARY
PROPOSAL UNIT PRICE SCHEDULE

BASE BID: TERMINAL DEMOLITION	\$103,456.00
ADDITIVE ALTERNATE I: SLAB, FOUNDATION, AND PAVEMENT REMOVAL AND RESTORATION	\$53,638.00
TOTAL BASE BID + ADDITIVE ALTERNATE I	\$157,094.00

Note: Contact will be awarded based on combination of Bid Schedules that will be most advantageous to the Owner based on funding available.

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Section 90-09 of the General Provisions on or before the dates or within the number of calendar days indicated in the Contract.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
 - A. Required Bid security (00 43 13);
 - B. List of Proposed Subcontractors (00 43 36)
 - C. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
 - D. Contractor's License No.: _____ or Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids;
 - E. Required Bidder Qualifications Statement (00 45 13) with supporting data; and
 - F. Conflict of Interest Questionnaire (00 46 01)
 - G. No Boycott Israel Certification (GTC)
 - H. No Boycott Energy Companies (GTC)
 - I. No Boycott of Firearm and Ammunition Industries (GTC)

ARTICLE 8 – DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Provisions, and the Special Provisions.

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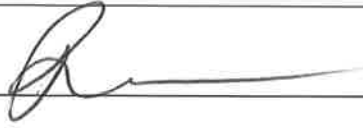
**Skylark Field Airport
Terminal Demolition**

ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

R&L Global Inc

By:
[Signature]



[Printed name] Ricardo Romero

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature]

[Printed name] Ricardo Romero

Title: CEO

Submittal Date: 8/22/23

Address for giving notices:

R&L Global Inc
3527 Mansfield Dr
Houston, TX 77091

Telephone Number: (713) 686-8899

Fax Number:

Contact Name and e-mail address: Tim Rogers
tim@rlglobalinc.com

Bidder's License No.: N/A
(where applicable)

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R&L GLOBAL INC

Unique Entity ID U3E9DN9LBX77	CAGE / NCAGE 9LTN5	Purpose of Registration All Awards
Registration Status Active Registration	Expiration Date Jun 22, 2024	
Physical Address 3527 Mansfield ST Houston, Texas 77091-4617 United States	Mailing Address 3527 Mansfield ST Houston, Texas 77091-4617 United States	

Business Information

Doing Business as (blank)	Division Name (blank)	Division Number (blank)
Congressional District Texas 18	State / Country of Incorporation Texas / United States	URL (blank)

Registration Dates

Activation Date Jul 11, 2023	Submission Date Jun 23, 2023	Initial Registration Date Jun 15, 2023
--	--	--

Entity Dates

Entity Start Date Feb 1, 2021	Fiscal Year End Close Date Dec 31
---	---

Immediate Owner

CAGE (blank)	Legal Business Name (blank)
------------------------	---------------------------------------

Highest Level Owner

CAGE (blank)	Legal Business Name (blank)
------------------------	---------------------------------------

Executive Compensation

Registrants in the System for Award Management (SAM) respond to the Executive Compensation questions in accordance with Section 6202 of P.L. 110-252, amending the Federal Funding Accountability and Transparency Act (P.L. 109-282). This information is not displayed in SAM. It is sent to USAspending.gov for display in association with an eligible award. Maintaining an active registration in SAM demonstrates the registrant responded to the questions.

Proceedings Questions

Registrants in the System for Award Management (SAM.gov) respond to proceedings questions in accordance with FAR 52.209-7, FAR 52.209-9, or 2. C.F.R. 200 Appendix XII. Their responses are displayed in the responsibility/qualification section of SAM.gov. Maintaining an active registration in SAM.gov demonstrates the registrant responded to the proceedings questions.

Exclusion Summary

Active Exclusions Records?
No

SAM Search Authorization

I authorize my entity's non-sensitive information to be displayed in SAM public search results:
Yes

Entity Types

Business Types	Entity Type	Organization Factors
Entity Structure Corporate Entity (Not Tax Exempt)	Business or Organization	Subchapter S Corporation
Profit Structure For Profit Organization		

Socio-Economic Types

- Minority-Owned Business
- Self Certified Small Disadvantaged Business
- Women-Owned Small Business
- Women-Owned Business
- Hispanic American Owned

Check the registrant's Reps & Certs, if present, under FAR 52.212-3 or FAR 52.219-1 to determine if the entity is an SBA-certified HUBZone small business concern. Additional small business information may be found in the SBA's Dynamic Small Business Search if the entity completed the SBA supplemental pages during registration.

Financial Information

Accepts Credit Card Payments Yes	Debt Subject To Offset No
EFT Indicator 0000	CAGE Code 9LTN5

Points of Contact

Electronic Business

👤 **Tim Rogers, Project Manager** **3527 Mansfield ST
Houston, Texas 77091
United States**

Government Business

👤 **Tim Rogers, Project Manager** **3527 Mansfield ST
Houston, Texas 77091
United States**

Service Classifications

NAICS Codes

Primary	NAICS Codes	NAICS Title
Yes	236220	Commercial And Institutional Building Construction
	236116	New Multifamily Housing Construction (Except For-Sale Builders)
	236118	Residential Remodelers
	238160	Roofing Contractors
	238990	All Other Specialty Trade Contractors

Disaster Response

Yes, this entity appears in the disaster response registry.
 Yes, this entity require bonding to bid on contracts.

Bonding Levels	Dollars
Service Aggregate	\$2,000,000.00
Service Per Contract	\$1,000,000.00

States: **Any** Counties: **(blank)** Metropolitan Statistical Areas: **(blank)**

Form 201

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709



Filed in the Office of the
Secretary of State of Texas
Filing #: 803920742 02/01/2021
Document #: 1024676980004
Image Generated Electronically
for Web Filing

Filing Fee: \$300

Certificate of Formation For-Profit Corporation

Article 1 - Entity Name and Type

The filing entity being formed is a for-profit corporation. The name of the entity is:

R&L Global Inc

The name must contain the word "corporation," "company," "incorporated," "limited," or an abbreviation of one of these terms. The name must not be the same as, deceptively similar to or similar to that of an existing corporate, limited liability company, or limited partnership name on file with the secretary of state. A preliminary check for "name availability" is recommended.

Article 2 - Registered Agent and Registered Office

A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

Ricardo Romero

C. The business address of the registered agent and the registered office address is:

Street Address:

3527 Mansfield St Houston TX 77091

Consent of Registered Agent

A. A copy of the consent of registered agent is attached.

OR

B. The consent of the registered agent is maintained by the entity.

Article 3 - Directors

The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified are set forth below:

Director 1: **Ricardo Romero**

Address: **3527 Mansfield St Houston TX, USA 77091**

Director 2: **Laura Romero**

Address: **3527 Mansfield St Houston TX, USA 77091**

Article 4 - Authorized Shares

The total number of shares the corporation is authorized to issue and the par value of each of such shares, or a statement that such shares are without par value, is set forth below.

Number of Shares	Par Value (must choose and complete either A or B)	Class	Series
100,000	<input checked="" type="checkbox"/> A. has a par value of \$1.00 <input type="checkbox"/> B. without par value.		

If the shares are to be divided into classes, you must set forth the designation of each class, the number of shares of each class, and the par value (or statement of no par value), of each class. If shares of a class are to be issued in series, you must provide the designation of each series. The preferences, limitations, and relative rights of each class or series must be stated in space provided for supplemental information.

Article 5 - Purpose

The purpose for which the corporation is organized is for the transaction of any and all lawful business for which corporations may be organized under the Texas Business Organizations Code.

Supplemental Provisions / Information

ARTICLE 6

The period of duration of the Corporation is perpetual.

ARTICLE 7

The Corporation will not commence business until it has received for the issuance of its share's consideration of the value of at least \$1,000, consisting of money, labor done, or property actually received.

ARTICLE 8

Without necessity for action by its shareholders, the Corporation may purchase, directly or indirectly, its own shares to the extent of the aggregate of unrestricted capital surplus available therefore and unrestricted reduction surplus available little, therefore.

ARTICLE 9

Cumulative voting shall not be permitted.

[The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing

A. This document becomes effective when the document is filed by the secretary of state.

OR

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Organizer

The name and address of the organizer is set forth below.

Ricardo Romero 3527 Mansfield St Houston, Texas 77091

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Ricardo Romero

Signature of organizer

FILING OFFICE COPY



August 22nd, 2023

Chase Bank, N.A.
9590 Six Pines Dr
The Woodlands, TX 77380

To Whom It May Concern:

Please be advised R & L Building Group Inc. established a depository relationship under account # 730251399 on 06/25/2015. This account is currently in good standing.

Thank you,

Carisa Siegel

Carisa Siegel
Business Relationship Manager
713-823-8568

PLEASE NOTE THAT THE INFORMATION PROVIDED IN THIS LETTER WILL BE THE ONLY INFORMATION RELEASED BY JPMorgan Chase, N.A. This letter is written as a matter of business courtesy, without prejudice, and is intended for the confidential use of the addressee only. No consideration has been paid or received for the issuance of this letter. The sources and contents of this letter are not to be divulged and no responsibility is to attach to this bank or any of its officers, employees or agents by the issuance or contents of the letter which is provided in good faith and in reliance upon the assurances of confidentiality provided to this bank. Information and expressions of opinion of any type contained herein are obtained from the records of this bank or other sources deemed reliable, without independent investigation, but such information and expressions are subject to change without notice and no representation or warranty as to the accuracy of such information or the reliability of the sources is made or implied or vouched in any way. This letter is not to be reproduced, used in any advertisement or in any way whatsoever except as represented to this bank. This bank does not undertake to notify of any changes in the information contained in this letter. Any reliance is at the sole risk of the addressee.

**Skylark Field Airport
Terminal Demolition**

00 43 13 BID BOND

Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable.

BIDDER (Name and Address):

R & L Global Inc.
3527 Mansfield Street
Houston, Texas 77091

SURETY (Name, and Address of Principal Place of Business):

The Ohio Casualty Insurance Company
175 Berkeley Street
Boston, MA 02116

OWNER (Name and Address):

City of Killeen
P.O. Box 1329
Killeen, Texas 76540

BID

Bid Due Date: August 21, 2023
Project Name: **Skylark Field Airport – Terminal Demolition**

BOND

Bond Number: BID-0019859
Date: August 21, 2023
Penal sum Five Percent of the Amount Bid \$ 5%
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

R & L Global Inc. (Seal)

Bidder's Name and Corporate Seal

By:

Signature

Ricardo Romero

Print Name

CEO

Title

Attest:

Signature

Title

SURETY

The Ohio Casualty Insurance Company (Seal)

Surety's Name and Corporate Seal

By:

Signature (Attach Power of Attorney)

Scott D. Chapman

Print Name

Attorney-in-Fact

Title

Attest:

Signature

Title Autumn Stockton, Surety Witness

Note: Addresses are to be used for giving any required notice.
Provide execution by any additional parties, such as joint ventures, if necessary.



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

The Ohio Casualty Insurance Company

POWER OF ATTORNEY

Principal: R&L Global Inc

Agency Name: USI Insurance Services LLC

Bond Number: BID-0019859

Obligee: CITY OF KILLEEN

Bid Bond Amount: (5% of Bid Amount) Five Percent of Bid Amount

KNOW ALL PERSONS BY THESE PRESENTS: that The Ohio Casualty Insurance Company, a corporation duly organized under the laws of the State of New Hampshire (herein collectively called the "Company"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint **Scott D. Chapman** in the city and state of **Spring, TX**, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Company in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of the Company has been affixed thereto this 28th day of March, 2021.



The Ohio Casualty Insurance Company

By: *David M. Carey*

David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 28th day of March, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of The Ohio Casualty Insurance Company and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: *Teresa Pastella*

Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-law and Authorizations of The Ohio Casualty Insurance Company, which is now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature or electronic signatures of any assistant secretary of the Company or facsimile or mechanically reproduced or electronic seal of the Company, wherever appearing upon a certified copy of any power of attorney or bond issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of The Ohio Casualty Insurance Company do hereby certify that this power of attorney executed by said Company is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Company this 21st day of August, 2023.



By: *Renee C. Llewellyn*

Renee C. Llewellyn, Assistant Secretary



Figure: 28 TAC § 1.601(a)(2)(B)

Have a complaint or need help?

If you have a problem with a claim or your premium, call your insurance company or HMO first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal through your insurance company or HMO. If you don't, you may lose your right to appeal.

The Ohio Casualty Insurance Company

To get information or file a complaint with your insurance company or HMO:

Call: Liberty Mutual Surety Claims **at** 206-473-6210

Online: www.LibertyMutualSuretyClaims.com

Email: HOSCL@libertymutual.com

Mail: P.O. Box 34526 Seattle, WA 98124

The Texas Department of Insurance

To get help with an insurance question or file a complaint with the state:

Call with a question: 1-800-252-3439

File a complaint: www.tdi.texas.gov

Email: ConsumerProtection@tdi.texas.gov

Mail: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

¿Tiene una queja o necesita ayuda?

Si tiene, un problema con una reclamación o con su prima de seguro, llame primero a su compañía de seguros o HMO. Si no puede resolver el problema, es posible que el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés) pueda ayudar.

Aun si usted presenta una queja ante el Departamento de Seguros de Texas, también debe presentar una queja a través del proceso de quejas o de apelaciones de su compañía de seguros o HMO. Si no lo hace, podría perder su derecho para apelar.

The Ohio Casualty Insurance Company

Para obtener información o para presentar una queja ante su compañía de seguros o HMO:

Llame a: Liberty Mutual Surety Claims

al 206-473-6210

En línea: www.LibertyMutualSuretyClaims.com

Correo electrónico: HOSCL@libertymutual.com

Dirección postal: P.O. Box 34526 Seattle, WA 98124

El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros o para presentar una queja ante el estado:

Llame con sus preguntas al: 1-800-252-3439

Presente una queja en: www.tdi.texas.gov

Correo electrónico: ConsumerProtection@tdi.texas.gov

Dirección postal: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

Skylark Field Airport
Terminal Demolition

DBE: Yes / No (circle one) Contract Amount:

SBE: Yes / No (circle one)

Date Firm Established:

Annual Gross Receipts (enter the range only):

Type of Work:

Subcontractor's Name:

Texas License No.:

Address:

DBE: Yes / No (circle one) Contract Amount:

SBE: Yes / No (circle one)

Date Firm Established:

Annual Gross Receipts (enter the range only):

Bidder (General Contractor): R&L Global Inc

Texas License No.: N/A

Address: 3527 Mansfield Dr Houston, TX 77091

DBE: Yes / No (circle one)

SBE: Yes / No (circle one)

Date Firm Established: 2021

Annual Gross Receipts (enter the range only): \$5M-\$7M

By Ricardo Romero

Title: CEO

*Signature must be the same as on the Bid form.

Notes:

- (1) Bidder and subcontractors shall have evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids.

00 45 13 QUALIFICATIONS STATEMENT

THE INFORMATION SUPPLIED IN THIS DOCUMENT IS CONFIDENTIAL TO THE EXTENT PERMITTED BY LAWS AND REGULATIONS

1. SUBMITTED BY:

Official Name of Firm: R&L Global Inc
Address: 3527 Mansfield Dr
Houston, TX 77091
(713) 686-8899

2. SUBMITTED FOR:

Owner: CITY OF KILLEEN
Project Name: TERMINAL DEMOLITION

TYPE OF WORK: Building demolition, removal of existing utilities, and AOA fencing
installation

3. CONTRACTOR'S CONTACT INFORMATION

Contact Person: Tim Rogers
Title: Project Manager
Phone: (713) 201-6675
tim@rlglobalinc.com
Email: N/A

4. AFFILIATED COMPANIES:

Name: _____
Address: _____

**Skylark Field Airport
Terminal Demolition**

5. TYPE OF ORGANIZATION:

SOLE PROPRIETORSHIP

Name of Owner: _____

Doing Business As: _____

Date of Organization: _____

PARTNERSHIP

Date of Organization: _____

Type of Partnership: _____

Name of General Partner(s): _____

CORPORATION

State of Organization: Texas

Date of Organization: 02/01/2021

Executive Officers:

- President: Laura Romero

- Vice President(s): Ricardo Romero

- Treasurer: _____

- Secretary: _____

LIMITED LIABILITY COMPANY

State of Organization: _____

Date of Organization: _____

Members: _____

**Skylark Field Airport
Terminal Demolition**

JOINT VENTURE

Sate of Organization: _____

Date of Organization: _____

Form of Organization: _____

Joint Venture Managing Partner

- Name: _____

- Address: _____

Joint Venture Managing Partner

- Name: _____

- Address: _____

Joint Venture Managing Partner

- Name: _____

- Address: _____

6. LICENSING

Jurisdiction: _____

Type of License: _____

License Number: _____

Jurisdiction: _____

Type of License: _____

License Number: _____

Has firm listed in Section 1 ever been fined or suspended by a Contractor's licensing board?

YES NO

If YES, attach as an Attachment details including where and why.

7. CERTIFICATIONS

CERTIFIED BY:

Disadvantage Business Enterprise: Self

Minority Business Enterprise: Self

Woman Owned Enterprise: Self

Small Business Enterprise: _____

Other (_____): _____

8. BONDING INFORMATION

Bonding Company: Koch Insurance

Address: 2219 Sawdust Rd
Spring, Texas 77380

Bonding Agent: Adam Koch

Address: 2219 Sawdust Rd
Spring Texas 77380

Contact Name: Adam Koch

Phone: (281) 918-4974

Aggregate Bonding Capacity: _____

Available Bonding Capacity as of date of this submittal: _____

9. FINANCIAL INFORMATION

Financial Institution: Chase Bank

Address: 5240 W 34th
Houston, TX 77091

Account Manager: Carisa Siegel

Phone: (713) 823-8568

Credit available: \$ N/A

10. CONSTRUCTION EXPERIENCE:

Current Experience:

List on **Schedule A** all uncompleted projects currently under contract (If Joint Venture list each participant's projects separately).

Previous Experience:

List on **Schedule B** all projects completed within the last 5 Years (If Joint Venture list each participant's projects separately).

Has firm listed in Section 1 ever failed to complete a construction contract awarded to it?

YES NO

If YES, attach as an Attachment details including Project Owner's contact information.

Has any Corporate Officer, Partner, Joint Venture participant or Proprietor ever failed to complete a construction contract awarded to them in their name or when acting as a principal of another entity?

YES NO

If YES, attach as an Attachment details including Project Owner's contact information.

Are there any judgments, claims, disputes, or litigation pending or outstanding involving the firm listed in Section 1 or any of its officers (or any of its partners if a partnership or any of the individual entities if a joint venture)?

YES NO

If YES, attach as an Attachment details including Project Owner's contact information.

11. SAFETY PROGRAM:

Name of Contractor's Safety Officer: Tim Rogers

Include the following as attachments:

Provide as an Attachment Contractor's (and Contractor's proposed subcontractors and suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) OSHA No. 300- Log & Summary of Occupational Injuries & Illnesses for the past 5 years.

Provide as an Attachment Contractor's (and Contractor's proposed subcontractors and suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) list of all OSHA Citations & Notifications of Penalty (monetary or other) received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

Provide as an Attachment Contractor's (and Contractor's proposed subcontractors and suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) list of all safety citations or violations under any state all received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

**Skylark Field Airport
Terminal Demolition**

Provide the following for the firm listed in Section 1 (and for each proposed subcontractor and supplier furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) the following (attach additional sheets as necessary):

Workers' compensation Experience Modification Rate (EMR) for the last 5 years:

YEAR	_____	EMR	_____
YEAR	_____	EMR	_____
YEAR	_____	EMR	_____
YEAR	_____	EMR	_____
YEAR	_____	EMR	_____

Total Recordable Frequency Rate (TRFR) for the last 5 years:

YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____

Total number of man-hours worked for the last 5 Years:

YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____

Provide Contractor's (and Contractor's proposed subcontractors and suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) Days Away From Work, Days of Restricted Work Activity or Job Transfer (DART) incidence rate for the particular industry or type of Work to be performed by Contractor and each of Contractor's proposed subcontractors and suppliers) for the last 5 years:

YEAR	_____	DART	_____
YEAR	_____	DART	_____
YEAR	_____	DART	_____
YEAR	_____	DART	_____
YEAR	_____	DART	_____

12. EQUIPMENT:

MAJOR EQUIPMENT:

List on **Schedule C** all pieces of major equipment available for use on project.

August 21, 2023

R&L Global Inc.
d/b/a R&L Building Group Inc
3527 Mansfield Street
Houston, TX 77091

Dear Laura Romero,

I am writing this letter in response to the request for a Workers' Compensation Experience Modification Rating ("EMR") from FrankCrum*. Please understand that, as a client of a PEO, R&L Global Inc. d/b/a R&L Building Group Inc does not have its own EMR. As such, the EMRs below are that of FrankCrum, PEO.

<u>Rating Effective Date</u>	<u>EMR</u>
07/11/2022	.75
01/01/2023	.75

Sincerely,



Steve Gober
Vice President of Underwriting
FrankCrum

* FrankCrum includes FrankCrum 1, Inc., FrankCrum 2, Inc., FrankCrum 3, Inc., FrankCrum 4, Inc., FrankCrum 5, Inc., FrankCrum 6, Inc., FrankCrum 7, Inc., FrankCrum 8, Inc., FrankCrum 9, Inc., FrankCrum 11, Inc., and FrankCrum 12, Inc.

OSHA's Form 300A

Summary of Work-Related Injuries and Illnesses

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases			
Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0 (G)	0 (H)	0 (I)	0 (J)

Number of Days	
Total number of days away from work	Total number of days of job transfer or restriction
0 (K)	0 (L)

Injury and Illness Types					
Total number of ... (M)	(1) Injuries	0	(4) Poisonings	0	
	(2) Skin Disorders	0	(5) Hearing Loss	0	
	(3) Respiratory Conditions	0	(6) All other illnesses	0	

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including time to review the instructions, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA, Office of Statistical Analysis, Room N-3844, 200 Constitution Ave. NW, Washington, DC 20210. Do not send the completed forms to this office.



Year 2022

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176
(REV. 01/2004)

Establishment information

Client Start Date: 07/11/2022
Your establishment name: 12891 - R&L BUILDING GROUP INC
Street: 3527 MANSFIELD STREET

City: HOUSTON State: TX Zip: 77091

Industry description (e.g., Manufacture of motor truck trailers)
CARPENTRY-DWELLINGS-3 STORIES OR LESS

North American Industrial Classification (NAICS), if known (e.g., 336212)
236116

Employment information

Annual average number of employees: 18
Total hours worked by all employees last year: 15105

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Company executive _____ Phone _____ Date _____

OSHA's Form 300A

Summary of Work-Related Injuries and Illnesses



Year 2022

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0175
(REV. 01/2004)

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases			
Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0 (G)	0 (H)	0 (I)	0 (J)

Number of Days	
Total number of days away from work	Total number of days of job transfer or restriction
0 (K)	0 (L)

Injury and Illness Types					
Total number of... (M)	(1) Injuries	0	(4) Poisonings	0	
	(2) Skin Disorders	0	(5) Hearing Loss	0	
	(3) Respiratory Conditions	0	(6) All other illnesses	0	

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instructions, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistical Analysis, Room N-3644, 200 Constitution Ave. NW, Washington, DC 20210. Do not send the completed forms to this office.

Establishment information

Client Start Date: 07/11/2022
Your establishment name: 12891 - R&L BUILDING GROUP INC
Street: 175 MANDARIN DRIVE

City: BRANDON State: MS Zip: 39047

Industry description (e.g., Manufacture of motor truck trailers)
CARPENTRY-DWELLINGS-3 STORIES OR LESS
North American Industrial Classification (NAICS), if known (e.g., 336212)
236116

Employment information

Annual average number of employees: 1
Total hours worked by all employees last year: 160

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Company executive _____ Phone _____ Date _____



Ricardo Romero

3527 Mansfield St. Houston Texas 77091

(713)437-0936 – ricardo@globalinc.com

Professional Summary

Committed and motivated independent Business Owner with over 14 years of experience as a Reconstruction and General Contractor Company in the Multi-family, commercial and residential construction, property restoration and recovery, roofing services, consulting services, estimation field, proven track record of identifying labor, materials and time requirements by analyzing proposals, construction plan, specifications and associated documents, possess a thorough understanding of fundamentals construction principles, familiar with preparing and negotiating contracts with clients and suppliers, specialty sales, leadership, project management and customer service. Safety conscience and detailed oriented.

As a business owner I'm required to maintain required certifications, licensing, bonding capacity and insurance coverage in all areas, allowing us to perform work in compliance with all state, federal regulations and industry standard adhering to all requirements as mandated by the environmental, health, and safety (EHS) regulations, OSHA Construction & General Industry Standards in general heavy construction and manufacturing settings, EPA (RCRA, TSCA, PCBs, RAC guidelines), DOT, NIOSH, NFPA, ANSI regulations as well as IICRC and RIA industry standards.

Work History

Owner of R & L Global inc., 5/2008 to Present. - Self Employed – Houston Texas

Responsibilities:

- Managing day to day operations associated with all phases of construction and residential projects, property restoration and recovery, roofing services, consulting services, workforce staffing services to the public and private sector clients.
- Lead and motive team members to exceed expectations and maintain a high standard in all operations.
- Reviewed plans and specs during the schematic design of pre-construction.
- Obtained building and specs permits from local jurisdictional agencies.
- Determine project schedule which includes the sequence of all construction activities.
- Conducted weekly production and operations contractor meetings which facilitated stronger communication and the ability to resolve critical issues.
- Conducted routine quality audits to ensure that work was progressing per the specifications and initiated necessary corrective actions.
- Guided and directed 3rd party inspections through project construction, commissioning and closeout.
- Strict familiarization, adherence and enforcement of building codes, local and state policies as well as OSHA regulations.

Commercial Projects

- Woodland Inn & Suites – 4814 Ave H Rosenberg, TX 77471 – Water mitigation, selective and interior remodeling – \$26503.21



-
- Pleasantville United Methodist Church – 1403 Demaree Lane Houston, TX 77029 – Water mitigation, selective demolition and interior remodeling – \$302,576.19
 - Rosenberg Hospitality Inc – 11206 W. Airport Blvd Stafford, TX 77477 – Water mitigation, selective and interior remodeling – \$26503.21
 - Hitchcock Project – 8010 Highway 6 Hitchcock TX 77563 – Complete Interior unit remodeling – \$360,850
 - Hilton America Parking Garage – 1600 Lamar St. Houston TX 77091 Complete Interior unit remodeling – \$550,000

Registrations/Licenses/Certs

- **IICRC – Company Certified Firm – Restoration & Construction – License # 57383563**

Affiliations

- **IICRC - Institute of Inspection Cleaning and Restoration Certification**
- **BCSP – Board of Certified Safety Professionals**

References

- Camille Davis – Dynamic Living Solutions – (713)203-3856
- Mike Visser – Cotton Restoration – (713)876-0023
- Luis Saldana – Camillo Properties – (713)724-6868

Company Web Sites

- Rlglobalinc.com
- LinkedIn
- Facebook



HIGHLIGHTS

Project/Construction Manager in charge of construction. Commercial, government, institutional; customer service and satisfaction orientated; Q/A, Q/C, Safety & Health, computer literate and business savvy; ability to handle and prioritize many tasks while in a stressful environment; detail oriented; honest; dependable, personable. I enjoy my work in construction and it is very satisfying to complete a job the right way, on time and under budget.

EXPERIENCE

R&L Global Inc – Houston – Project Manager **June 2023 - Present**

Rebuilding Together – Houston – Director of Construction **July 2013 – June 2023**

In Charge of all Construction activities. Developed Health & Safety Plan for Contractors and volunteers. Developed and implemented lead Safe program. Get Federal HUD Grant off and running.

All American Brothers Co., LLC – VP Construction **2006 – June 2013**

24 Million dollars of work in five years with 5 Million dollars of profit. Built Federal Government Client Base and secured several muliti-year contracts. In Charge of all construction operations. Wrote numerous technical proposals for Federal Solicitations.

- Used Cost tracking system that I developed with less than 2% difference between projected cost and actual cost.
- Wrote entire safety plan, and Quality Control plan that was approved by Department of Veteran Affairs, Dept of Navy, Coast Guard, Air Force, Corp of Engineers & NASA.
- In charge of all operations, hiring, firing of up to 35 people under my control.
- First Small Company in US to utilize the Everify System For Employment Status
- Used Critical Path Method for Scheduling (Never Received Liquidated Damages)

Basic Industries IDIQ Division - Project Manager, Quality Assurance, Safety Specialist **2005-2006**

Hired for this project at NASA Johnson Space Center to replace critical cooling tower in Building 48 that provides critical utilities to flight control. Included all submittal paperwork, through all Safety and Quality Control meeting, Progress meetings with clients and subcontractors, did all scheduling, ordering of materials, all the way through commissioning and turn over.

- Entire Crew Awarded for Safe Job Site (No Accidents or Write ups)
- Increased profit % by negotiating with subcontractors and finishing on time
- Scheduled all work with suppliers and subcontractors. Project Finished on Time
- Coordinated all work and meetings with NASA’s Third Party Q/A, Safety & NASA Project Managers

LMC Corporation, Houston, Texas

April 2000 – 2005

TIM ROGERS
11427 Highgrove Dr Houston, TX 77077
(713) 201-6675 tim@rlglobalinc.com

Hired for one project for the Department of the Navy, after less than one year was put in charge of Construction activities. Started project cost tracking system compared to project buyout to track weekly expenditures. This System increased Profits and Identified Losses. Wrote technical packages for bidding and landed largest contract company had ever had for 5 year multi-year contract at NASA Johnson Space Center

- Performed all Quality Assurance and Safety Inspections
- Negotiated contracts with several government agencies.
- Wrote Health and Safety Plans and Quality Assurance / Quality Control Plans.
- Used new Tracking System to Audit old projects and found thousands of dollars of double paid bills, over paid invoices, and fraudulent charges.

Penco Construction Company, Houston, Texas

1997-2000

Multi Family Construction Company – Managed Numerous Projects At once ranging from 20K up to 2M. Ensured Quality Control and safety on all job sites. Ordered Material, Organized Subcontractors, bought out projects. Hired to be superintendant, shortly got promotion to Project manager, then put in charge of all construction in San Antonio. Did all planning, Negotiating, scheduling, working with Sales and Clients to get projects all the way through closing them out.

EDUCATION

Graduate, Jersey Village High School + Attended Art Institute of Houston w/ Photography Scholarship
CPM Scheduling + Word, Excel, Power Point, Project + Primavera + Quality Control/Quality Assurance
30 Hour OSHA Course + Wide Area Work Flow + Federal Quarterly Reporting on Stimulus Projects

PARTIAL PROJECT LIST

All American Brothers Co., LLC

VA Michael DeBakey Medical Center:

D/B IT/Bio Med Renovation	\$750K
D/B Endoscope Renovation	\$275K
D/B Parking Lots	\$1.6M
Renovate Directors Suite	\$100K

Texas Air National Guard Ellington Air Force Base:

Munitions Maint. Bldg New Construction	\$2M
Road Replacement	\$1.6M
Concrete Spall Repairs on Flight Line	\$50K
Seal Coating & Striping Parking Lots	\$50K
Generator Pad	\$25K

Goodfellow Air Force Base: 5 Year SABER Contract (Maxed Out in One Year) \$9.75M

46 Task Orders Successfully Completed from \$2K - \$1.4M

Goodfellow Air Force Base: 2 Year SABER \$3.5M

16 Task Orders Successfully Completed

Basic Industries IDIQ Division

TIM ROGERS
11427 Highgrove Dr Houston, TX 77077
(713) 201-6675 tim@rlglobalinc.com

NASA Johnson Space Center

Cooling Tower Bldg 48 2M

LMC Corporation, Houston, Texas

NAVFAC Southern Division -

Renovations to Bldg 8 & 11 NRRTC Houston, Texas 1M
Parking Lot Repairs NR/MCTC Houston, Texas 3/4M
Renovations to Bldg 215 NRC Orange, Texas 1/2M
AT/FP Improvements Galveston, Texas 1/4M
Renovations to Bldg 187 Orange, Texas 1M
Remodel Bldg 10 NR/MCTC Houston, Texas 1/2M
Reskin/Repair Alterations to Bldg 176 Orange, Texas 3/4M

Department of Veteran Affairs -

Road Repairs VA Cemetery Houston, Texas 1.5M
Roof Replacement Bldg 100 VA Hospital Houston, TX 3/4M
Road, Curb & Sidewalk Repairs VA Hospital Houston 1/2M
Roof Replacement Bldg 100 Phase II & III 1.5M

Texas Air National Guard Ellington Air Force Base JOC-

Fuel Farm Rehab Phase I & II Ellington Field 1M
MEP Modification Bldg 1183 Ellington Field 1.2M
LaPorte/Nederland Fence & Gate Additions 3/4M
Old Alert Crew Quarters Renovations Ellington 1/2M
Remodel New Alert Crew Quarters Ellington 1/2M
Remodel Commanders Suite Ellington Field 1/4M
Remodel Clinic Bldg 1377 Ellington Field 1/2M

NASA JSC IDIQ Houston -

Bldg 8 & 16 Modifications Houston, Texas 1/2M
Radio Communications Facility Bldg 347 1.5M
Facilities Exchange Bldg 3, 11 & 207 2M

**Skylark Field Airport
Terminal Demolition**

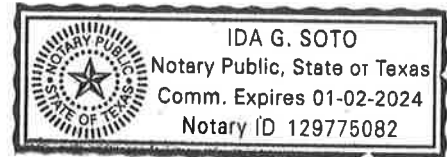
I HEREBY CERTIFY THAT THE INFORMATION SUBMITTED HEREWITH, INCLUDING ANY ATTACHMENTS, IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF ORGANIZATION: R&L Global Inc
BY: *Frederico Perro*
TITLE: CEO
DATED: 8/22/23

NOTARY ATTEST:

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 22nd DAY OF August, 2023

NOTARY PUBLIC - STATE OF Texas
MY COMMISSION EXPIRES: 01/02/2024



CS

REQUIRED ATTACHMENTS

1. Schedule A (Current Experience)*.
2. Schedule B (Previous Experience)*.
3. Schedule C (Major Equipment)*.
4. Evidence of authority for individuals listed in Section 5 to bind organization to an agreement.
5. Resumes of officers and key individuals (including Safety Officer) of firm named in Section 1.
6. Required safety program submittals listed in Section 11.
7. Resumes and licenses of key electrical individuals requested in Section 13.

*Information may be provided on form attached or bidder provided form containing similar information.

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SCHEDULE A

CURRENT EXPERIENCE

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
Dynamic Living Solutions	Name: Dynamic Living Solutions Address: 2613 Delafield Hou Telephone: (713) 203-3856	Name: N/A Company: Telephone:	8/2/23	New Construction		\$1,474,880
The Abbey	Name: The Abbey Address: 1520 Enclave Pkwy Telephone: (205) 823-4791	Name: N/A Company: Telephone:	8/31/22	Renovation		\$2,209,875
AAA Capital Roofing	Name: AAA Capital Roofing Address: 2101 Parker Telephone: (281) 830-2478	Name: N/A Company: Telephone:	11/7/2022	New Construction		\$450,000
Bridgewood Property	Name: Bridgewood Property Address: 5020 Kelvin Telephone: (713) 623-6767	Name: N/A Company: Telephone:	5/2/23	Renovation		\$91,082
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				

SCHEDULE B

PREVIOUS EXPERIENCE (Include ALL Projects Completed within last 5 years)

Project Name	Owner's Contact Person Name: Harris, Celeste Address: 3211 Elmcrest Telephone: (281) 999-0529	Design Engineer Name: N/A Company: Telephone:	Contract Date	Type of Work	Status	Cost of Work
3211 Elmcrest	Name: Harris, Celeste Address: 3211 Elmcrest Telephone: (281) 999-0529	Name: N/A Company: Telephone:	04/13/2021	Reconstruction		\$68,689
Pleasantville UMC	Name: Pleasantville UMC Address: 1403 Demaree Ln Telephone: (281) 704-4240	Name: N/A Company: Telephone:	05/05/2021	Construction		\$187,643
FSI	Name: FSI Address: 201 Wilkes St Telephone: (713) 690-5330	Name: N/A Company: Telephone:	1/10/22	New Construction		\$135,000
Elizabeth Cox	Name: Elizabeth Cox Address: 30063 Willow Walk Telephone: (832) 888-9866	Name: N/A Company: Telephone:	2/28/22	Re-Construction		\$110,143
Blue Team	Name: Blue TEam Restoration Address: 6203 Alden Bridge Telephone: (954) 928-3870	Name: N/A Company: Telephone:	6/14/2022	Remediation		\$192,745
Crown Plaza	Name: Cotton/Crown Plaza Address: 2712 SW Frwy Telephone: (713) 849-9300	Name: N/A Company: Telephone:	8/15/22	Demolition		\$147,600
Fire Clean / Camillo	Name: Fire Clean Camillo Address: 151 Cliff Heights Telephone: (832) 865-9414	Name: N/A Company: Telephone:	9/8/22	Remediation		\$172,153

**Skylark Field Airport
Terminal Demolition**

**SCHEDULE B
PREVIOUS EXPERIENCE (Include ALL Projects Completed within last 5 years)**

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
David Wuensch	Name: David Wuensch Address: 7241 Navigation Telephone: (832) 723-0523	Name: N/A Company: N/A Telephone:	9/16/2022	New Construction		\$144,662
ACT / Staffing	Name: ACT Address: 235 Georgetown Blvd Telephone: (888) 747-1515	Name: N/A Company: N/A Telephone:	10/12/22	Staffing		\$317,384
Blue Team T&M	Name: Blue Team Restoration Address: 6410 21st Ave W Telephone: (954) 928-3870	Name: N/A Company: N/A Telephone:	10-31-22	Staffing		\$106,627
Blue Team T&M	Name: Blue Team Restoration Address: 3002 Jack Rabbit Rd Telephone: (954) 928-3870	Name: N/A Company: N/A Telephone:	11/10/22	Time & Material		\$347,576
Craft / MOR	Name: Craft / MOR Address: 1700 Tamiami Trail Telephone: (940) 536-8412	Name: N/A Company: N/A Telephone:	11/28/2022	Staffing		\$193,272
Cotton	Name: Cotton Address: 500 Dallas Telephone: (713) 849-9300	Name: N/A Company: N/A Telephone:	1/5/23	RE-Construction		\$108,300
ACT	Name: ACT Address: 2700 Elm Hill Pike Telephone: (888) 747-1515	Name: N/A Company: N/A Telephone:	7/17/23	Time & Material		\$557,320

SKYLARK FIELD AIRPORT (ILE)
 TERMINAL DEMOLITION
 BID OPENING: AUGUST 23, 2023 2:15 PM

BID TABULATION - BASE BID

ITEM NO.	SPEC. NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	ENGINEER'S ESTIMATE		AAR Inc Bidder #1		American Abatement LLC 2nd Bidder		JR Ramon Demolition 3rd Bidder		R&L Global Inc 4th Bidder		RNDI Companies INC 5th Bidder		Tejas Destructors LLC 6th Bidder		
					UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	
1	-	BASE BID: TERMINAL DEMOLITION	LS	1	\$400,000.00	\$400,000.00		\$131,200.00		\$448,194.00		\$274,000.00		\$103,456.00		\$173,670.00			\$204,500.00
TOTALS						\$400,000.00		\$131,200.00		\$448,194.00		\$274,000.00		\$103,456.00		\$173,670.00			\$204,500.00

BID TABULATION - ADDITIVE ALTERNATE I

ITEM NO.	SPEC. NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	ENGINEER'S ESTIMATE		Bidder #1		2nd Bidder		3rd Bidder		4th Bidder		5th Bidder		6th Bidder		
					UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	
1	-	ADDITIVE ALTERNATE I: SLAB, FOUNDATION, AND PAVEMENT REMOVAL AND RELOCATION	LS	1	\$100,000.00	\$100,000.00		\$68,400.00		\$155,600.00		\$55,000.00		\$53,638.00		\$96,622.50			\$93,250.00
TOTALS						\$100,000.00		\$68,400.00		\$155,600.00		\$55,000.00		\$53,638.00		\$96,622.50			\$93,250.00

TOTAL BID TABULATION - BASE BID + ADDITIVE ALTERNATE I					ENGINEER'S ESTIMATE	Bidder #1	2nd Bidder	3rd Bidder	4th Bidder	5th Bidder	6th Bidder
					\$500,000.00	\$199,600.00	\$603,794.00	\$329,000.00	\$157,094.00	\$270,292.50	\$297,750.00

Corrected Prices



**00 52 00 CONTRACT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Killeen ("Owner") and
R&L Global Inc ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
- A. Base Bid – Demolition of the old terminal building down to foundational slab, remove and cap existing utilities to outside of building, removal of all existing equipment and transformer surrounding building, install AOA fencing to secure airfield.
 - B. Additive Alternate I – Demolition of foundational slab and portions of surrounding pavement east and west of building, add and compact soil, seed and sod exposed area, grade site to drain.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Terminal Demolition at Skylark Field Airport.**

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by **Garver, LLC.**

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Days*
- A. The Work will be substantially completed within the following number of days after the date when the Contract Times commence to run as provided in Section 80-07 of the General Provisions and completed and ready for final payment in accordance with Section 90-09 of the General Provisions within the following number of days after the date when the Contract Times commence to run.
 - B. Parts of the Work shall be substantially completed on or before the following Milestone(s):
 - 1. Milestone 1 **Substantial Completion (Base Bid + Add. Alt. I) – 60 calendar days**
 - 2. Milestone 2 **Final Completion – 30 calendar days**

Description	Substantial Completion
Base Bid	45 calendar days
Additive Alternate I	15 calendar days

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

Schedule	Liquidated Damages Cost	Allowed Construction Time
Base Bid	\$1,000.00/calendar day	45 Calendar Days
Additive Alternate I	\$1,000.00/calendar day	15 Calendar Days

4.04 Special Damages

- A. Special damages shall be paid for at the expense of the Contractor for any work performed outside of the contracted scope that interferes with airport operations. Amount shall be agreed upon by Contractor and Owner.

ARTICLE 5 – CONTRACT PRICE \$157,094.00

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):
- B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. Estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer and Owner.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Applications for Payment shall be made in accordance with Section 90-06 of the General Provisions. Applications for Payment will be processed by Owner as provided in the General Provisions.

6.02 Progress Payments; Retainage

- A. Progress payments and retainage shall be in accordance with Section 90-06 of the General Provisions.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Section 50-15 of the General Provisions, Owner shall pay the remainder of the Contract Price as provided in

Section 90-09 of the General Provisions, minus any damages as described in Paragraphs 4.03 and 4.04.

ARTICLE 7 – INTEREST

7.01 Not Used.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Special Provisions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Special Provisions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 - J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
 - K. The Contractor hereby represents and warrants to and for the benefit of the Owner that:
 - 1. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to recover as damages against the

Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Owner). While the Contractor has no direct contractual privity with the State, as a lender to the Owner for the funding of its Project, the Owner and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. Executed Contract
 - 2. Addenda (if any)
 - 3. Advertisement for Bids
 - 4. Instructions to Bidders
 - 5. Bid Form
 - 6. Bid Bond
 - 7. List of Proposed Subcontractors
 - 8. Qualification Statement
 - 9. General Provisions
 - 10. Special Provisions
 - 11. Supplemental Specifications as listed in the Table of Contents
 - 12. Drawings
 - 13. Performance Bond
 - 14. Payment Bond
 - 15. Certificates of Insurance
 - 16. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid
 - 17. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Provisions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms not otherwise defined herein and used in this Agreement will have the meanings stated in the General Provisions and the Special Provisions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

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

10.04 *Severability*

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

10.05 *Contractor's Certifications*

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

**Skylark Field Airport
Terminal Demolition**

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

City of Killeen

By: _____

Kent Cagle

Title: _____

City Manager

Attest: _____

Laura Calcote

Title: _____

City Secretary

CONTRACTOR:

R&L Global Inc

By: _____

Laura Romero

Title: _____

President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Ricardo Romero

Title: _____

CEO

Address for giving notices:

Killeen-Fort Hood Regional Airport

8101 Clear Creek Road, Box C

Killeen, TX 76549

Address for giving notices:

R&L Global Inc

3527 Mansfield

Houston, TX 77091

info@rlglobalinc.com

License No.: _____

(where applicable)

This document is a MODIFIED version of EJCDC® C-520, Agreement Between Owner and Contractor for Construction Contract (Stipulated Price). Copyright © 2013 National Society of Professional Engineers, American Council of Engineering Companies and is based in part on excerpts from EJCDC documents. Those portions of the text that originated in published EJCDC documents remain subject to copyright.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

R&L Global Inc
 Houston, TX United States

Certificate Number:
 2023-1063848

Date Filed:
 08/24/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Killeen

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

23-44
 Demolition Services

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
R&L Global Inc	Houston, TX United States	X	

5 Check only if there is NO Interested Party.


6 UNSWORN DECLARATION

My name is Laura Romero, and my date of birth is _____.

My address is 3527 Mansfield, Houston, TX, 77091, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 24 day of August, 20 23.
(month) (year)



 Signature of authorized agent of contracting business entity
 (Declarant)



AWARD OF CONTRACT-TERMINAL
DEMOLITION AT SKYLARK FIELD
AIRPORT

Background

2

- The previous airline terminal building at Skylark Field is 44 years old and has been vacant for the past 19 years.
- Numerous attempts to repurpose the building have failed due in part to the size, configuration, and the overall condition of the interior.

Background

3

- Recent storm damage has caused a portion of an exterior wall and a portion of the roof to collapse, rendering it uninhabitable and structurally unsafe.
- The Skylark Field Master Plan that was approved in October of 2016, calls for the demolition of the terminal to make way for future aviation related development.

Discussion

4

- The project will consist primarily of the demolition of the existing old terminal building that is no longer in use.
- The funding for this project will come from the Aviation Capital Improvement Plan (CIP) fund.
- The Terminal Demolition project was advertised on August 6 & August 13, 2023. Advertising appeared in the local newspaper as well as the City's website. Additionally, it was advertised on multiple statewide electronic bidding sites.

Discussion

5

- Bids were opened on August 23, 2023 - six (6) bids received

Vendor	Base Bid	Additive Alternate 1 (Slab, Foundation, Pavement Removal and Restoration)	Total
R&L Global Inc.	103,456	53,638	157,094.00
AAR Incorporated	131,200	68,400	199,600.00
RNDI Companies, Inc.	173,670	96,622.50	270,292.50
Tejas Destructors, LLC	204,500	93,250	297,750.00
JR Ramon Demolition	274,000	55,000	329,000.00
American Abatement LLC	448,194	155,600	603,794.00

Discussion

6

- Staff reviewed bid packages and found R&L Global Inc. to be the lowest responsive and responsible bidder.
- Staff recommends the contract be awarded to R&L Global Inc. based on bid and price offered.
 - ▣ Includes Base Bid and Additive Alternate 1
 - ▣ The contract amount is \$157,094.
 - ▣ Project will be funded by the Aviation Capital Improvement Plan (CIP) Fund

Alternatives

7

- ❑ Reject the Bid
- ❑ Authorize award of contract to R&L Global Inc. for Base Bid
- ❑ Authorize award of contract to R&L Global Inc. for Base Bid and Additive Alternate 1

Recommendation

8

- Approve the contract with R&L Global Inc. for the Base Bid and Additive Alternate 1 in the amount of \$157,094 and authorize the City Manager or designee to execute all contract documents and any and all change orders or actions within the amounts set by state and local law



City of Killeen

Staff Report

File Number: RS-23-149

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution authorizing the agreement with Waste Management Inc. for the disposal of the City's municipal solid waste.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Jeffery Reynolds, Executive Director of Public Works

SUBJECT: Approval of Agreement with Waste Management Inc. for the Disposal of the City's municipal solid waste

BACKGROUND AND FINDINGS:

The City of Killeen Transfer Station processes over 130,000 tons of municipal solid waste (MSW) annually. On October 8, 2015, the City of Killeen entered into a contract for disposal services for the City's MSW with Waste Management, Inc. Waste Management, Inc. maintains the Temple landfill, which is the primary destination of disposal for the city's MSW, and the Williamson County landfill, which could be used as a secondary destination.

On September 1, 2020, City Council approved Amendment #3 to that contract, which extended the term of the disposal agreement to October 7, 2023.

The proposed agreement, which would become effective at the expiration of the current agreement and would remain effective for five (5) years, sets the disposal rate at \$33.12 per ton (base disposal rate). As with the existing agreement, the base disposal rate would automatically increase at the end of each twelve (12) month period by eighty five percent (85%) of the percentage increase of the Consumer Price Index, series CUSR0000SEHG02 CPI-U Garbage & Trash Collection Services, US City Average, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI-U"). The CPI-U adjustment will be calculated using the change in the 12-month annual average of monthly CPI-U index values between the May to April period of the year immediately prior to the adjustment date, and the May to April period of the year before. Adjustments to the Contractor's service rates shall be made in units of one cent (\$0.01).

Additionally, the base disposal rate will receive an annual adjustment for a fuel surcharge of fifteen percent (15%) of the percentage increase of the EIA Diesel, On Highway, Retail, Fuel Price for the Gulf Coast Region, as published by the United States Energy Information Administration. The Diesel fuel adjustment will be calculated using the change in the 12-month annual average of monthly EIA fuel index values between May to April period of the

year immediately prior to the adjustment date, and the May to April period of the year before. Adjustments to the Contractor's service rates shall be made in units of one cent (\$0.01).

THE ALTERNATIVES CONSIDERED:

1. Do not authorize the disposal agreement with Waste Management, Inc.
2. Authorize the disposal agreement with Waste Management Inc. allowing the city to continue utilizing their services for the duration of five (5) years.

Which alternative is recommended? Why?

Alternative two is recommended in order to ensure disposal services for the City's municipal solid waste at a set cost each year.

CONFORMITY TO CITY POLICY:

Per the Texas Health and Safety Code sections 363.116 and 363.117, the City of Killeen has the authority to enter into this agreement to provide the City of Killeen municipal solid waste management disposal services on the terms considered appropriate by the city.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

The FY 2024 estimated expenditures for the proposed agreement for MSW disposal is \$5,012,174.

Is this a one-time or recurring expenditure?

Recurring annually

Is this expenditure budgeted?

Yes, funds are available in the Solid Waste Fund Transfer Station account 540-3475-439.50-40.

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes

RECOMMENDATION:

City Council authorize the City Manager, or his designee, to execute the disposal agreement with Waste Management Inc. for the disposal of the city's municipal solid waste for the duration of five (5) years as well as any amendments within limits established by City policy or State Law.

DEPARTMENTAL CLEARANCES:

Public Works
Purchasing
Finance
City Attorney

ATTACHED SUPPORTING DOCUMENTS:

Agreement
Certificate of Interested Parties
Contract Verification

Non-Hazardous Waste Landfill Disposal Agreement

This Agreement dated this **8th** day of **October 2023**, by and between Waste Management of Texas, Inc., a Texas corporation (the “Company”), and the City of Killeen (the “City”).

WHEREAS, the City and Company desire to enter into a contract for disposal of the City’s solid waste at a facility authorized to accept municipal solid waste for disposal;

WHEREAS, the proper disposal of the City’s solid waste is critical to the public’s health, safety, and welfare and is a procurement necessary to preserve and protect the health and safety of the City’s residents;

WHEREAS, this Agreement falls within the exemption set out in §252.022(a)(2) of the Texas Local Government Code;

WHEREAS, the City has the authority under §363.116 and §363.117 of the Texas Health & Safety Code to enter into this Agreement so that the City is provided solid waste management disposal services on the terms considered appropriate by the City;

WHEREAS, this Agreement is for the disposal of approximately 128,000 tons per year of Acceptable Waste as defined in Paragraph 1 delivered by the City to the Company; and

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereby agree as follows:

1. Acceptable Waste. City agrees to deliver and Company agrees to accept for disposal a projected annual tonnage of approximately 128,000 tons per year of Acceptable Waste as defined herein at a properly authorized disposal site. This amount may fluctuate as described in Paragraph 3 below. The City warrants that the waste to be delivered to the Landfill hereunder (i) will be of the type that can legally be disposed of at a Type I, Municipal Solid Waste Facility; (ii) is the type of waste that is acceptable at the City of Killeen transfer station under its state issued permit, (iii) will not contain any hazardous, radioactive, or toxic waste or substance as defined by applicable federal, state or local laws or regulations; and (iv) will not contain any Special Waste unless specifically described in a generator’s waste profile sheet and attached hereto or which Company later agrees to accept in writing. The City’s waste meeting the criteria of (i), (ii), (iii) and (iv) above shall be referred to as "Acceptable Waste" or "Waste," and all other waste shall be referred to as "Unacceptable Waste." Title to Acceptable Waste shall transfer to the Company upon Company’s acceptance of the Waste for disposal into the Landfill.

For the purposes of this Agreement, Special Waste means waste defined as such by the Texas Commission on Environmental Quality in Title 30, Chapter 330.3 (148) of the Texas Administrative Code (TAC) that requires special handling, special disposal methods, or manifesting at the disposal facility. The City agrees to comply with all precautions, limitations, and conditions placed on the disposal of Special Waste by the Company, and to comply with all

applicable laws, regulations, and rules related to Special Waste. If the City or its contracted transporter delivers or unloads waste at the Landfill that is thought to be Acceptable Waste, but subsequently the City or its contracted transporter obtains knowledge or information that such waste is or may be Unacceptable Waste, the City shall inform the Company immediately. Neither title to nor liability for Unacceptable Waste shall vest in the Company at any time.

2. Term of Agreement. This Agreement shall commence on the 8th day of October 2023, (“Effective Date”) and shall remain in effect for five (5) years until midnight on October 7, 2028 (“Term”).

3. Rates for Disposal.

- a. Although the City, in accordance with Paragraph 5 below, grants Company the exclusive right to receive for disposal the municipal solid waste as defined in that paragraph, no minimum monthly tonnage requirement is hereby established, as many factors, such as waste minimization, curbside recycling or other waste reduction methods mandated by local, state and federal regulations, population increases and decreases, or other factors, may result in increases or decreases in the amounts of waste to be processed under this Agreement. However, as stated in this Agreement, the City approximates, based on past levels and future projections that approximately 128,000 tons of Acceptable Waste will be delivered by the City and disposed of by Company pursuant to the terms of this Agreement.
- b. The disposal rate will be fixed for from the Effective Date until September 30, 2024 in accordance with Exhibit A attached hereto (the “base rate” or “base disposal rate”), provided the City abides by the terms of this Agreement. Company will also include in its invoice, payable by the City, the required State fees as provided under the Texas Health & Safety Code § 361.013 or other applicable law or regulation (when these fees are added to the base rate the amount shall constitute the “final rate”). Commencing on October 1, 2024 and each October 1 thereafter (the “Adjustment Date”), the service rates set forth in the Rate Schedule in Exhibit A, as adjusted hereunder, shall be automatically increased by eighty five percent (85%) of the percentage increase of the Consumer Price Index, series CUSR0000SEHG02 CPI-U Garbage & Trash Collection Services, US City Average, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics (“CPI-U”). The CPI-U adjustment will be calculated using the change in the 12-month annual average of monthly CPI-U index values between the May to April period of the year immediately prior to the adjustment date, and the May to April period of the year before. Adjustments to the Contractor’s service rates shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments. Company shall notify the City no later than June 1 of each year for the implementation.
- c. Commencing on the first anniversary of the Agreement effective date, and on the same anniversary date annually thereafter (the “Adjustment Date”), the service rates set forth in the Rate Schedule in Exhibit A, as adjusted hereunder, shall be automatically increased by fifteen percent (15%) of the percentage increase of the EIA Diesel, On Highway, Retail, Fuel Price for the Gulf Coast Region, as published by the United States Energy Information Administration. The Diesel fuel adjustment will be calculated using the change in the 12-

month annual average of monthly EIA fuel index values between May to April period of the year immediately prior to the adjustment date, and the May to April period of the year before. Adjustments to the Contractor's service rates shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments. Company shall notify the City no later than June 1 of each year for the implementation.

- d. The disposal rates contained in this Agreement are valid and applicable only at the **City of Temple Landfill**, located at 706 Landfill Road, Temple, Texas, 76501 and the **Williamson County Landfill**, located at 600 Landfill Road, Hutto, Texas and the (hereafter collectively referred to as "**Landfill**"). **Exhibit A** attached hereto contains the disposal rates for City for the first twelve (12) months of the Agreement. The Temple Landfill shall be the primary landfill in which the City or its designated hauler shall deliver the Acceptable Waste and the Williamson County Landfill shall be the alternate disposal site as more specifically described in paragraph 14 below.

Except as provided in the preceding paragraphs 3.a. through 3.c., the Company may adjust the disposal rates hereunder to account for increases in the Company's costs resulting from Uncontrollable Circumstances. Uncontrollable Circumstances means and includes an act, event, or condition occurring during the Term that has or will affect Company's costs of providing the services and complying with all applicable laws and permits related to the disposal of Waste at the Landfill and which is beyond the Company's reasonable control. Uncontrollable Circumstances shall include, but are not limited to, (i) changes in any laws, ordinances, regulatory requirements or guidelines, (including changes in construction or interpretation thereof or changes in the manner or method of enforcement thereof by the applicable regulating authority), (ii) increased costs of compliance with the Landfill's TCEQ issued solid waste permit; (iii) orders or directives of any court or governmental body or instrumentality thereof directly related to the continued disposal of the City's Waste, excluding fines or judgments levied on Company resulting from Company's violation of any federal, state or local law, (iv) reasonable additional preparation for other work required by any sample of Special Waste or actual, newly disclosed or newly discovered changes in the properties, characteristics or conditions of the Waste, or new handling procedures required by federal, state, or local regulations. Company will provide written notice to the City of such Uncontrollable Circumstance and associated adjustment at least thirty (30) days prior implementing the change.

During the Term of this Agreement should an increase or a new fee, tax or charge by any local, state, or federal government entity be charged specific to the solid waste disposal industry and assessed upon waste disposal, such additional fees, taxes or charges, as directly related to the City's Waste disposed at the given Landfill will be borne by the City. Furthermore, should there be a change in local, state or federal law specific to the solid waste industry that materially and directly impacts the operating costs of the Landfill in relation to the City's Waste, the City will pay its pro-rata share of the additional costs.

4. Compliance with Laws. The City shall, in all matters relating to the collection, transportation and disposal of the Waste hereunder, comply with all applicable federal, state and local laws, regulations, rules and orders relating to such activities. The City represents and warrants that the Waste it or its contractor transports to the Landfill for disposal will not contain any

unacceptable quantity of hazardous, radioactive or toxic materials or substances. The City represents that it and its contractors will utilize all necessary and appropriate methods to screen waste coming through the City owned transfer station, which Waste is scheduled for disposal at the Landfill, to help ensure such waste does not contain or constitute Unacceptable Waste.

5. Exclusivity. The City agrees that this Agreement is exclusive, and that the Company shall have the exclusive right to receive for disposal all of the Waste generated within the corporate limits of the City, excluding recyclables and brush and other composting materials removed from the waste stream prior to transport to Company's Landfill, for the term of this Agreement. Regardless of whom transports the waste, the City agrees that it will require any waste hauler to transport and deliver all such Waste, as qualified in this Paragraph, pursuant to the terms of this Agreement.

6. Operating Rules.

a. The Company reserves the right to make and enforce reasonable rules and regulations concerning Landfill operations, the conduct of the drivers and others on Company or Landfill premises, quantities and sources of Waste, and any other matters necessary or desirable for the safe, legal and efficient operation of the Landfill. City and/or its waste hauling contractor agree to conform to such rules and regulations as they may be established and amended from time to time.

b. The Company shall have the right to refuse to allow disposal of any Waste that does not conform to the requirements of this Agreement or to any applicable law, regulation, rule or order, even if only a part of the waste load is nonconforming. City or its waste hauling contractor shall inspect all Waste at the place of collection and shall remove any Unacceptable Waste before transporting it to the Landfill. The Company shall have the right to inspect all trucks of waste haulers including City in order to determine whether the Waste is conforming or nonconforming. It is understood, however, that the failure of the Company to perform any such inspection, or the failure of the Company to detect Unacceptable Waste despite such inspections, shall in no way relieve City of its obligations to deliver only Acceptable Wastes to the Landfill. City shall be responsible for and bear all reasonable expenses incurred by Company for the removal and proper disposal of Unacceptable Waste delivered by City in accordance with Paragraph 13 below.

c. All of the Waste delivered by the City or its contractor shall be weighed at the Landfill by the Company, and such weight shall be used in determining the invoice amount. City reserves the right to contest an invoiced amount and Company shall provide all necessary documentation, including periodic calibration reports as required by the Texas Department of Agricultural Weights and Measures Division or other applicable agency, to City upon written request in order to resolve any invoicing dispute. Any additional and unwarranted charge found in any invoice shall be credited to the following month's invoice.

d. In the event that the City or its contractor's vehicle should become incapacitated or unable to move while on the Landfill premises, the Company may, but shall not be obligated to, provide assistance in moving the vehicle. In such circumstances, the City or its contractor's driver or agent shall make any necessary connections to City's vehicle and City expressly agrees that the Company shall have no liability for damage, except damages resulting from negligence or gross negligence of Company to the City or its Contractor's vehicle or property while providing such

assistance.

e. Company agrees that, for the purposes of this Agreement, City or City's waste hauler shall be allowed to access the Landfill in accordance with the schedule as provided on Exhibit A attached hereto. All Waste acceptance hours at the Landfill must be in compliance with the Landfill's TCEQ issued municipal solid waste permit. The City will generally require Landfill access for disposal of its Waste every calendar day except for Sundays and the following holidays: New Year's Day, Independence Day, Thanksgiving Day and Christmas Day. Landfill waste acceptance hours and days of operation may be altered with the written consent of each party, so long as such alteration complies with the Landfill's TCEQ issued Permit.

7. Payment. Company shall send monthly invoices to City for all charges due in that month. City shall pay Company within thirty (30) calendar days of receipt of invoice. The maximum finance charge allowed by law will be applied to all overdue amounts. If the City fails to timely pay Company's invoices, the Company has the right, after giving at least ten (10) calendar days' written notice to the City Manager, to suspend disposal services.

8. Right of Disposal. This Agreement does not grant any rights to the City or its waste hauler contractor to dispose of Waste other than in accordance herewith. The Company reserves the right to terminate access to the Landfill to City or its contractor in the event of breach or violation by City or its contractor of any of the Company's operating rules (as provided under Paragraph 6 above), any breach of this Agreement or any applicable laws, upon fourteen (14) calendar days of receipt of written notice of the same to the City. City shall be afforded the opportunity to cure breach within this fourteen (14) day period.

In the event that Company's disposal services are interrupted (i.e., the Company is unable to accept Waste at the Landfill(s)) for any reason, except as otherwise provided in this Agreement, for more than twenty-four (24) consecutive hours, the City shall have the right to make temporary independent arrangements for the purpose of continuing this necessary service to its citizens. Company shall be required to reimburse City for any excess costs above the unit prices included herein. Company will, with due diligence, restore services at no additional expense to the City. Except as provided for in this Agreement, if the interruption in service continues for a period of thirty (30) consecutive calendar days and is caused, in part or in total, by the Company's negligence, willful misconduct, its failure to comply with applicable federal, state, or local laws, or circumstances within the Company's reasonable control, the City shall have the right to terminate the rights and privileges granted in this Agreement and seek forfeiture of Company's performance bond, and subject Company to any other recourse as provided by law.

9. Indemnification. To the extent allowed by law, the Company agrees to indemnify, save harmless, and defend the City from and against any and all demands, liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders to the extent caused, in whole or in part, by the negligent or willful acts or omissions of the Company's employees or its subcontractors in the performance of this

Agreement.

To the extent allowed by law, the City agrees to indemnify, save harmless, and defend the Company from and against any and all demands, liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or rules to the extent caused by the City's breach of any warranty, term or provision of the Agreement, or any negligent or willful act or omission of the City, its employees, or contractors in the performance of this Agreement.

The City shall be responsible for and shall pay or reimburse the Company for any and all expenses incurred by the Company as a result of breaches by the City of its obligations hereunder, including, but not limited to, fines and clean-up expenses resulting from waste delivered by City and increased inspection, testing, study and analysis costs made necessary due to reasonable concerns of the Company as to the content of the waste following discovery of Unacceptable Waste.

The Company shall be responsible for and shall pay or reimburse the City for any and all reasonable expenses incurred by the City as a result of breach(es) by the Company of its obligations hereunder. The City shall be responsible for and shall pay or reimburse the Company for any and all reasonable expenses incurred by the Company as a result of breach(es) by the City of its obligations hereunder.

The indemnification and other obligations stated in this Paragraph 9 shall survive the termination of this Agreement.

10. Insurance. The City and/or its hauling contractor shall maintain in full force and effect throughout the term of this Agreement the following types of insurance in at least the limits specified below:

Coverages	Minimum Limits of Liability
Worker's Compensation	Statutory
General Liability	\$1,000,000 combined single limit
Automobile Liability	\$1,000,000 combined single limit

All insurance policies will be written by insurers authorized to do business in the state in which the landfill is located. Prior to the City being allowed on Landfill premises, the City or its hauling contractor shall provide the Company with certificates of insurance or other satisfactory evidence that such insurance has been procured and is in force, and all the policies listed above, with the exception of the Workers' Compensation policy, shall name the Company as an additional insured. Said policies shall not thereafter be cancelled, be permitted to expire, or be changed without thirty (30) calendar days' advance written notice to the Company.

11. Failure to Perform; Force Majeure. Neither party shall be liable for its failure to perform hereunder due to circumstances not its fault and beyond its reasonable control, including but not

limited to, strikes or other labor disputes; lockouts, riots, civil disturbance or sabotage; fires, floods, explosions, accidents, industry-wide equipment or labor shortage, pandemic, epidemic, federal, state or local governmental orders, declarations, or decrees, severe weather or acts of God affecting either party hereto. In the event of any of the circumstances listed in the preceding sentence, or if any federal, state or district court or governmental agency, such as the Texas Commission on Environmental Quality, takes any action which would (i) close or restrict operations at the Landfill(s), (ii) limit the quantity or prohibit the disposal of waste at the Landfill(s), or (iii) limit the ability of or prohibit the City from delivering waste to the Landfill(s), except a closure resulting from Company's failure to comply with applicable federal, state, or local regulations, the Company shall have the right, at its option, to reduce, suspend or terminate City's access to the Landfill(s) immediately, without prior notice and without any additional liabilities between the parties, other than City's then due payment obligations hereunder. Provided, however, Company shall be obligated to notify City within three (3) calendar days of Company's receipt of any notice from any federal, state or district court or governmental agency that may adversely affect Company's ability to perform under the terms of this Agreement. In the event that closure of both Landfill locations provided in this Agreement is deemed imminent, Company and City, in good faith, shall immediately begin to negotiate in accordance with Paragraph 14 below.

12. Immunity Waiver. The City agrees that this Agreement is subject to the provisions of Chapter 271 of the Texas Local Government Code, specifically including §§ 271.151 through 271.160 of that Code and the City further agrees that governmental or sovereign immunity is not a defense to suit or liability to enforce the terms of this Agreement, including damages provided by that Code resulting from the City's breach of this Agreement. Company shall be entitled to sue the City for the City's breach of this Agreement and collect all damages allowed under that Code arising from such breach. If the City improperly terminates or takes any action to improperly terminate its Agreement with Company prior to the Agreement termination date, the City agrees to waive all of its rights to sovereign or governmental immunity, save and except individual immunity provided by law to City's officers, employees and representatives, whether by contract, law, or otherwise, as to a lawsuit by Company against the City to recover damages or other rights that Company has or may have under this Agreement. The City understands that by providing this waiver of its immunity, the City is agreeing that it can be sued for and held liable for damages as provided in Chapter 271 of the Texas Local Government Code §§ 271.151 through 271.160, that Company may incur as a result of the City's accelerated termination of this Agreement, as provided under paragraph 16 below, or failure to make the required payments set forth in this Agreement. The City further acknowledges and agrees that it is receiving consideration for providing this waiver of immunity which consideration includes, but is not limited to, favorable disposal rates from Company. The parties further agree that the City waives the right to assert sovereign immunity in a breach of contract action involving the parties, and that all contractual damages, as provided by law, shall be available in litigation between the parties with the recovery of attorneys' fees provided by Texas Civil Practices & Remedies Code §38.01, et seq.

Company agrees that, in the event of a breach of this Agreement by Company and the City prevailing in a lawsuit against the Company, City shall be entitled to reasonable attorney's fees and costs, in addition to other damages awarded to remedy such breach, to the extent provided under §§ 271.151 through 271.160 of the Texas Local Government Code.

13. Rights of Refusal/Rejection. Company has the right to refuse or reject after acceptance any whole or partial load of Waste delivered to the Landfill if, upon reasonable inspection, information, and/or documentation, Company determines that some or all of the load contains Unacceptable Waste. If the City or its contractor delivers Unacceptable Waste to the Landfill and the Company deems such Waste as Unacceptable Waste, the Company shall notify City and the Company shall have the option to either: a) remove and dispose of the Unacceptable Waste and charge City for the reasonable costs; or b) require the City to promptly remove the Unacceptable Waste at the City's sole cost. If the City or its contractor, at any time, obtain information indicating that a load or part of a load of Waste delivered to the Landfill contained, in whole or in part, Unacceptable Waste, the City or its contractor agrees to notify Company as soon as possible and to provide Company with access to all information forming the City's belief that Unacceptable Waste was delivered to or accepted by the Landfill.

14. Primary and Alternate Disposal Site. Company hereby designates the City of Temple Landfill ("Temple Landfill") as the primary disposal site under this Agreement. The City or its hauling contractor shall dispose of Waste at the Temple Landfill, and will only dispose of Waste at the Williamson County Landfill with Company's approval. The Williamson County Landfill will serve as the alternate disposal facility for the City's Waste. If Company ceases to be the operator of the Williamson County Landfill and the City of Temple Landfill, for the reasons provided under Paragraph 11 above, then Company agrees to use due diligence to find an alternate disposal site acceptable to the City for the City's Waste. The City and the Company agree to negotiate in good faith on an alternate disposal site and a new disposal rate for that site. In the interim period, or if a reasonable alternate disposal site cannot be agreed upon, the City may take all necessary steps without incurring liability hereunder, including but not limited to, entering into an Agreement with another contractor for the disposal of the City's solid waste.

15. Termination. Company or City may terminate this Agreement upon a breach by the other party of any provision of this Agreement and the failure of such party to cure such breach or take reasonable actions to cure such breach within fourteen (14) calendar days following receipt of written notice of the breach from the Company or City.

16. Miscellaneous.

a. This Agreement shall be governed by the laws of the State of Texas. Venue shall be in Bell County, Texas.

b. No waiver of a breach of any of the covenants contained in this Agreement shall be construed to be a waiver of any prior or succeeding breach of the same covenant or of any other covenant of this Agreement.

c. No modification, release, discharge or waiver of any provision hereof shall be of any force or effect, unless in writing, signed by all parties to this Agreement.

d. If any term, covenant or provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall remain in effect and be construed without regard to such provision.

e. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

f. Neither party may assign, transfer or otherwise vest in any other company, entity or person, any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that the Company may, without any such prior written consent from City, assign its rights and/or obligations under this Agreement to a subsidiary, parent or other affiliate corporation, pursuant to a merger or otherwise.

g. This Agreement constitutes the entire understanding between the parties, replacing and amending any prior agreements between the parties, and shall be binding upon all parties hereto, their successors, heirs, representatives and assigns. Any provision, term or condition in any acknowledgment, purchase order or other response by City or Company which is in addition to or different from the provisions of this Agreement shall be deemed objected to by the City and Company and shall be of no effect.

17. Liquidated Damages. If the City terminates this Agreement other than as provided for in this Agreement, the City agrees that the Company's damages would be difficult, if not impossible to calculate. Therefore, the City agrees that in such event it shall pay all past due sums and in addition shall pay as liquidated damages, and not as a penalty, the City's most recent monthly charge, minus the applicable State fee as provided under the Texas Health & Safety Code § 361.013 and minus the applicable royalty that Company pays either Williamson County or the City of Temple under their applicable operating agreements depending on where disposal occurred in the most recent month, multiplied by six (6). The City acknowledges that this liquidated damages clause is reasonable and is applicable to recover damages related to Company's investment in equipment, development of landfills and hiring of employees undertaken by the Company to service its customers, including City. This liquidated damages clause in no way relieves City from its obligations and liability for other costs or damages as set forth elsewhere in this Agreement.

If the Company breaches, defaults, or terminates this Agreement other than as provided in this Agreement, the City may make demand under the terms of the Performance Bond and seek any other legal recourse provided by law or equity.

18. Notices.

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given: (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; or (ii) by delivering same in person (or via commercial third party delivery service) and providing evidence of receipt at the office of the intended addressee to the addresses given below.

If to the City:

City of Killeen
Attn: Director of Public Works
P.O. Box 1329
Killeen, TX 76540-1329

With a copy to:

City of Killeen
Attn: Office of the City Attorney
P.O. Box 1329
Killeen, TX 76540-1329

If to the Company:

Waste Management of Texas, Inc.
Attn: Landfill Manager
9900 Giles Road
Austin, Texas 78754

With a copy to:

Waste Management of Texas, Inc.
Attn: Legal Counsel
800 Capitol, Suite 3000 Houston, Texas 77002

or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

19. PERFORMANCE BONDS

In accordance with Chapter 2253 of the Texas Government Code, the Company shall, at its cost, furnish the City with a Performance Bond with the execution this Agreement as security for the performance of the Agreement. The Performance Bond shall be in the amount of \$2,119,680 (half of the projected Agreement amount for the first year (128,000 tons) multiplied by the amount per ton (\$33.12)) and remain in effect for the duration of this Agreement.

At any time during the term of this Agreement, if the City, in its sole discretion, determines that: (i) any surety upon any bond furnished by the Company is unacceptable; or (ii) the Agreement amount has increased to such an extent that the bond furnished by the Company is inadequate, The Company shall provide such additional bond or other security as may be requested by the City.

All bond premiums shall be paid by the Company and the surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State of Texas.

Attorneys-in-fact who sign Performance Bonds must file with each bond a certified and effectively dated copy of their power of attorney.

20. Non-Discrimination.

The Company, in performance of this Agreement, shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin or the American Disabilities Act.

COMPANY AND CITY IN CONSIDERATION OF THE MUTUAL OBLIGATIONS CONTAINED HEREIN, AGREE THIS IS A LEGALLY BINDING AGREEMENT.

City of Killeen

Waste Management of Texas, Inc.

SIGNATURE
(AUTHORIZED REPRESENTATIVE)

SIGNATURE
(AUTHORIZED REPRESENTATIVE)

Name (Please Print)

Name (Please Print)

Title

Title

Date

Date

Exhibit A to Disposal Agreement

Rates on Effective Date for First Twelve (12) Month Period

Landfill Base Disposal Rate: \$32.18 per ton

Plus Required State Fee: \$.94 per ton currently

Total Rate Per Ton Disposal Fee: \$33.12

Landfill Waste Acceptance Hours

Waste Acceptance Hours Allowed by Permit

City Waste Acceptance Hours

Primary Landfill: The City of Temple Landfill

Monday through Friday: 6 a.m. to 6 p.m.
Saturday: 7 a.m. to 5 p.m.
Closed Sunday

6 a.m. to 6:00 p.m.
7 a.m. to 2 p.m.
Closed Sunday

Alternate Landfill: Williamson County Landfill

Monday through Friday: 5 a.m. to 8:00 p.m.
Saturday: 6 a.m. to 4 p.m.
Closed Sunday

6 a.m. to 6 p.m.
6 a.m. to noon
Closed Sunday



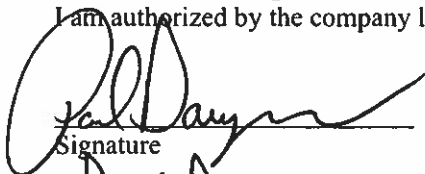
Contract Verification

Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- o Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. *Boycott Israel is defined in Government Code Chapter 808.*
- o Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.*
- o Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

By signing below, I verify that the company listed below does not boycott Israel, does not boycott energy companies, and does not discriminate against firearms entities or firearm trade associations and will not do so during the term of the contract entered into with the City of Killeen. I further certify that I am authorized by the company listed below to make this verification.


Signature

Paul Augereau
Printed Name

8-31-23
Date

Waste Management of Texas, Inc
Company Name

Public Sector
Title

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
 CERTIFICATION OF FILING**

Certificate Number:
 2023-1065849

Date Filed:
 08/29/2023

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Waste Management of Texas, Inc.
 Austin, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Non-Hazardous Waste Landfill Agreement

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Contract Agreement
 Disposal of MSW Waste

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Daugereau, Paul	Buda, TX United States		X

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is Paul Daugereau, and my date of birth is 9-12-74.

My address is 241 Still Hollow, Buda, TX, 78610, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, State of TX, on the 31 day of Aug, 20 23.
(month) (year)

Paul Daugereau
 Signature of authorized agent of contracting business entity (Declarant)



DISPOSAL AGREEMENT FOR MUNICIPAL SOLID WASTE

RS-23-149

September 19, 2023

201

Background

2

- ❑ Killeen Transfer Station processes over 130,000 tons of municipal solid waste (MSW) annually.
- ❑ On October 8, 2015, the City of Killeen entered into an agreement for disposal services for the city's municipal solid waste (MSW) with Waste Management, Inc.
 - ▣ On September 1, 2020, City Council approved Amendment #3, executing the first extended term of the disposal agreement set to expire October 7, 2023.
- ❑ Waste Management, Inc. oversees the only landfills in the area:
 - ▣ Temple Landfill (Primary)
 - ▣ Williamson County Landfill (Secondary)



3

Waste Management, Inc.

- ❑ The agreement with Waste Management, Inc. is for a period of five (5) years and will provide disposal for the city's MSW at the Temple or Williamson County landfill.

Alternatives

4

- ❑ Do not authorize a disposal agreement with Waste Management, Inc.
- ❑ Authorize a disposal agreement with Waste Management Inc., allowing the city to continue utilizing their services for the duration of five (5) years.

Recommendation

5

- City Council authorize the City Manager, or his designee, to execute the disposal agreement with Waste Management Inc. for the disposal of the city's municipal solid waste for the duration of five (5) years.



City of Killeen

Staff Report

File Number: RS-23-150

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution authorizing the agreement with Comal Transportation, LLC for transportation of the City's municipal solid waste.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Jeffery Reynolds, Executive Director of Public Works

SUBJECT: Approval of Agreement with Comal Transportation, LLC for the Transportation of the City's Municipal Solid Waste

BACKGROUND AND FINDINGS:

The City of Killeen Transfer Station processes over 130,000 tons of municipal solid waste (MSW) annually. On October 8, 2008, the City of Killeen entered into an agreement for transportation services for the City's MSW with Comal Transportation, LLC (Comal). The agreement with Comal provides for the transport of the City's MSW from the Killeen Transfer Station to the Temple landfill, the primary destination, or to the Williamson County landfill, the secondary destination.

After the expiration of the original agreement, another agreement was executed for an initial term of five (5) years beginning on October 8, 2015 and ending on October 7, 2020. This initial term could be extended for two (2) additional three (3) year terms. On September 1, 2020, City Council approved Amendment #2, executing the first extended term of the transportation agreement that is set to expire on October 7, 2023.

Since the initiation of the agreement in 2015, there has been a significant rise in operating costs. Therefore, the Solid Waste Division reached out to nine (9) transportation companies with a set of specifications required for the transportation of our MSW, ensuring we are receiving the best value for the city. Two (2) companies responded, only one has the necessary equipment and staff required to maintain our Texas Commission on Environmental Quality permit, Comal Transportation, LLC.

The proposed agreement for transportation to the Temple landfill is \$315.00 per trailer load, which is approximately 21.5 tons of waste. The staging fee is proposed to be increased to \$1.35 per ton from the \$1.07 that it has been for eight (8) years. The base transportation fee is subject to a fuel surcharge adjustment of 2% for every ten cent (\$0.10) increase in the price of fuel above \$4.40 per gallon, or a 2% credit for every ten cents (\$0.10) below \$3.25. The diesel fuel price shall be determined on a weekly basis by reference to the Energy Information Administration of the U.S.

Department of Energy (EIA/DOE) Weekly Retail on Highway Diesel Prices for the Gulf Coast.

After the first twelve (12) months of this agreement, and subsequently for each following twelve (12) month period for the duration of this agreement, a CPI increase can be assessed based on the Consumer Price Index (Dallas/Fort Worth regions for All Urban Consumers, less energy) as published by the U.S. Department of Labor, Bureau of Labor Statics as measured from May of the previous year to April of the then current year. Any such CPI increase will be clearly itemized on the weekly invoice and shall be submitted to the city no later than June 1st of any given year prior to the addition of the CPI line item of the CPI percentage.

THE ALTERNATIVES CONSIDERED:

1. Do not authorize a transportation agreement with Comal Transportation, LLC.
2. Authorize a transportation agreement with Comal Transportation LLC, allowing the City to continue utilizing their services for the duration of five (5) years.

Which alternative is recommended? Why?

Alternative two is recommended in order to ensure transportation services for the city's municipal solid waste at a set cost each year and the ability to maintain standards established by the Texas Commission on Environmental Quality.

CONFORMITY TO CITY POLICY:

Texas Local Government Code (LGC) section 252.022(a)(2) exempts contracts for the preservation of Public Health or Safety from the competitive bidding requirement.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

Projected expenses for the proposed agreement in FY 2024 for MSW Transportation is \$2,342,693. Future years would have a CPI increase applied along with changes based on usage.

Is this a one-time or recurring expenditure?

Recurring annually

Is this expenditure budgeted?

Yes, funding is available in the Solid Waste Fund in the Transfer Station account 540-3475-439.50-35.

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes

RECOMMENDATION:

That the City Council authorize the City Manager, or his designee, to execute the transportation agreement with Comal Transportation, LLC for the transportation of the city's municipal solid waste for the duration of five (5) years.

DEPARTMENTAL CLEARANCES:

Public Works
Purchasing
Finance
City Attorney

ATTACHED SUPPORTING DOCUMENTS:

Agreement
Certificate of Interested Parties
Contract Verification
Quote

**COMAL TRANSPORTATION, LLC
P.O. BOX 1106
GEORGETOWN, TEXAS 78627
PHONE (512)746-4224**

Date: July 28, 2023

**To: Jason Hanchey, Transfer Station Manager
Joseph Dudley III, Director of Solid Waste Division**

RE: Proposal for Transportation of Municipal Solid Waste for the City of Killeen

1. Transportation and Disposal Service

a. Origin: City of Killeen Transfer Station

b. Destinations:

- i. Primary – City of Temple Landfill Location: 706 Landfill Road, Temple, TX
Base Rate: **\$315.00/load**
- ii. Secondary – Williamson County Landfill Location: 600 Landfill Road, Hutto, TX
Base Rate: **\$390.00/load**

2. Staging Fee: \$1.35/ton

3. Fuel Adjustment Surcharge (FAS):

The FAS Threshold is a charge when fuel reaches \$3.90 and a credit when fuel is below \$2.50. This FAS only applies to the Base Rate for Transportation, not Staging. The adjustments will follow the specifications outlined in the Bid Request.

4. Consumer Price Index Adjustment:

The Base trucking charge and the Staging Fee will both be adjusted annually after completion of the second year of the contract. The CPI increase shall be calculated by multiplying the base rate by the same net percentage as the Consumer Price Index (Dallas/Fort Worth regions for all Urbans Consumers, less energy) as published by the U.S. Bureau of Labor Statistics.

The above prices include performance and payment bonds which have been verbally approved for the amount of the annual contract and would be extended each year for that year.

Comal Transportation cannot accept hazardous waste for transportation and disposal.

Comal Transportation's availability schedule for transportation and disposal service concur with the City of Killeen Operating Hours, including holidays listed in the Bid Request.

The point of contact for questions related to this proposal is John Taylor at 512-845-0233.

John Taylor

COMAL TRANSPORTATION, LLC

JOHN TAYLOR
GTITAYLOR@HOTMAIL.COM

P.O. Box 1106
GEORGETOWN, TX 78627

MOBILE: 512-845-0233
OFFICE: 512-746-4224
FAX: 512-746-5103

From: Emily Springs <esprings@panthercreektransportation.com>
Date: August 28, 2023 at 9:39:14 AM CDT
To: gtitaylor@hotmail.com
Cc: Emily Springs <esprings@panthercreektransportation.com>
Subject: Killeen Transfer Facility

August 28th, 2023

Jason Hanchey
City of Killeen
Transfer Station Manager

Dear Jason:

Please accept this response to your email dated Friday, August 25th, 2023, requesting a response by 10am, August 28th, 2023.

In years past, contracts adjusted by CPI, which is our agreed upon measure of costs less fuel, have averaged 1 – 2 % annually. The CPI during this 5-year contract has risen by an unprecedented 22.1%. That includes a 7% CPI which we are on target to reach in 2023.

2019	2.4%
2020	1.4%
2021	4.1%
2022	7.2%
<u>2023</u>	<u>7.0%</u>
Total	22.1%

I am not completely sure this represents the true increase for the trucking industry as truck prices, parts, and insurance have gone up considerably more. Nevertheless, the CPI has been the standard by which the price is set.

The charge per load of transfer trash from Killeen to the Temple land fill should be \$327.23 per load. My proposal of \$315/load continues to stand as my offer. Likewise, my load offer to Williamson County land fill stands as well.

The loading price offer of \$1.35/ton is 4 cents per ton more than the increase to CPI. We will continue to hold that price without a fuel adjustment.

The price of fuel, which is approximately 20% of my load expense, has been adjusted up and down weekly through the fuel adjustment. You have requested a change to charging over \$5.00/gallon and credits less than \$4.00/gallon. The \$315/load price, which is less than the CPI calls for, somewhat limits my options to keep fuel expense at an acceptable percentage of the hall. The \$327/load would offer a change in my proposal for fuel adjustment. At \$315/load, I can adjust the fuel as per our

agreement to include charges above \$4.40/gallon and credits below \$3.25/gallon. The price of fuel today falls between those triggers at \$3.867/gallon.

Thank you again for your consideration. Please let me know if further requirements or dialogue is needed regarding this offer.

Sincerely,
John Taylor
Comal Transportation, LLC

TRANSPORTATION SERVICE AGREEMENT

THIS WASTE TRANSPORTATION SERVICE AGREEMENT (“Agreement”) effective this 8th day of October, 2023 (the “Effective Date”), is entered into by and between the City of Killeen, Texas, a municipal corporation and home-rule city situated in Bell County, Texas, organized and operating under the provisions of its charter and the Constitution and laws of the State of Texas (“CITY”), and Comal Transportation, LLC (“CARRIER”), a Limited Liability Company organized under the laws of the State of Texas; collectively, the “Parties.”

RECITALS

WHEREAS, the CITY and CARRIER desire to enter into a contract for transportation of the CITY’s solid waste at a facility authorized to accept municipal solid waste for disposal;

WHEREAS, the proper transportation and disposal of the CITY’s solid waste is critical to the public’s health, safety, and welfare and is a procurement necessary to preserve and protect the health and safety of the CITY’s residents;

WHEREAS, pursuant to section 252.022(a)(2) of the Texas Local Government Code (“Code”), this Agreement is exempt from the competitive bidding requirements as articulated in chapter 252 of the Code; and

WHEREAS, pursuant to sections 363.116 and 363.117 of the Texas Health and Safety Code, the CITY has the authority to enter into this Agreement so that the CITY is provided solid waste management disposal services on the terms considered appropriate by the CITY.

NOW, THEREFORE, for and in consideration of the provisions as provided below, the parties hereby agree as follows:

1. **DEFINITIONS.** In addition to those words defined within the body of this Agreement, the following terms shall have the following meanings.

A. “Company” means the business or entity that has been retained to operate or is otherwise in control of the Destination Location. As of the effective date of this Agreement, the Company is Waste Management of Texas, Inc. However, the Parties understand that if Waste Management of Texas, Inc. is no longer serving in that capacity, then its successor shall become the Company.

B. “Destination” or “Destination Location” means the landfills, designated by the CITY as the primary and alternate destinations for the Waste, as identified in ATTACHMENT 1.

C. “Equipment” means the tractors, trailers, or other vehicles and equipment used by CARRIER to perform Services under this Agreement; including such equipment provided by CITY hereunder, if any.

D. "Origin" or "Origin Location" means the City of Killeen municipal solid waste transfer station.

E. "Services" means the Waste transportation and other services provided by CARRIER pursuant to this Agreement.

F. "Waste" means all non-hazardous solid waste or recyclables that may be legally disposed of, handled, or processed at its Origin and given Destination.

G. Words that have a well-known technical or trade meaning, unless otherwise specifically defined in this Agreement, shall be construed in accordance with such well-known meaning, recognized by the solid waste transportation professions and trades.

2. **ORIGIN AND DESTINATION LOCATIONS; DOCUMENTATION**

A. CARRIER agrees to transport Waste under the terms, conditions, and rates set forth herein from the Origin to the Destination Locations as described in ATTACHMENT 1. The CARRIER will not refuse any Waste shipments tendered by the CITY pursuant to this Agreement.

B. CITY will provide, or cause to be provided, to CARRIER shipping documents for each load of Waste to be transported from the Origin Location to a Destination. At the Destination, the CARRIER will obtain a receipt showing that the load has been delivered and the weight of the delivered load. For each load of Waste delivered, the CARRIER shall promptly (within one (1) business day) deliver to the CITY copies of all shipping documents and/or the delivery receipts tendered to CARRIER by the COMPANY.

3. **TERM OF CONTRACT**

The term of this Agreement shall commence on the Effective Date, and, subject to the provisions of this Agreement, shall continue for five (5) years ("Term"); upon which time it shall automatically terminate.

4. **RATES AND CHARGES; INVOICING AND PAYMENTS**

CITY shall compensate CARRIER for the Services in accordance with the rates and charges and other terms and conditions set forth in ATTACHMENT 1. CARRIER shall bear all costs incurred in performing the Services, including but not limited to: (i) all costs required to operate and maintain the Equipment in a condition and manner consistent with good business practices and industry standards and as required by applicable laws, ordinances and regulations; (ii) all other operating costs for or relating to the insurance, fuel, permits, and licenses; and (iii) all taxes, tolls, expenses, fines, and fees incurred in connection with the transportation of Waste from the Origin to the Destination Locations.

5. **VOLUME**

A. During the Term of this agreement, CITY intends to use CARRIER as its preferred transporter for the CITY's Waste shipment requirements from the Origin Location to the Destinations covered by this Agreement.

B. CARRIER shall be fully operational and capable of providing the Services in accordance with the terms and conditions set forth in this Agreement on October 8, 2023 and continue providing such Services throughout the Term of this Agreement.

C. CARRIER shall make available to CITY during the Term of this Agreement (i) eleven (11) trailers, plus (ii) up to three (3) additional trailers as set forth on ATTACHMENT 1, and an adequate number of power units to transport all Waste shipments from the Origin Location to various Destinations on a timely basis. CITY does not guarantee any volume amounts. Waste will be loaded in the trailers by CITY and staged and tarped by the CARRIER. At no time shall Waste loaded in trailers remain at the Origin Location for a period exceeding one (1) business day after notification by CITY to CARRIER that a trailer is ready for transit to the Destination Location. If CITY anticipates that there will be a continuous and sustained increase in the volume of Waste to be transported from the Origin Location, CITY shall provide written notice to CARRIER of such increase and CARRIER shall be provided a reasonable period of time, not less than seven (7) days after receipt of such notice, to supply additional tractor-trailer units to transport the increased volume of Waste at the rate for additional trailers as set forth in ATTACHMENT 1.

D. In no event shall CARRIER co-mingle Waste collected at the Origin with any other solid waste.

6. **EQUIPMENT AND PERSONNEL**

CARRIER shall provide personnel and Equipment sufficient to provide the Services in a legal and safe manner as specified in Paragraph 5 above, other than any Equipment to be provided by the CITY as specified on ATTACHMENT 1, if any. At minimum, CARRIER'S Equipment and personnel shall meet the Minimum Standards and Specification in ATTACHMENT 2 attached hereto (the "Minimum Standards and Specification"). CARRIER further warrants that all Equipment used hereunder shall be in roadworthy condition and shall comply with all state and federal laws, regulations, and permits, particularly with regard to (i) the replacement of tires and brakes; (ii) legal weight limits for highway transportation; (iii) properly tarping and securing all loads; and (iv) transportation of Waste, including, those relating to the prevention of leaks and airborne materials.

7. **CARRIER'S SERVICES**

A. **Transportation:** CARRIER shall provide the CITY with transportation services for the Waste received by the CITY at the Origin Location in accordance with the operating hours provided under ATTACHMENT 1. At no time shall Waste loaded in trailers remain at the Origin Location for a period exceeding one (1) business day.

B. **Trailer Loading:** CITY, at its sole cost shall load Waste into CARRIER’S trailers at the Origin Location. CITY shall not load the Trailers in excess of the legal load limit.

8. CITY’S OBLIGATIONS

The CITY agrees to perform all obligations required of the CITY pursuant to the terms of this Agreement, including, but not limited to the following:

A. The CITY shall designate the Agreement administrator, who shall communicate CITY decisions to the CARRIER on a timely basis as required under this Agreement;

B. The CITY shall timely pay CARRIER pursuant to Paragraph 4 of this Agreement;

C. The CITY shall operate and maintain the Origin Location in a safe, good, and workmanlike manner. The CITY shall provide CARRIER with adequate access for the CITY’S loading of Waste into CARRIER’S trailers. CITY warrants that the access ways for CARRIER’S equipment is sufficient to bear the weight of such equipment;

D. The CITY shall timely load Waste into CARRIER’S trailers; and,

E. The CITY shall otherwise comply with its obligations as set forth in this Agreement.

9. PERFORMANCE STANDARDS; COMPLIANCE WITH APPLICABLE LAWS

A. CARRIER shall ensure that the Services are performed in a professional and workmanlike manner and in compliance with all applicable Federal, State, or local laws, ordinances, rules, regulations, and permits, including, but not limited to, Federal Motor CARRIER Safety Regulations (49 CFR Parts 381-399), Federal and State vehicle codes, state commercial driver licensing laws, and federal OSHA standards. Without limiting the foregoing, the CARRIER further warrants that it has not received a “Conditional”, “Unsatisfactory” or “Unfit” safety rating pursuant to 49 CFR Part 385; in the event that CARRIER receives a “Conditional”, “Unsatisfactory, or “Unfit” safety rating, CARRIER shall immediately notify CITY in writing. If such “Conditional”, “Unsatisfactory, or “Unfit” safety rating is received by CARRIER, CITY shall have the right to terminate this Agreement if CARRIER fails to remedy such determination within a reasonable time period (not to exceed ninety (90) calendar days of CARRIER’S receipt of such rating). CARRIER shall at all times have and maintain all required permits, authorizations, registrations, franchises, certificates, licenses, and approvals.

It is expressly agreed that nothing in this Agreement shall be construed in any manner to abridge the right of the CITY to pass or enforce necessary police and health regulations for the protection of its inhabitants. It is further agreed and understood that, if the CITY calls the attention of the CARRIER to any such violation on the part of the CARRIER, its officers, employees, contractors, or subcontractors, CARRIER shall immediately desist from such activity and correct such violation.

B. The CITY shall have the right to inspect, review and monitor CARRIER'S performance under this Agreement. If, following a review or inspection, the CITY reasonably believes that CARRIER'S performance is not in compliance with this Agreement, then the CITY shall give written notice of the default to CARRIER, and CARRIER shall have the time periods provided in Paragraph 14 below, if any, to cure such default.

C. **Temporary Interruption of Service:** In the event that CARRIER'S transportation services are interrupted for any reason for more than twenty-four (24) hours, the CITY shall have the right to make temporary arrangements for the purpose of continuing this necessary service to its citizens in order to protect the public health and safety. CARRIER shall be required to reimburse CITY for any excess costs above the unit prices provided in ATTACHMENT 1 and CITY may directly bill the CARRIER and/or present claims under the terms of Paragraph 25 below (Performance Bond) to recover such costs. CARRIER will, with due diligence, restore services at no additional expense to the CITY.

D. **Excessive Interruption of Service:** If the interruption in service in Paragraph 9(C) above continues for a period of thirty (30) consecutive days or thirty (30) cumulative days within a two (2) month time period, the CITY shall have the right to terminate the rights and privileges granted in this Agreement and require forfeiture of CARRIER'S Performance Bond, and subject CARRIER to any other recourse as provided by law.

E. **Holidays/Sundays:** The CARRIER shall not be required to provide transportation services on the following days: Sundays, New Year's Day, Independence Day, Thanksgiving Day, and Christmas Day. Days of operation may be altered with the written consent of each party.

10. **CITY/COMPANY OPERATING RULES**

CARRIER shall fully and promptly comply with all operating rules that are applicable to the Services and to CARRIER'S entry into the Origin and the Destination Locations, including those provided at ATTACHMENT 2. CITY and Company may reasonably modify such operating rules from time-to-time. At CITY's request, CARRIER or any permitted substitute CARRIER shall replace its employees, agents, or representatives who fail to follow such operating rules. CITY shall also have the right to deny CARRIER or permitted substitute CARRIER'S entry to any Origin or Destination Location of the CITY at which Services are performed and/or to terminate this Agreement (in part or in whole) if CARRIER, any permitted substitute CARRIER or their respective employees, agents or representatives fail to follow such operating rules and such failure is continuing ten (10) days after CITY's written notice to CARRIER or immediately upon CARRIER'S receipt of notice of the third such failure.

11. **CUSTODY AND HANDLING OF WASTE**

CARRIER shall have the sole and exclusive responsibility and liability for the care, custody, and control of the Waste from the time CARRIER attaches its tractor to a trailer loaded with Waste at the Origin Location until the waste is discharged from such trailer at the Destination. Except in the event and to the extent of CITY'S negligence, CARRIER assumes full responsibility

and shall bear all liability for any and all damages and fines occurring during the time that the Waste is in CARRIER'S control, custody or possession. Notwithstanding the foregoing, at no time will title to the Waste vest in CARRIER.

12. **MAINTENANCE; DAMAGES; REPAIRS; PENALTIES**

A. CARRIER shall pay and be responsible for all maintenance costs for any Equipment provided by CITY to CARRIER, if any, in the performance of Services hereunder and shall return such Equipment back to CITY in the same general condition in which it was provided to CARRIER.

B. CARRIER shall give notice to CITY within twenty-four (24) hours of, and assume all liability for, any loss or damage to any property, including to any of CITY'S equipment, except to the extent the loss or damage is caused by CITY.

C. CARRIER shall notify CITY within twenty-four (24) hours of, and assume all liability for, any loss or damage to any CITY property, including to any of CITY'S Equipment, resulting from or relating to CARRIER'S performance of Services hereunder, except to the extent the loss or damage is caused by CITY. Without limiting the foregoing, CARRIER shall promptly repair to CITY'S satisfaction all damages occurring to any of CITY'S Equipment while such Equipment is in CARRIER'S control, custody, or possession or damages to CITY property while CARRIER is on CITY premises.

D. If CARRIER fails to maintain CITY'S Equipment as provided above for damages and does not adequately repair CITY'S Equipment or other property, CITY may (i) submit a bill for the costs of repairs and labor expensed incurred, associated with such maintenance or damage, and CARRIER shall promptly reimburse CITY; or (ii) offset such costs against amounts otherwise owing to the CARRIER.

E. CARRIER shall give notice to CITY within a reasonable time (in no case to exceed ten (10) calendar days) of, and assume liability for, any fine, traffic ticket, or notice of violation of any statute, ordinance or regulation received while performing the Services, excluding any tickets or fines for overweight violations solely caused by the CITY overloading a trailer.

F. CARRIER will be responsible for any reasonable increased costs that CITY incurs as a result of CARRIER not meeting all of its performance standards and obligations under this Agreement.

G. CITY shall promptly repair all damages occurring to any of CARRIER'S Equipment caused solely by CITY while such Equipment is located at the Origin Location through the loading process, excluding normal wear and tear. If CITY damages and does not adequately repair CARRIER'S Equipment, CARRIER may submit a bill for the costs of repairs and labor expenses incurred, associated with such damage, and CITY shall promptly reimburse CARRIER. CARRIER agrees to notify CITY within twenty-four (24) hours of any damage to the Equipment.

13. **GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for causes of action arising out of this Agreement shall be brought in Bell County, Texas.

14. **TERMINATION**

A. CITY shall have the right to terminate this Agreement:

1. with fifteen (15) days prior written notice to CARRIER, if CARRIER fails to provide sufficient empty trailers in the loading area at the Origin Location, as required by the Agreement, and fails to remedy the insufficiency within such time frame or upon receipt of notice of the third such failure;

2. with two (2) days prior written notice to CARRIER, if CARRIER fails to accept, transport, and unload any Waste rendered by CITY to CARRIER under this Agreement;

3. immediately if CARRIER fails to maintain, at CARRIER'S sole cost and expense, the insurance provided for, and in accordance with the terms and conditions set forth, in Paragraph 16 below;

4. immediately if CARRIER fails to maintain, or comply with all requirements, any and all permits, approvals, or licenses required by federal, state, or local law, statute or ordinance necessary to CARRIER'S performance of this Agreement.

5. with ten (10) days prior written notice to CARRIER if CARRIER fails to abide by CITY's or Company's operating rules at either the Origin or Destination locations or immediately upon receipt of a third such notice, in accordance with Paragraph 10 above;

6. immediately if CARRIER or any subsidiary makes an assignment for the benefit of creditors, or admits in writing its inability to pay, or generally fails to pay its debts as they mature or become due, or petitions or applies for the appointment of a trustee or other custodian, liquidator or receiver or for any substantial part of its assets or commences any case or other proceeding relating to CARRIER or any subsidiary under bankruptcy, reorganization, arrangement, insolvency, readjustment of debt dissolution, or liquidation or similar law of any jurisdiction, now or hereafter in effect, or takes any action to authorize in furtherance of any of the foregoing, or if any such petition or application is filed or any such case or other proceeding is commenced against CARRIER or any subsidiary, and the CARRIER or the subsidiary, as applicable, indicates its approval thereof, consent thereto or acquiescence therein;

7. immediately if a decree or order is entered appointing any such trustee, custodian, liquidator, or receiver or adjudicating CARRIER, or any subsidiary, bankrupt or insolvent, or approving a petition in any such case or other proceeding, or a decree or order for relief is entered in respect of CARRIER or any subsidiary in an involuntary case

under federal bankruptcy laws of any jurisdiction as now or hereafter constituted, and such decree or order remains in effect for more than thirty (30) days, whether or not consecutive;

8. immediately if CARRIER fails to comply with any other term or provision of this Agreement and any such failure continues for fifteen (15) days after CITY provides written notice of such failure to CARRIER; or

9. immediately upon termination of the “Non-Hazardous Waste Disposal Agreement,” in accordance with its terms and conditions, by and between the Company and CITY, dated on or about October 8, 2023.

B. CARRIER shall have the right to terminate this Agreement (in part or in whole):

1. with thirty (30) days prior written notice to CITY, if CITY fails to make a payment of an invoice not in dispute on its due date and such failure remains uncured during the thirty (30) day period;

2. immediately if CITY fails to maintain, or comply with all requirements, permits, approvals, or licenses required by Federal, State and local law, statute or ordinance necessary to CITY’S performance of this Agreement; or

3. if CITY fails to comply with any other term or provision of this Agreement and any such failure is continuing fifteen (15) days after CARRIER provides written notice of such failure to CITY.

15. **INDEPENDENT CONTRACTOR**

It is understood by the parties hereto that the CARRIER and its employees are not agents or employees of the CITY, but CARRIER is an independent contract.

16. **INSURANCE**

CARRIER shall maintain, as its sole cost, and shall require any subcontractors it may engage to maintain at all times during the Term of this Agreement, the insurance coverage set forth below:

A. Workers’ Compensation Insurance as required by laws and regulations applicable to and covering employees of CARRIER engaged in the performance of the transportation Services under this Agreement;

B. Commercial General Liability Insurance including products and completed operations with limits less than \$1,000,000 per occurrence and in the aggregate;

C. Automobile Liability Insurance including non-owned and hired vehicle coverage with limits of liability of not less than \$1,000,000;

D. Accident clean-up \$100,000.

In addition to all the other risks for which coverage is provided in this Section 16, the Commercial General Liability Insurance shall cover the contractual liability assumed under Paragraph 17 (Indemnification).

Prior to commencement of the Services, CARRIER shall deliver to CITY a certificate evidencing the required coverages including, but not limited to, coverage for CARRIER'S indemnity obligations and naming the CITY and COMPANY (Waste Management of Texas, Inc.) as additional insureds with waivers of subrogation. This certificate shall provide that any change restricting or reducing coverage or the cancellation of any policies under which certificates are issued, shall not be valid as respects the CITY'S and COMPANY'S interests therein until CITY and COMPANY have received thirty (30) days' written notice of such change or cancellation. To the proportionate extent only that CARRIER'S negligence, acts or omissions causes the CITY or COMPANY'S damages, the certificate shall state that the insurance is primary coverage and not concurrent or excess over other valid insurance which may be available to CITY and/or COMPANY. CITY and COMPANY shall be included as additional insured as respects operations of CARRIER, its subcontractors and agents, but only as it respects claims or suits arising out of the negligence of CARRIER, its employees and anyone CARRIER is legally liable for while in the course of CARRIER'S business.

CARRIER agrees to comply with all terms of the insurance contracts referenced in this Paragraph 16 (Insurance). Failure of CARRIER to keep the required insurance policies in full force and effect during the term of this Agreement, and during any extensions thereof, shall constitute a breach of this Agreement and CITY shall have to right, in addition to any other rights, to immediately cancel and terminate this Agreement without further cost to the CITY, except for liabilities and/or obligations incurred by CITY prior to termination of the Agreement or which otherwise survive termination of the Agreement as provided herein. Nothing contained in these provisions relating to coverage and amounts set out herein shall operate as a limitation of CARRIER'S liability in tort or contract under the terms of this Agreement.

17. **INDEMNIFICATION**

Each party hereto (an "Indemnifying Party") covenants and agrees to defend, protect, indemnify, hold harmless and render whole the other party, its subsidiaries and affiliates, and their respective officers, directors and employees ("Indemnified Parties"), to the extent allowed by law, from and against all damages, claims, demands, or causes of actions and any liability, cost, fine, environmental remediation and response cost, penalty and/or expense, including but not limited to reasonable attorney's fees and expenses ("Damages") as provided under section 271.159 of the Code, incurred by each such Indemnified Party arising or resulting from, and to the extent caused by the Indemnifying Party's, its permitted subcontractors' or agents' (or their respective shareholders', partners', officers', directors', or employees') negligent acts or omissions under this Agreement or relating to the Services provided hereunder.

18. **IMMEDIATE ACCIDENT RESPONSE**

If any loss of load of any nature or kind (referred to hereinafter as “Discharge”) into the environment occurs as a result of the performance of this Agreement by CARRIER, its agents, employees, or subcontractors, CARRIER shall immediately proceed to stop or abate such Discharges, and shall immediately notify CITY and confirm the same in a writing to CITY within twenty-four (24) hours, and make any other notifications of such occurrence to governing or regulatory bodies as may be required of CARRIER by law.

CARRIER shall, at its expense, be responsible for loss of load response action and environmental remediation required as a result of such Discharges, including disposal of any waste resulting therefrom.

If, while providing the Services, CARRIER, or any of its employees, agents, or subcontractors (i) is involved in an accident or incident causing injury or damage to any person or property or a spill or waste; or (ii) receives any fine, traffic ticket, or notice of violation of any statute, ordinance or regulation, CARRIER shall immediately advise the CITY of the incident and shall confirm the details of the incident in writing to the CITY not later than twenty-four (24) hours thereafter.

19. **FORCE MAJEURE**

In the event performance of this Agreement, by either party, is affected by strike or other labor disturbances, fire, riot, war, weather conditions, Act of God, pandemic, governmental actions or regulations, governmental requests or requisitions for National defense, or any other cause beyond the reasonable control of either party, the running of all periods of time mentioned herein shall be suspended during such interruption. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, the deliveries shall be continued, and liability shall not be incurred by either party for damages resulting from such suspensions. Economic hardship shall not be considered an event of Force Majeure. In the event of Force Majeure affecting a party’s obligations hereunder, such party shall immediately notify the other party in writing.

20. **NOTIFICATION**

All notices required to be given by this Agreement shall be in writing and addressed to the respective parties at the following addresses:

CITY

City of Killeen
Attn: Director of Solid Waste
P.O. Box 1329
Killeen, TX 76540-1329

CARRIER

Comal Transportation, LLC
Attn: John Taylor
P.O. Box 1106
Georgetown, TX 78627

With copy to:
City of Killeen
Attn: Office of the City Attorney
P.O. Box 1329
Killeen, TX 76540-1329

21. **ASSIGNABILITY**

Neither party shall assign its rights, responsibilities, and obligations under this Agreement without the prior written consent of the other party. If this Agreement is assigned as provided above, it shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns. In the event CARRIER, with CITY's written consent, subcontracts any of its responsibilities and obligations under this Agreement (including to any approved substitute carriers), CARRIER shall require all substitute carriers and other subcontractors to comply with the terms, conditions, and standards contained in this Agreement and CARRIER shall remain liable to CITY for each substitute carrier's and other subcontractor's performance of the Services (including any loss, damage or delay sustained by CITY), as if the Services were provided by the CARRIER itself.

22. **ADMINISTRATIVE**

CARRIER must provide copies of the following prior to the Effective Date of this Agreement to CITY, and thereafter, within fifteen (15) business days after written request by CITY (unless provided otherwise below):

- A. Operating authority;
- B. Proof of current insurance;
- C. Executive, operations, emergency and customer service contacts with telephone numbers;
- D. Performance and Payment Bonds;
- E. Latest Bureau of Motor Carrier Safety Survey or U.S. DOT Safety Rating; and
- E. Any and all permits required for CARRIER to operate in those states or jurisdictions where the Origin or Destination Locations are located or to provide Services under this Agreement.

23. **DISPUTE RESOLUTION/ATTORNEY'S FEES**

If a claim or dispute arises out of or relates to the interpretation, application, enforcement, or performance of Services under this Agreement, the Parties agree to attempt to resolve the claim or dispute at a meeting between the principals within ten (10) business days of receipt by either party of a notice and description of the dispute. If the claim or dispute cannot be resolved through the

meeting, and unless otherwise mutually agreed, either party may file suit in an appropriate court as provided in this Agreement. As provided under section 271.159 of the Code, both parties agree that reasonable attorney's fees shall be available to the prevailing party of any claim adjudicated hereunder.

24. **NON-DISCRIMINATION**

CARRIER, in the execution, performance, or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, age, creed, color, national origin, or the American Disabilities Act. CARRIER must be an equal opportunity employer.

25. **PERFORMANCE AND PAYMENT BONDS**

In accordance with chapter 2253 of the Texas Government Code, the CARRIER shall, at its cost, furnish the CITY with a Performance Bond and a Payment Bond in accordance with Paragraph 22 of this Agreement as security for the performance of the Agreement. The Performance Bond and Payment Bond shall be in the contract amount for each year and remain in effect for the duration of this Agreement.

At any time during the term of this Agreement, if the CITY, in its sole discretion, determines that: (i) any surety upon any bond furnished by the CARRIER is unacceptable; or (ii) the Agreement amount has increased to such an extent that the bond furnished by the CARRIER is inadequate, the CARRIER shall provide such additional bond or other security as may be requested by the CITY.

All bond premiums shall be paid by the CARRIER and the surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State of Texas.

Attorneys-in-fact who sign Performance and Payment Bonds must file with each bond a certified and effectively dated copy of their power of attorney.

26. **RIGHTS/REMEDIES CUMULATIVE**

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. The rights and remedies provided in this Agreement are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

27. **NO WAIVER**

No waiver by CITY or CARRIER of any default of the other under this Agreement shall operate as a waiver of any future default whether of like or different character.

28. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document. All counterparts must be construed together to constitute one and the same instrument.

29. **SEVERABILITY**

If any part of the Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable.

30. **ENTIRETIES**

This Agreement sets forth the entire agreement between the parties with respect to the matters set forth herein, and there are no other agreements or understandings whatsoever expressed or implied relating to the subject matter thereof.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives.

CITY

CARRIER

Kent Cagle
City Manager

Date

By:

Date

Title:

ATTACHMENT 1

1. ORIGIN AND DESTINATION LOCATIONS:

1.1 Origin:

City of Killeen, Texas Transfer Station located 12200 State Highway 195, Killeen, TX 76549 (“CITY Transfer Station”)

1.2 Destinations:

PRIMARY destination: City of Temple Landfill located at 706 Landfill Road, Temple, TX 76501 (“City of Temple Landfill”).

SECONDARY destination: Williamson County Landfill located at 600 Landfill Road, Hutto, TX (“Williamson County Landfill”).

CARRIER shall transport all Waste to the PRIMARY location unless otherwise directed in advance by the CITY. CARRIER shall operate in accordance with paragraph 4 of this ATTACHMENT 1.

2. INVOICING AND PAYMENT:

2.1 CARRIER shall submit to CITY weekly invoices for the Services provided and, where applicable, a copy or the original shipping order or delivery receipt, and any other reports or information required by the CITY, including weight tickets from the Destination. CARRIER shall include in each such invoice all state and local sales, use or excise taxes applicable (in respect to CITY’S tax-exempt status) to the Services provided by the CARRIER to CITY, itemizing such amounts. CARRIER shall indemnify and hold CITY harmless for any interest, fines, or penalties incurred by CITY as result of CARRIER’S failure to charge CITY for applicable state and local sales, use or excise taxes.

2.2 CITY shall issue payment for all undisputed amounts due on the next Friday following the week in which the invoice was received provided such invoice is received in time for the CITY to process the payment for issuance the following Friday. If the CITY receives any invoice or portion thereof that it believes was billed in error, the CITY will timely pay the undisputed portion of the invoice, and before the invoice payment is due, notify CARRIER in writing of the portion that the CITY believes to be billed in error, together with information supporting the CITY’s assertion. The due date for these disputed sums shall then be extended for fifteen (15) days (or such later time as both parties may agree) from that date that CARRIER provides the CITY with all reasonably requested supporting documentation as to the legitimacy and accuracy of the disputed amount. If such invoicing dispute cannot be remedied as provided in this Paragraph, both CITY and CARRIER shall resolve the dispute in accordance with Paragraph 23 of this Agreement.

3. **BASE RATES AND CHARGES:** (Base Rate shall remain constant).

ORIGIN LOCATION	DESTINATION LOCATION	\$/Base Rate INCLUDING TRAILER
City Transfer Station	City of Temple Landfill	\$315.00/per load
City Transfer Station	Williamson County Landfill	\$390.00/per load

4. **OPERATING HOURS:**

ORIGIN location (Killeen Transfer Station):

Monday, Tuesday, Thursday, and Friday: 8:00 a.m. to 5:00 p.m.

Wednesday and Saturday: 8:00 a.m. to 3:00 p.m.

Sunday: Closed Sunday

PRIMARY destination (Temple Landfill):

Monday through Friday: 6:00 a.m. to 6:00 p.m.

Saturday: 7:00 a.m. to 2:00 p.m.

Sunday: Closed Sunday

SECONDARY destination (Williamson County Landfill):

Monday through Friday: 7:00 a.m. to 5:00 p.m.

Saturday: 7:00 a.m. to 12:00 p.m.

Sunday: Closed Sunday

The Parties agree and understand that the above operating hours are for convenience purposes only and are subject to change. The CITY maintains no control over the Destination Locations or the Company that operates them. If there are questions or concerns regarding the dates and/or times, CARRIER should contact Company for the respective landfill.

5. **FUEL SURCHARGE:**

There shall be a fuel surcharge adjustment to the Base Rate(s) listed above. The fuel surcharge will consist of a two (2) percent price adjustment for every (ten) 10 cent increase or decrease, as the case may be, in diesel fuel (i) above \$4.40 per gallon, and (ii) below \$ 3.25 per gallon. Each increase or decrease will be calculated based on the Base Rate provided above. The diesel fuel price shall be as determined weekly by reference to the Energy Information Administration of the U.S. Department of Energy (EIA/DOE) Weekly Retail on Highway Diesel Prices for the Gulf Coast. The EIA/DOE currently publishes these prices on their website at the following location: https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.html

The surcharge for each week will be determined by referencing this website each Monday morning. Each week's applicable surcharge so determined shall be clearly itemized on the CARRIER'S weekly invoice to the CITY as a separate line item. Any adjustment to any invoice by paragraph 6 of this ATTACHMENT 1 shall not be included when calculating any surcharge hereunder. If at any time the cost of fuel exceeds \$6.60 per gallon or reduces below \$2.75, the Parties shall meet to discuss possible amendment of this Agreement.

6. CONSUMER PRICE INDEX (CPI) ANNUAL INCREASE

After the expiration of the first twelve (12) months of this Agreement, and subsequently for each following twelve (12) month period for the duration of this Agreement, CARRIER may add a separate line item to each invoice in an amount equal to the same net percentage increase, if any, as the CPI indicated in the next paragraph. Any such increase shall be added at the beginning of each subsequent twelve (12) month period.

The CPI increase shall be calculated by multiplying the Base Rate by the same net percentage as the Consumer Price Index (Dallas/Fort Worth regions for All Urban Consumers, less energy) as published by the U.S. Department of Labor, Bureau of Labor Statistics during the preceding twelve (12) months, as measured from May of the previous year to April of the then current year. Increases, if any, in this line item shall be cumulative from year to year.

Any such increase shall be clearly itemized on the CARRIER'S weekly invoice and shall not be considered, for fuel surcharge calculations, to be an increase in the Base Rate. CARRIER shall notify the City no later than June 1st of any given year prior to the addition of the CPI line item, if any, of the CPI percentage as calculated hereunder.

7. STAGING FEE:

There shall be a trailer staging fee of \$1.35 per ton to compensate CARRIER for necessary personnel and power units required to ensure adequate staging and efficient operations at the Origin Location.

8. CITY EQUIPMENT:

CITY will not be supplying any Equipment under this Agreement.

9. TRAILERS/ADDITIONAL TRAILERS

The above stated rate of \$315.00 and \$390.00 for the City of Temple and Williamson County Landfills, respectively, per load includes the availability and use of 11 trailers. If requested by CITY, CARRIER shall provide up to an additional three (3) trailers under this Agreement, subject to the provisions of Paragraph 5C (above).

ATTACHMENT 2 MINIMUM STANDARDS AND SPECIFICATIONS

In addition to compliance with all applicable federal, state, and local laws, regulations, and ordinances, CARRIER and CARRIER'S Equipment shall meet the following minimum standards and specifications.

- A. All drivers shall have:
 - 1. a current and appropriate State Commercial Driver's License;
 - 2. a copy of the vehicle registration, inspection sticker and insurance card for the vehicle the driver is operating;
 - 3. the most recent annual Motor Vehicle Report (not to exceed 6 months of current date; and,
 - 4. a current and valid U.S. DOT required medical certificate.

- B. CARRIER shall maintain current Driver Qualifications and Training files for each driver and shall keep on file all pre-trip and post-trip vehicle condition reports for a six (6) month period.

- C. Tractors and trailers shall meet all current U.S. DOT and appropriate State inspections, licenses, regulations and permits, without limitation.

- D. Tractor hoses shall be kept clean and must be arranged to eliminate any chance of falling to the ground and becoming entangled with the driveshaft, fifth-wheel or frame.

- E. Trailers shall be sufficient to provide transportation and disposal service in a legal and safe manner. Trailers must be designed to haul waste. Trailers must have a one hundred (100) cubic yard maximum capacity. Trailers must be capable of transporting a maximum of twenty-two (22) tons per load. Trailers must have live floor, or similar, for unloading purposes. Trailers must have an open-top design with roll-tarp or equivalent covering. All drivers shall ensure trailers are properly secured and tarped prior to departure.

- F. All drivers shall operate in the safest, most effective manner possible while in the Origin Location, on a public or private property, and in the Destination Location by obeying all posted signs, directions from designated spotters, and applying all their experience to safely and effectively accomplish their assignment.

- G. All drivers shall apply their best judgment and professionalism to gauge rest or meal breaks to eliminate any convoying of our trailers (i.e., no tractor-trailer to be within three (3) miles of another tractor-trailer going in the same direction.)

H. All drivers shall use only tractor-trailer routes that will accommodate the following:

1. Appropriate height and weight restrictions.
2. Routes that minimize time spent away from the Origin Location.
3. No residential streets will be transited except at the Destination Location entrance and trucks will travel under 25 mph.

I. All trailers provided shall be empty and shall not have been used for the transport of Special or Hazardous Waste, as defined by any Federal, State or local law, or other regulated substance without having been cleaned, prior to deployment for transport of CITY's waste materials.

J. CARRIER shall not back-haul food products unless previously approved by CITY.

K. All drivers shall cooperate completely in timely finishing and furnishing documentation within one (1) business day of each assignment in accordance with Paragraph 2A of this Agreement, including filing appropriate paperwork with a dispatcher if any discrepancy is observed or experienced.

L. CARRIER shall not hold or receive a "Conditional" or "Unsatisfactory" safety rating with the U.S. DOT. or other applicable State agency.



Contract Verification

Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. *Boycott Israel is defined in Government Code Chapter 808.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

By signing below, I verify that the company listed below does not boycott Israel, does not boycott energy companies, and does not discriminate against firearms entities or firearm trade associations and will not do so during the term of the contract entered into with the City of Killeen. I further certify that I am authorized by the company listed below to make this verification.



 Signature
John Taylor

 Printed Name
08/29/2023

 Date

Comal Transportastion, LLC

 Company Name
Member Manager

 Title

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Comal Transportation LLC
Georgetown, TX United States

Certificate Number:
2023-1066325

Date Filed:
08/30/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Killeen

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Transportation Agreement 10-23
Transportation of Trash from Killeen Transfer Station to Landfill

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Tilley, Terry	Georgetown, TX United States		X
	DuBois, Maximilion	Dallas, TX United States		X
	Taylor, John	Georgetown, TX United States	X	

5 Check only if there is NO Interested Party.

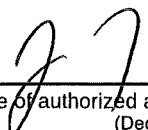
6 UNSWORN DECLARATION

My name is John Taylor, and my date of birth is 5/27/56.

My address is 1144 River Vista Rd, Georgetown, TX, 78628, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Williamson County, State of Texas, on the 30 day of August, 2023.
(month) (year)



 Signature of authorized agent of contracting business entity
 (Declarant)



TRANSPORTATION AGREEMENT FOR MUNICIPAL SOLID WASTE

RS-23-150

September 19, 2023

233

Background

2

- Killeen Transfer Station processes over 130,000 tons of municipal solid waste annually.
- On October 8, 2015, the City of Killeen entered an agreement with Comal Transportation for transportation services for the city's municipal solid waste (MSW).
 - ▣ On September 1, 2020, Council approved Amendment #2, executing the first extended term of the transportation agreement set to expire October 7, 2023.
- Solid Waste reached out to nine (9) transportation companies and received two (2) responses.
 - ▣ Comal Transportation, LLC
 - ▣ Mr. Bult's, Inc.

Background Cont.

- Comal Transportation, LLC was selected as the best value for the city.
 - ▣ Comal Transportation, LLC has been utilized by the city for transportation of *MSW* since 2008.
 - ▣ Comal Transportation, LLC was the only quote submitted with the adequate equipment and staff to meet the requirements of our permit with Texas Commission on Environmental Quality (TCEQ).
- The transportation agreement brought forth is for transportation services of *MSW* for five (5) years.



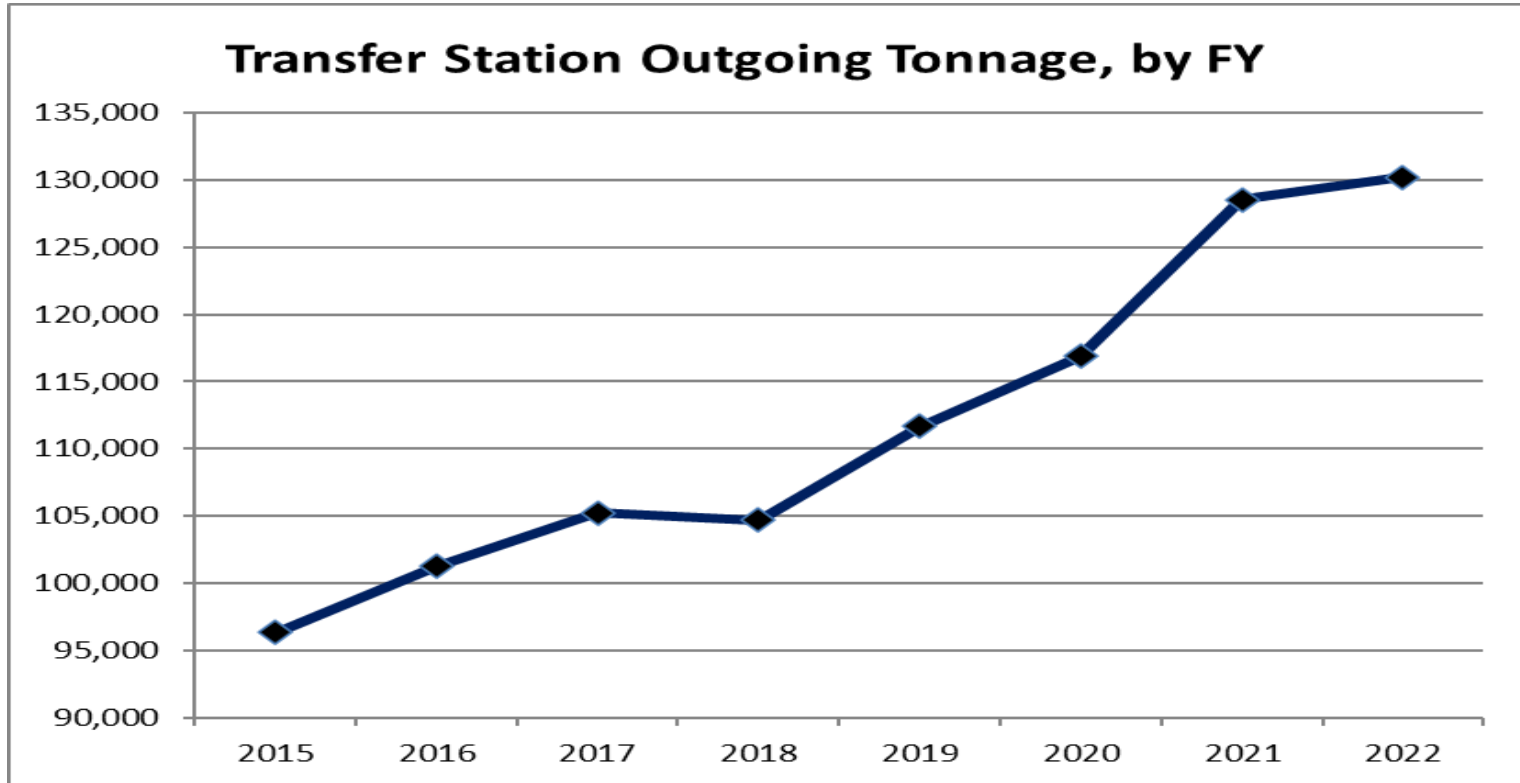
4

Comal Transportation, LLC

- ❑ The agreement with Comal Transportation, LLC provides for the transport of the city's MSW to the Temple landfill or Williamson County landfill.

MSW Transported by Fiscal Year

5



Alternatives

6

- ❑ Do not authorize a transportation agreement with Comal Transportation, LLC.
- ❑ Authorize a transportation agreement with Comal Transportation LLC, allowing the city to continue utilizing their services for the duration of five (5) years.

Recommendation

7

- City Council authorize the City Manager, or his designee, to execute the transportation agreement with Comal Transportation, LLC for the transportation of the city's municipal solid waste for a duration of five (5) years.



City of Killeen

Staff Report

File Number: RS-23-151

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution authorizing the award of Bid No. 23-41, Wastewater Improvements for Chaparral Road Project to Arguijo Corporation with a contract in the amount of \$2,729,604.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Jeffery Reynolds, Executive Director of Public Works

SUBJECT: Authorize the Award of Bid No. 23-41, Wastewater Improvements for Chaparral Road Project to Arguijo Corporation

BACKGROUND AND FINDINGS:

The 2019 Water and Wastewater Master Plan includes project 7S - construction of a sewer main north of Chaparral Road and west of Trimmier Road (Project No. 180014). It also includes the construction of a force main along Chaparral Road that will allow wastewater flows from this area to be diverted from Lift Station No. 24 to the South Wastewater Treatment Plant. This project will bring sewer service to the area around the intersection of Chaparral Road and Trimmier Road. The completion of this project is critical for construction of the American Rescue Plan Act (ARPA) funded Fire Station No. 4/Emergency Operations Center (EOC) Project.

On August 10, 2023, two (2) bids were received in response to Bid No. 23-41, Wastewater Improvements for Chaparral Road Project. The following bids were opened and read aloud:

Purchasing, Water and Sewer, and Walker Partners staff reviewed the bids and relevant bidder experience based on the selection criteria set forth in the contract documents and response of references. Arguijo Corporation is recommended as the awarded bidder for Bid No. 23-41, Wastewater Improvements for Chaparral Road Project in the amount of \$2,729,604 as they are the lowest responsible bidder whose proposal is the most advantageous to the city.

THE ALTERNATIVES CONSIDERED:

- (1) Do not authorize award Bid No. 23-41, Wastewater Improvements for Chaparral Road Project; resulting in the City not meeting the ARPA funded Fire Station No. 4/EOC timeline.
- (2) Authorize the award of Bid No. 23-41, Wastewater Improvements for Chaparral Road Project to

Arguijo Corporation with a contract in the amount of \$2,729,604.

Which alternative is recommended? Why?

Alternative two (2) is recommended due to extensive experience with the construction of wastewater main projects by Arguijo Corporation and they are the lowest responsible bidder whose proposal is the most advantageous to the City.

CONFORMITY TO CITY POLICY:

This item conforms to state and local policies.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

The FY 2023 encumbrance will be \$2,729,604 with charges processed throughout future fiscal years until project is complete.

Is this a one-time or recurring expenditure?

One-time

Is this expenditure budgeted?

Yes, funds are available in the 2020 Water & Sewer Bond Fund account number 363-8934-493.69-03.

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes

RECOMMENDATION:

Authorize the award of Bid No. 23-41, Wastewater Improvements for Chaparral Road Project to Arguijo Corporation; authorize the City Manager, or designee, to execute a construction contract with Arguijo Corporation in the amount of \$2,729,604; and furthermore, authorize the City Manager, or designee, to execute any and all change orders within the amounts set by State and Local law.

DEPARTMENTAL CLEARANCES:

Public Works
Finance
Legal

ATTACHED SUPPORTING DOCUMENTS:

Bid Proposal

Contract

Notice of Award

Walker Partners Letter of Recommendation

Certificate of Interested Parties (Form 1295)



City of Killeen

Purchasing

Lorianne Luciano, Director of Procurement

802 N 2nd St, Killeen, TX 76541

PROPOSAL DOCUMENT REPORT

Bid No. 23-41

Wastewater Improvements Chaparral Road

RESPONSE DEADLINE: August 10, 2023 at 2:00 pm

Report Generated: Tuesday, August 15, 2023

Arguijo Corporation Proposal

CONTACT INFORMATION

Company:

Arguijo Corporation

Email:

estimating@arguijo.com

Contact:

Jon Hibler

Address:

3701 Bee Caves
Suite 205
Austin, TX 78746

Phone:

N/A

Website:

Arguijo.com

Submission Date:

Aug 10, 2023 12:55 PM

ADDENDA CONFIRMATION

Addendum #1

Confirmed Aug 9, 2023 10:01 PM by Jon Hibler

Addendum #2

Confirmed Aug 9, 2023 10:01 PM by Jon Hibler

Addendum #3

Confirmed Aug 9, 2023 10:01 PM by Jon Hibler

Addendum #4

Confirmed Aug 9, 2023 10:01 PM by Jon Hibler

QUESTIONNAIRE

1. Conflict of Interest Questionnaire (Form CIQ)*

Please download the below documents, complete, and upload.

- [Conflict of Interest Questi...](#)

Conflict_of_Interest_Questionnaire_(Form_CIQ).pdf

2. Certificate of Interested Parties (Form 1295)*

If awarded, vendor must submit the Certificate of Interested Parties Form 1295 online.

Texas Government Code Section 2252.908 requires that parties contracting with governmental entities submit a disclosure of interested parties form for contracts entered into after January 1, 2016. Successful bidders shall electronically submit the form at the following website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and provide the City with a certified copy prior to Council approval of the award.

Please confirm that you shall file the Certificate of Interested Parties (Form 1295) if awarded the contract.

Confirmed

3. Acknowledgement – “Boycott Israel”*

By submitting this proposal the vendor hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. Boycotting Israel is defined in Texas Government Code section 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Confirmed

4. Acknowledgement – “Boycott Energy Companies”*

By submitting this proposal the vendor hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. “Boycott energy company” is defined in Texas Government Code section 809.001 to mean, without an ordinary business purpose, refusing to deal with terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A).

Confirmed

5. Acknowledgement – “Prohibition on contracts with companies that discriminate against firearm and ammunition industries”*

By submitting this proposal the vendor hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Discriminate against a firearm entity or a firearm trade association are defined in Texas Government Code section 2274.001 as (A) with respect to the entity or association, to (i) refuse to engage in the trade of any goods or services; (ii) refrain from continuing an existing business relationship; (iii) terminate an existing business relationship; or (iv) otherwise express a prejudice against the entity or association; and (B) does not include the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories.

Confirmed

6. Antitrust Law Certification*

The vendor hereby certifies that neither the vendor nor the entity represented by the vendor, or anyone acting for such entity has violated the antitrust laws of the State of Texas, codified in Section 15.01 et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly, prior to the solicitation opening with any competitor or any other person engaged in such line of business.

Yes

7. Litigation Disclosure*

Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

No

8. Has the company been disqualified or debarred by any public agency, including the Federal Government, from participation in public contracts?*

No

9. Does any City of Killeen employee or official have any financial or other interest in your company?*

No

10. Can service be accomplished as specified in the specifications?*

Yes

11. When can service commence after award (number of days)?*

10

12. Point of contact to resolve issues (delivery or invoice):*

Please provide the name, title, address, email, and phone number of contact.

Jon Hibler - Director - 432.238.7406 - jon.hibler@arguijo.com

13. Copyrighted Material*

Texas Public Information Act

Steps to Assert Information Confidential or Proprietary

All bids or proposals, data, and information submitted to the City of Killeen are subject to release under the Texas Public Information Act ("Act") unless exempt from release under the Act. You are not encouraged to submit data and/or information that you consider to be confidential or proprietary unless it is absolutely required to understand and evaluate your submission.

On each page where confidential or proprietary information appears, you must label the confidential or proprietary information. Do not label every page of your submission as confidential as there are pages (such as the certification forms and bid sheet with pricing) that are not confidential. It is recommended that each page that contains either confidential or proprietary information be printed on colored paper (such as yellow or pink paper). At a minimum the pages where the confidential information appears should be labeled and the information you consider confidential or proprietary clearly marked.

Failure to label the actual pages on which information considered confidential appears will be considered as a waiver of confidential or proprietary rights in the information.

In the event a request for public information is filed with the City which involves your submission, you will be notified by the City of the request so that you have an opportunity to present your reasons for claims of confidentiality to the Texas Attorney General.

The proposal/bid submitted to the City contains NO confidential information and may be released to the public if required under the Texas Public Information Act.

14. If your proposal contains confidential information identify where it is located.

Where in your proposal is the confidential information? Please be specific.

n/a

15. Does bidder maintain insurance as specified herein (see insurance requirements within the specifications and terms and conditions)?*

Answer YES or

If your answer is NO, then please describe the differences here.

YES

16. Insurance Broker Information*

Please provide your Insurance Broker's Name, contact name, phone number, fax number, and email address.

Gilliland Insurance Agency - Jim Gilliland - [\(432\) 550-0033](tel:4325500033) - jim@gillyins.com

17. Are there claims that are pending against this insurance policy?*

Answer No or

If yes, please describe:

No

18. Proposal Requirements*

Did you read through and confirm that you met all of the proposal requirements in the specifications and contract documents?

Yes

19. Proposal Documents*

Please Upload your COMPLETE Proposal here.

Insurance_Certificate.pdfChaparral_Road_Bid_Forms_TURNED_IN.pdfBid_Bond_City_of_Killeen.pdf

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

Arguijo Corporation

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

none

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

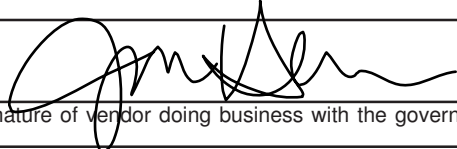
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

none

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 

Signature of vendor doing business with the governmental entity

8/9/2025

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/10/23

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER GILLILAND INSURANCE AGENCY 3800 E 42nd St #606 Odessa, TX 79762-5930 License #:		CONTACT NAME: PHONE (A/C, No, Ext): (432)550-0033 FAX (A/C, No): (432)550-9891 E-MAIL ADDRESS: certs@gillyins.com	
INSURED ARGUIJO CORPORATION HIBCO, INC. BOX 14861 ODESSA, TX 79768-4861		INSURER(S) AFFORDING COVERAGE INSURER A : TEXAS MUTUAL INSURANCE CO INSURER B : NAUTILUS INSURANCE CO INSURER C : KEY RISK INSURANCE CO INSURER D : CRUM&FORSTER SPEICALTY INS CO INSURER E : HANOVER INSURANCE CO INSURER F : RSUI INDEMNITY CO	
		NAIC # 22945 17370 10885 44520 22292 22314	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X	X	ECP2040804-10	07/06/23	07/06/24	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> CONTRACTUAL <input checked="" type="checkbox"/> POLLUTION GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
C	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> MCS-90	X	X	BAP2040805-10	07/06/23	07/06/24	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
DF	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			SEO-124963/NHA103279	07/06/23	07/06/24	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			0001115833	04/01/23	04/01/24	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	CONTRACTOR'S EQUIPMENT			IHDH76029001	09/20/22	09/20/23	LEASED/RENTED 500K

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

WORKERS' COMP, GEN'L LIAB AND AUTO POLICIES PROVIDE WAIVER OF SUBROGATION TO CERTIFICATE HOLDER AS REQUIRED PER WRITTEN CONTRACT. GEN'L LIAB, AUTO, & EXCESS POLICIES NAME CERTIFICATE HOLDER AS ADD'L INSURED AS REQUIRED PER WRITTEN CONTRACT. GL COVERAGE IS PRIMARY AND NON-CONTRIBUTORY. EXCESS POLICY FOLLOWS FORM.

CERTIFICATE HOLDER**CANCELLATION**

MASTER CERTIFICATE

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ADDENDUM NO. 4

CITY OF KILLEEN

CHAPARRAL ROAD WASTEWATER IMPROVEMENTS

PROJECT NO.: 2-01612.02 / BID NO. 23-41

DATE OF ADDENDUM: August 7, 2023

BID OPENING DATE: August 10, 2023

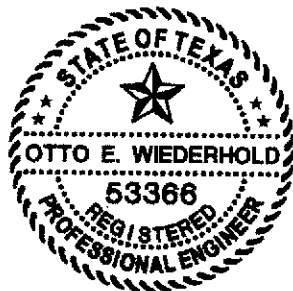
This Addendum forms a part of Contract and clarifies, corrects, or modifies original Bid Documents, dated June 2023. Acknowledge receipt of this addendum in space provided on Bid Form. Failure to do so may subject bidder to disqualification.

REVISIONS TO PROCUREMENT DOCUMENTS

1. Bid Proposal – replace the Bid Proposal Form with the one attached.

REVISIONS TO DRAWINGS

1. Drawings – replace the Drawings with the ones attached.



Approved by:



Engineer

BID PROPOSAL

The undersigned, as Bidder, declares that the only person or parties interested in this Bid proposal ("Bid") as principals are those named herein, that this Bid is made without collusion with any other person, firms, or corporation, that he has carefully examined the form of contract, Notice to Bidders, Specifications and the Plans therein referred to, and has carefully examined the locations, conditions, and classes of materials of the proposed work, and agrees that he will provide all the necessary labor, machinery, tools, apparatus, and other items incidental to construction, and will do all the work and furnish all the materials called for in the Contract and Specifications in the manner prescribed and according to the requirements of the Engineer as herein set forth.

It is understood that the following quantities of work to be done at unit prices are approximate only, and are intended principally to serve as a guide in evaluating bids. Payments for such items will be made on the basis of the actual quantity incorporated in the Work.

It is further agreed that the quantities of work to be done at unit prices and material to be furnished may be increased or diminished as may be considered necessary, in the opinion of the Engineer, to complete the Work fully as planned and contemplated, and that all quantities of work, whether increased or decreased, are to be performed at the unit prices set forth below except as provided for in the Specifications.

It is further agreed that lump sum prices may be increased to cover additional work ordered by the Engineer, but not shown on the Plans or required by the Specifications, in accordance with the provisions of the General Conditions. Similarly, they may be decreased to cover deletion of work so ordered.

It is understood and agreed that the work is to be completed in full within the time shown in the Instruction to Bidders.

Accompanying this Bid is a Cashier's Check or Bid Bond in the amount of _____
_____ DOLLARS (\$2,729,603.91) which is a minimum of five (5%) percent of the total amount of the Base Bid.

The bid security accompanying this Bid shall be returned to the Bidder, unless, in case of the acceptance of the Bid the Bidder shall fail to execute a Contract and file a Performance and Payment Bond within ten (10) days after its acceptance, in which case the Bid security shall become the property of the OWNER, and shall be considered as payment for damages due to delay and other inconveniences suffered by the OWNER on account of such failure of the Bidder. It is understood that the OWNER reserves the right to reject any and all Bids received.

Unit Prices

Item No.	Bid Item Description	Estimated Quantities	Unit	Unit Price	Unit Amount
1.00	GENERAL CONDITIONS				
1.01	Mobilization & Bonds	1	LS	\$ 120,923.97	\$ 120,923.97
1.02	Storm Water Pollution Prevention Plan & Implementation	1	LS	\$ 52,250.00	\$ 52,250.00
1.03	Traffic Control Plan and Implementation	1	LS	\$ 27,500.00	\$ 27,500.00
1.04	Trench Safety Plan	1	LS	\$ 935.00	\$ 935.00
1.05	Trench Safety Implementation	11,650	LF	\$ 2.20	\$ 25,630.00
	SUBTOTAL GENERAL CONDITIONS				\$ 227,238.97
2.00	WASTEWATER IMPROVEMENTS				
2.01	10" C900 PVC Force Main Line (Open Cut)	6,454	LF	\$ 99.23	\$ 640,430.42
2.02	Tie in to Existing 10-inc Force Main	1	LS	\$ 3,298.53	\$ 3,298.53
2.03	Remove 10" Force Main	1,511	LF	\$ 17.26	\$ 26,079.86
2.04	Plug Existing 10" Force Main	3	EA	\$ 3,298.51	\$ 9,895.53
2.05	10" SDR-26 PVC Wastewater Line (Open Cut)	1,511	LF	\$ 76.87	\$ 116,150.57
2.06	15" SDR-26 PVC Wastewater Line (Open Cut)	2,825	LF	\$ 167.41	\$ 472,933.25
2.07	18" SDR-26 PVC Wastewater Line (Open Cut)	960	LF	\$ 204.29	\$ 196,118.40
2.08	21" SDR-26 PVC Wastewater Line (Open Cut)	42	LF	\$ 160.57	\$ 6,743.94
2.09	18" DR 14 HDPE (or equal) Wastewater Line (Directional Drill)	800	LF	\$ 192.49	\$ 153,992.00
2.10	18" Steel Encasement (Bore)	52	LF	\$ 562.89	\$ 29,270.28
2.11	24" Steel Encasement Pipe (Bore)	50	LF	\$ 625.45	\$ 31,272.50
2.12	10" 45 Degree Bend	8	EA	\$ 1,335.76	\$ 10,686.08
2.13	6' Diameter Manhole @ LS	1	EA	\$ 15,998.16	\$ 15,998.16
2.14	6' Diameter Manhole @ 10" Force Main Discharge Manhole with Raven Coating Applied	1	EA	\$ 12,699.66	\$ 12,699.66
2.15	4' Diameter Manhole	26	EA	\$ 8,385.37	\$ 218,019.62
2.16	4' Diameter Drop Manhole	2	EA	\$ 10,738.61	\$ 21,477.22
2.17	Raven Coating applied to Existing Manhole downstream of 6' Manhole at discharge to 10" Force Main	1	LS	\$ 792.00	\$ 792.00
2.18	1" ARV & Vault	2	EA	\$ 9,954.30	\$ 19,908.60
2.19	Remove Existing 1" ARV Vault	1	EA	\$ 2,500.00	\$ 2,500.00
2.20	Tie 21-inch Gravity line into Wet Well	1	LS	\$ 6,597.04	\$ 6,597.04
2.21	Bypass Pumping @ 450gpm for tie ins to wet well and	1	LS	\$ 11,000.00	\$ 11,000.00
2.22	24" CMP Removal & Replacement	40	LF	\$ 32.98	\$ 1,319.20
2.23	18" CMP Removal & Replacement	20	LF	\$ 32.99	\$ 659.80
2.24	Install 8" Standard Clean-Out	1	EA	\$ 3,396.77	\$ 3,396.77
2.25	Install Residential Wastewater Service to Existing Residential Septic Line & Demo Existing Septic System as noted on the Construction Plans	2	EA	\$ 6,597.01	\$ 13,194.02
2.26	Install Additional Wastewater Service per Owners at their directed location	3	EA	\$ 6,597.02	\$ 19,791.06

2.27	Concrete Driveway Removal & Replacement	75	SY	\$ 99.00	\$ 7,425.00
2.28	Asphalt Driveway Removal & Replacement	386	SY	\$ 49.50	\$ 19,107.00
2.29	Gravel Driveway Removal & Replacement	403	SY	\$ 22.56	\$ 9,091.68
2.30	Concrete Rip Rap Removal & Replacement	84	SY	\$ 99.00	\$ 8,316.00
2.31	Concrete Pavement Replacement	27	SY	\$ 99.00	\$ 2,673.00
2.32	Chain Link Fence Removal & Replacement	60	LF	\$ 109.95	\$ 6,597.00
2.33	Barbed Wire Fence Removal & Replacement	360	LF	\$ 18.33	\$ 6,598.80
2.34	Remove Tree	17	EA	\$ 549.75	\$ 9,345.75
2.35	CLFB Trench Backfill	6,305	LF	\$ 42.84	\$ 270,106.20
2.36	Topsoil, Seeding, Soil Retention Blanket	16,000	SY	\$ 7.43	\$ 118,880.00
	SUBTOTAL WASTEWATER IMPROVEMENT				\$ 2,502,364.94
	TOTAL BASE BID =				\$ 2,729,603.91

2.27	Concrete Driveway Removal & Replacement	75	SY	\$	\$
2.28	Asphalt Driveway Removal & Replacement	386	SY	\$	\$
2.29	Gravel Driveway Removal & Replacement	403	SY	\$	\$
2.30	Concrete Rip Rap Removal & Replacement	84	SY	\$	\$
2.31	Concrete Pavement Replacement	27	SY	\$	\$
2.32	Chain Link Fence Removal & Replacement	60	LF	\$	\$
2.33	Barbed Wire Fence Removal & Replacement	360	LF	\$	\$
2.34	Remove Tree	17	EA	\$	\$
2.35	CLFB Trench Backfill	6,305	LF	\$	\$
2.36	Topsoil, Seeding, Soil Retention Blanket	16,000	SY	\$	\$
SUBTOTAL WASTEWATER IMPROVEMENTS					\$
TOTAL BASE BID =					

In the event of award of a contract to the undersigned, the undersigned will appear before the authorized representative of the Owner and furnish Performance and Payment bonds for the full amount of the Contract, with the sureties offered by: Insurers Indemnity and _____

To secure proper compliance with the terms and provisions of the Contract to insure and guarantee the work until final completion and acceptance and to guarantee payment of all claims for labor performed and material furnished in fulfillment of the Contract.

The work proposed to be done shall be accepted when fully completed and finished in accordance with Chaparral Road Wastewater Improvements (Bid Number 23-41) Plan Sheets and Specifications, to the satisfaction of the Engineer.

The undersigned certifies that the Bid prices contained in this Bid have been carefully checked and are submitted as correct and final.

Receipt is hereby acknowledged of the following addenda to the Contract Documents:

Addendum No. 1 dated 7/10 Received ✓

Addendum No. 2 dated 7/25 Received ✓

Addendum No. 3 dated 7/27 Received ✓

Add 4 dated 8/7 received ✓

This is a Bid of: Arquijo Corporation Corporation, organized and existing under the laws of the State of TX, or; a Partnership consisting of _____, or; and Individual, doing business as _____.

By: [Signature]

Seal, if a Corporation

Director
TITLE

3701 Bee Caves Road Suite 205
MAILING ADDRESS

see above
STREET ADDRESS

Austin, TX 78746
CITY AND STATE

472-238-7406
TELEPHONE NUMBER

BID BOND

Bond No. CNB-42420-00

KNOW ALL MEN BY THESE PRESENTS:

THAT we, Arguijo Corporation, as Principal, hereinafter called the Principal, and INSURORS INDEMNITY COMPANY, Waco, Texas, as Surety, hereinafter called the Surety, are held and firmly bound unto City of Killeen, as Obligee, hereinafter called the Obligee, in the amount of 5 % of the amount of this bid not to exceed 5% of the Greatest Amount Bid Dollars (\$ 5% of G.A.B.), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the principal has submitted a bid for Public Utility Project,

NOW, THEREFORE, If the contract be timely awarded to the Principal and the Principal shall within such time as specified in the bid, enter into a contract in writing and give bond with good and sufficient surety, or, in the event of the failure of the Principal to enter into such Contract and give such bond or bonds; if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect

PROVIDED, HOWEVER, neither Principal nor Surety shall be bound hereunder unless Obligee prior to execution of the final contract shall furnish evidence of financing in a manner and form acceptable to Principal and Surety that financing has been firmly committed to cover the entire cost of the project.

SIGNED, SEALED AND DATED this 10th day of August, 2023.

Principal:
Arguijo Corporation

By: [Signature] (Seal)
(title)

Surety:
INSURORS INDEMNITY COMPANY
(Seal)

By: [Signature]
James H. Gilliland, Attorney-in-Fact



IMPORTANT NOTICE - AVISO IMPORTANTE

To obtain information or make a complaint:

You may call Insurors Indemnity Company's toll-free telephone number for information or to make a complaint at:

1-877-816-2800

You may also write to Insurors Indemnity Company at:

P.O. Box 32577
Waco, TX 76703-4200
Or
225 South Fifth Street
Waco, TX 76701

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

1-800-252-3439

You may write the Texas Department of Insurance at:

Consumer Protection (111-1A)
P.O. Box 149091
Austin, TX 78714-9091
Fax: 512-490-1007

Web: <http://www.tdi.texas.gov>

E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de Insurors Indemnity Company's para informacion o para someter una queja al

1-877-816-2800

Usted tambien puede escribir a Insurors Indemnity Company:

P.O. Box 32577
Waco, TX 76703-4200
O
225 South Fifth Street
Waco, TX 76701

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

Consumer Protection (111-1A)
P.O. Box 149091
Austin, TX 78714-9091
Fax: 512-490-1007

Web: <http://www.tdi.texas.gov>

E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concemiente a su prima o a un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

**POWER OF ATTORNEY of INSURORS INDEMNITY COMPANY
Waco, Texas**

KNOW ALL PERSONS BY THESE PRESENTS:

Number: CNB-42420-00

That INSURORS INDEMNITY COMPANY, Waco, Texas, organized and existing under the laws of the State of Texas, and authorized and licensed to do business in the State of Texas and the United States of America, does hereby make, constitute and appoint

James H. Gilliland of the City of Odessa, State of TX

as Attorney in Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, all of the following classes of document, to-wit:

Indemnity, Surety and Undertakings that may be desired by contract, or may be given in any action or proceeding in any court of law or equity; Indemnity in all cases where indemnity may be lawfully given and with full power and authority to execute consents and waivers to modify or change or extend any bond or document executed for this Company.

INSURORS INDEMNITY COMPANY

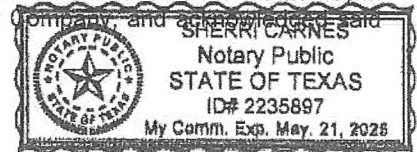
Attest: Tammy Tieperman
Tammy Tieperman, Secretary

By: Dave E. Talbert
Dave E. Talbert, President

State of Texas
County of McLennan

On the 11th day of November, 2014, before me a Notary Public in the State of Texas, personally appeared Dave E. Talbert and Tammy Tieperman, who being by me duly sworn, acknowledged that they executed the above Power of Attorney in their capacities as President, and Corporate Secretary, respectively, of Insurors Indemnity Company, and executed said Power of Attorney to be the voluntary act and deed of the Company.

Sherril Carnes
Notary Public, State of Texas



Insurors Indemnity Company certifies that this Power of Attorney is granted under and by authority of the following resolutions of the Company adopted by the Board of Directors on November 11, 2014:

RESOLVED, that all bonds, undertakings, contracts or other obligations may be executed in the name of the Company by persons appointed as Attorney in Fact pursuant to a Power of Attorney issued in accordance with these Resolutions. Said Power of Attorney shall be executed in the name and on behalf of the Company either by the Chairman and CEO or the President, under their respective designation. The signature of such officer and the seal of the Company may be affixed by facsimile to any Power of Attorney, and, unless subsequently revoked and subject to any limitation set forth therein, any such Power of Attorney or certificate bearing such facsimile signature and seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signature and seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached.

RESOLVED, that Attorneys in Fact shall have the power and authority, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and any such instrument executed by such Attorneys in Fact shall be binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary or Assistant Secretary of the Company.

I, Tammy Tieperman, Secretary of Insurors Indemnity Company, do hereby certify that the foregoing is a true excerpt from the Resolutions of the said Company as adopted by its Board of Directors on November 11, 2014, and that this Resolution is in full force and effect. I certify that the foregoing Power of Attorney is in full force and effect and has not been revoked.

In Witness Whereof, I have set my hand and the seal of INSURORS INDEMNITY COMPANY on this 10th day of August, 2023.

Tammy Tieperman
Tammy Tieperman, Secretary

NOTE: IF YOU HAVE ANY QUESTION REGARDING THE VALIDITY OR WORDING OF THIS POWER OF ATTORNEY, PLEASE CALL 800 933 7444 OR WRITE TO US AT P. O. BOX 32577, WACO, TEXAS 76703 OR EMAIL US AT BONDDEPT@INSURORSINDEMNITY.COM.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification.

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General Contractors of America

Construction Specifications Institute

This Standard Form of Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. The suggested language for instructions of bidders contained in the Guide to the Preparation of Instructions to Bidders (No. 1910-12, 1996 Edition) is also carefully interrelated with the language of this Agreement. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). See also Guide to the Preparation of Supplementary Conditions (No. 1910-17, 1996 Edition).

EJCDC No. 1910-8-A-1 (1996 Edition)

Copyright © 1996

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2715

American Consulting Engineers Council
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

Introduction

This Agreement between Owner and Contractor on the Basis of a Stipulated Price (“Agreement”) has been prepared for use with the Guide to the Preparation of Instructions to Bidders (“Instructions”) (No. 1910-12, 1996 Edition) and with the Standard General Conditions of the Construction Contract (“General Conditions”) (No. 1910-8, 1996 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the others. Comments concerning their usage are contained in the Commentary on Agreements for Engineering Services and Construction Related Documents (“Commentary”) (No. 1910-9, 1996 Edition). For guidance in the preparation of Supplementary Conditions and coordination with Instructions to Bidders, see Guide to the Preparation of Supplementary Conditions (“Supplementary Conditions”) (No. 1910-17, 1996 Edition). See also Guide to Preparation of the Bid Form (“Bid Form”) (No. 1910-18, 1996 Edition). The EJCDC has not prepared a suggested form of Advertisement or Invitation to Bid because such documents will vary widely in response to statutory requirements.

This form and the other Bidding Documents prepared and issued by the EJCDC assume acceptance of the Project Manual concept of the Construction Specifications Institute which provides for an organizational format for location of all bound documentary information for a construction project, namely: Bidding Requirements (which term refers to the Advertisement or Invitation to Bid, the Instructions, and any bid form that may be suggested or prescribed, all of which provide information and guidance for all Bidders) and the Contract Documents (defined in Article 1 of the General Conditions), which include the Agreement, Bonds and Certificates, the General Conditions, the Supplementary Conditions, the Drawings, and the Specifications. The Bidding Requirements are not considered part of the Contract Documents because much of their substance pertains to the relationships prior to the award of the Contract and has little effect or impact thereafter and because many contracts are awarded without going through the bidding process. In some cases, however, the actual Bid may be attached as an exhibit to the Agreement to avoid extensive retyping. (The terms “Bidding Documents” and “Bidding Requirements” are defined in Article 1 of the General Conditions.) The Project Manual concept is explained in the *Manual of Practice* issued by the Construction Specifications Institute.

Suggested language is presented herein with “Notes to User” to assist in preparing the Agreement. Much of the language should be usable on most projects, but modifications and additional provisions will often be necessary. The suggested language has been coordinated with the other standard forms produced by the EJCDC. When modifying the suggested language or writing additional provisions, the user must check the other documents thoroughly for conflicts and coordination of language usage and make appropriate revisions in all affected documents.

For brevity, referenced paragraphs of the Instructions to Bidders with the prefix “I,” those of the Bid Form with the prefix “BF,” and those of this Agreement with the prefix “A.”

Refer to Contract Documents Bibliography (No. 1910-24, 1996 Edition), which will be helpful in preparing the Agreement, and see in particular the discussions in EJCDC’s *Recommended Competitive Bidding Procedures for Construction Projects* (“Bidding Procedures”) (No. 1910-9-D, 1987 Edition) by Robert J. Smith, P.E., Esq., on the particular paragraphs of which frequent reference is made below.

NOTES:

1. EJCDC publications may be ordered from NSPE headquarters at 1420 King Street, Alexandria VA 22314-2715; or ACEC headquarters at 1015 15th Street NW, Washington DC 20005; or ASCE headquarters at 345 East 47th Street, New York NY 10017.
2. CSI publications may be ordered from CSI headquarters at 601 Madison Street, Alexandria VA 22314.
3. AIA publications may be obtained from most local AIA chapter offices or by writing to AIA headquarters at 1735 New York Avenue NW, Washington, DC 20006.
4. The Associated General Contractors of America has a series of construction related documents which may be of interest. The AGC’s Publications and Services Catalog may be obtained from AGC headquarters at 1957 E Street NW, Washington, DC 20006.

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between City of Killeen (hereinafter called OWNER) and Arguijo Corporation (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally referred to as **CHAPARRAL ROAD WASTEWATER IMPROVEMENTS PROJECT** and described as follows:

The major items of work include the construction of approximately 6,400 LF of 10” force main, 800 LF of 18” gravity main, 3,000 LF of 15” gravity main and associated appurtenances along Chaparral and Trimmier Road. This scope of work is not intended to be inclusive of all work to be performed under this contract. Refer to this Project Manual, Specifications, and Plan set for further information.

ARTICLE 2 - THE PROJECT

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

Same as 1.01

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by

Walker Partners, LLC.

who is hereinafter called ENGINEER and who is to act as OWNER’s representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.1 Time of the Essence

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

4.2 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 210 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 240 days after the date when the Contract Times commence to run.

4.3 Liquidated Damages

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$500 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$500 for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work other than Unit Price Work, a Lump Sum of:

_____ (\$ _____) to be determined.
 (use words) (figure)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:

UNIT PRICE WORK

Item No.	Bid Item Description	Estimated Quantities	Unit	Unit Price	Unit Amount
1.00 GENERAL CONDITIONS					
1.01	Mobilization, Traffic Handling and Incidentals	1	LS	\$120,923.97	\$120,923.97
1.02	Storm Water Pollution Prevention Plan & Implementation	1	LS	\$52,250.00	\$52,250.00
1.03	Traffic Control Plan and Implementation	1	LS	\$27,500.00	\$27,500.00
1.04	Trench Safety Plan	1	LS	\$935.00	\$935.00
1.05	Trench Safety Implementation	11,650	LF	\$2.20	\$25,630.00
	SUBTOTAL GENERAL CONDITIONS				\$227,238.97
2.00 WASTEWATER IMPROVEMENTS					
2.01	10" C900 PVC Force Main Line (Open Cut)	6,454	LF	\$99.23	\$640,430.42
2.02	Tie into Existing 10-inc. Force Main	1	LS	\$3,298.53	\$3,298.53
2.03	Remove 10" Force Main	1,511	LF	\$17.26	\$26,079.86
2.04	Plug Existing 10" Force Main	3	EA	\$3,298.51	\$9,895.53
2.05	10" SDR-26 PVC Wastewater Line (Open Cut)	1,511	LF	\$76.87	\$116,150.57
2.06	15" SDR-26 PVC Wastewater Line (Open Cut)	2,825	LF	\$167.41	\$472,933.25
2.07	18" SDR-26 PVC Wastewater Line (Open Cut)	960	LF	\$204.29	\$196,118.40
2.08	21" SDR-26 PVC Wastewater Line (Open Cut)	42	LF	\$160.57	\$6,743.94

2.09	18" SDR-26 PVC Wastewater Line (Directional Drill)	800	LF	\$192.49	\$153,992.00
2.10	18" Steel Encasement Pipe (Bore)	52	LF	\$562.89	\$29,270.28
2.11	24" Steel Encasement Pipe (Bore)	50	LF	\$625.45	\$31,272.50
2.12	10" 45 Degree Bend	8	EA	\$1,335.76	\$10,686.08
2.13	6' Diameter Manhole	1	EA	\$15,998.16	\$15,998.16
2.14	6' Diameter Manhole @ 10" Force Main Discharge Manhole with Raven Coating Applied	1	EA	\$12,699.66	\$12,699.66
2.15	4' Diameter Manhole	26	EA	\$8,385.37	\$218,019.62
2.16	4' Diameter Drop Manhole	2	EA	\$10,738.61	\$21,477.22
2.17	Raven Coating applied to Existing Manhole down-Stream of 6' Manhole at discharge to 10" forcemain	1	LS	\$792.00	\$792.00
2.18	1" ARV & Vault	2	EA	\$9,954.30	\$19,908.60
2.19	Remove Existing 1" ARV Vault	1	EA	\$2,500.00	\$2,500.00
2.20	Tie 21-inch Gravity line into Wet Well	1	LS	\$6,597.04	\$6,597.04
2.21	Bypass Pumping at 450gpm for tie ins to wet well	1	LS	\$11,000.00	\$11,000.00
2.22	24" CMP Removal & Replacement	40	LF	\$32.98	\$1,319.20
2.23	18" CMP Removal & Replacement	20	LF	\$32.99	\$659.80
2.24	Install 8" Standard Clean-Out	1	EA	\$3,396.77	\$3,396.77
2.25	Install Residential Wastewater Service to Existing Residential Septic Line & Demo Existing Septic System as noted on the Construction Plans	2	EA	\$6,597.01	\$13,194.02
2.26	Install Additional Wastewater Service per Owners at their directed location	3	EA	\$6,597.02	\$19,791.06
2.27	Concrete Driveway Removal & Replacement	75	SY	\$99.00	\$7,425.00
2.28	Asphalt Driveway Removal & Replacement	386	SY	\$49.50	\$19,107.00
2.29	Gravel Driveway Removal & Replacement	403	SY	\$22.56	\$9,091.68
2.30	Concrete Rip Rap Removal & Replacement	84	SY	\$99.00	\$8,316.00
2.31	Concrete Pavement Replacement	27	SY	\$99.00	\$2,673.00
2.32	Chain Link Fence Removal & Replacement	60	LF	\$109.95	\$6,597.00
2.33	Barbed Wire Fence Removal & Replacement	360	LF	\$18.33	\$6,598.80
2.34	Remove Tree	17	EA	\$549.75	\$9,345.75
2.35	CLFB Trench Backfill	6,305	LF	\$42.84	\$270,106.20
2.36	Topsoil, Seeding, Soil Retention Blanket	16,000	SY	\$7.43	\$118,880.00
SUBTOTAL WASTEWATER IMPROVEMENTS					\$2,502,364.94
TOTAL BASE BID =					\$2,729,603.91

See BID PROPOSAL

TOTAL OF ALL UNIT PRICES Two million, seven hundred twenty-nine thousand, six hundred three dollars and ninety-one cents \$2,729,603.91(dollars)

As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

C. For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit.

ARTICLE 6 - PAYMENT PROCEDURES

6.1 Submittal and Processing of Payments

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.2 Progress Payments; Retainage

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

- a. 95 % of Work completed (with the balance being retainage).
- b. 95 % of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95 % of the Work completed, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02.B.5 of the General Conditions.

6.3 Final Payment

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate as allowed by law at the place of the project.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.1 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.1 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 7, inclusive);
2. Performance Bond (pages 00610-1 to 00610-2, inclusive);
3. Payment Bond (pages 00620-1 to 00620-3, inclusive);

4. Other Bonds (pages N/A to _____, inclusive);
 5. General Conditions (pages 1 to 43, inclusive);
 6. Supplementary Conditions (pages 1 to 11, inclusive);
 7. Specifications as listed in the table of contents of the Project Manual;
 8. Drawings consisting of a cover sheet, sheets numbered _____ through _____, inclusive, with each sheet bearing the following general title: **CHAPARRAL ROAD WASTEWATER IMPROVEMENTS**;
 9. Addenda (numbers _____ to _____, inclusive);
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed (pages 1 to 1, inclusive);
 - b. CONTRACTOR's Bid (pages 1 to _____, inclusive);
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages _____ to _____, inclusive);
 - d. Wage Rates;
 11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Written Amendments;
 - b. Work Change Directives;
 - c. Change Order(s).
- B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.1 Terms

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.2 Assignment of Contract

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

10.3 Successors and Assigns

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

10.4 Severability

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

10.5 Other Provisions

This contract shall be governed by the laws of the state of Texas, and venue shall be in Bell County.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

OWNER:

CITY OF KILLEEN

By: _____

[CORPORATE SEAL]

Attest _____

Address for giving notices:

P. O. BOX 1329

KILLEEN, TX 76540-1329

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

Designated Representative:

Name: Steve Kana

Title: Director of Water and Sewer

Address: 805 W. Jasper Drive

Phone: (254) 501-7623

Facsimile: (254) 501-7628

CONTRACTOR:

ARGULJO CORPORATION

By: 

[CORPORATE SEAL]

Attest G M Stach

Address for giving notices:

2800 W 42ND STREET

ODESSA, TX 79764

License No. _____
(Where applicable)

Agent for service of process: _____

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Name: JON HIBLER

Title: DIRECTOR

Address: 3701 BEE CAVES ROAD
AUSTIN, TX 78746

Phone: 432.238.7406

Facsimile:

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place
of Business):

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

EJCDC No. 1910-28-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference.

2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

3. If there is no OWNER Default, the Surety's obligation under this Bond shall arise after:

3.1. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and

3.2. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and

3.3. The OWNER has agreed to pay the Balance of the Contract Price to:

3.3.1. The Surety in accordance with the terms of the Contract;

3.3.2. Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1. Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or

4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances;

4.4.1. After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefor to the OWNER; or

4.4.2. Deny liability in whole or in part and notify the OWNER citing reasons therefor.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied

liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

6. After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.

7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1. Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.

12.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

12.3. CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY--Name, Address and Telephone)
AGENT or BROKER: OWNER'S REPRESENTATIVE (Engineer or other party):

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place
of Business):

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

EJCDC No. 1910-28-B (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.

3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1. Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2. Claimants who do not have a direct contract with the CONTRACTOR:

1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.

5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2. Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

9. The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

15.3. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY--Name, Address and Telephone)

AGENCY or BROKER: OWNER'S REPRESENTATIVE (Engineer or other party):

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

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This document has been approved and endorsed by

The Associated General Contractors of America

Construction Specifications Institute

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.1 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.2 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. *Day*

1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, “provide” is implied.

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

ARTICLE 2 - PRELIMINARY MATTERS

2.1 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.2 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.3 *Commencement of Contract Times; Notice to Proceed*

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

2.4 *Starting the Work*

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

2.5 *Before Starting Construction*

A. *CONTRACTOR’s Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise speci-

fied in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and
3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.6 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.7 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments

and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.
2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.
3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.2 *Reference Standards*

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society,

organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.3 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.4 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.5 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS;
SUBSURFACE AND PHYSICAL CONDITIONS;
REFERENCE POINTS

4.1 *Availability of Lands*

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on

such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.3 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the

necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to

CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.4 Underground Facilities

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

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated

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

determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

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

4.5 Reference Points

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

4.6 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such

reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and

CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then

OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition:

(i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR, ENGINEER, or by anyone for whom CONTRACTOR or ENGINEER is responsible. Nothing in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this

paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.1 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment is made, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.2 *Licensed Sureties and Insurers; Ratings*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in Texas to issue Bonds or insurance policies for the limits and coverages so required. Insurance carriers must have at least an "A" rating with AM Best Company. Such surety and

insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.3 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

5.4 *CONTRACTOR's Liability Insurance*

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

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);
6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and
7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two

years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.5 *OWNER's Liability Insurance*

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

5.6 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will

be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.7 *Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

5.8 *Receipt and Application of Insurance Proceeds*

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

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

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

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.2 *Labor; Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.3 *Services, Materials, and Equipment*

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery,

tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.4 *Progress Schedule*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.5 *Substitutes and "Or-Equals"*

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

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

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER’s sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an “or-equal” item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a

proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR’s achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER’s sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer’s Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No “or-equal” or substitute will be ordered, installed or utilized until ENGINEER’s review is complete,

which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an “or equal.” ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR’s expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER’s Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER’s Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER’s Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR’s Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or “or-equal” at CONTRACTOR’s expense.

6.6 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER’s acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the

cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR’s own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER’s Consultants, and all other individuals or entities identified in the Supplementary Conditions to be

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

6.7 *Patent Fees and Royalties*

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

6.8 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.9 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a

counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 *Safety and Protection*

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance

with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers,

and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a

specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

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

6.18 Continuing the Work

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 CONTRACTOR's General Warranty and Guarantee

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;
2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the perfor-

mance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.1 Related Work at Site

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of

CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.2 *Coordination*

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose

status under the Contract Documents shall be that of the former ENGINEER.

8.3 *Furnish Data*

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

8.4 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.5 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.61 *Insurance*

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

8.7 *Change Orders*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.8 *Inspections, Tests, and Approvals*

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.9 *Limitations on OWNER's Responsibilities*

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

responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.1 *OWNER'S Representative*

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.2 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and

responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.3 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.4 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.5 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a

Claim may be made therefor as provided in paragraph 10.05.

9.6 *Rejecting Defective Work*

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

9.7 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.8 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

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

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.1 Authorized Changes in the Work

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.2 Unauthorized Changes in the Work

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

10.3 Execution of Change Orders

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work

actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.4 Notification to Surety

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

10.5 Claims and Disputes

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on

such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.1 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such

losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not

limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.2 Cash Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated

for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.3 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.1 Change of Contract Price

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *CONTRACTOR's Fee*: The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.2 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.3 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.4 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.5 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.6 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or
2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS;
CORRECTION, REMOVAL OR ACCEPTANCE OF
DEFECTIVE WORK

13.1 *Notice of Defects*

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.2 *Access to Work*

A. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation,

inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.3 *Tests and Inspections*

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

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of

CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.4 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.5 *OWNER May Stop the Work*

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

13.6 *Correction or Removal of Defective Work*

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.7 *Correction Period*

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed

and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.8 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.9 OWNER May Correct Defective Work

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of

the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefore as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 Schedule of Values

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.2 Progress Payments

A. Applications for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

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

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the

accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. there are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.3 *CONTRACTOR's Warranty of Title*

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

14.4 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certifi-

cate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.5 Partial Utilization

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially

complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.6 Final Inspection

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

14.7 Final Payment

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph

5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. *Review of Application and Acceptance*

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

payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due*

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.8 *Final Completion Delayed*

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.9 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 *OWNER May Suspend Work*

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly

attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.2 OWNER May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);
2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;
3. CONTRACTOR's disregard of the authority of ENGINEER; or
4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not

be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.3 OWNER May Terminate For Convenience

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

C. CONTRACTOR shall take all reasonable steps to reduce his costs related to termination and shall not incur additional costs once written notice of cancellation is cancelled.

15.4 CONTRACTOR May Stop Work or Terminate

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.1 *Giving Notice*

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

17.2 *Computation of Times*

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

17.3 *Cumulative Remedies*

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

17.4 *Survival of Obligations*

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

17.5 *Controlling Law*

A. This Contract is to be governed by the laws of the State of Texas and venue shall be Bell County.

SUPPLEMENTARY CONDITIONS

1. GENERAL:

The following special conditions shall prevail in this Contract and will govern in case of a conflict with any other part of this Contract.

2. DISCREPANCIES AND OMISSIONS:

It is agreed that it is the intent of this Contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies or in the event of any doubt as to the meaning and intent of any portion of the Contract, Specifications or Plans, the ENGINEER shall define which is intended to apply to what Work.

3. INCIDENTAL WORK:

Incidental Work of any nature, if not otherwise indicated on the Plans, will be a part of the Work to which it pertains and payment for such incidental Work shall be included in the price of the bid item to which it pertains.

4. CONSTRUCTION IN CITY STREETS AND PRIVATE DRIVES:

It shall be the responsibility of the CONTRACTOR to build and maintain all weather bypasses and detours, if necessary, and to properly light, barricade and mark all bypasses and detours that might be required on and across the roads involved in the Work included in this Contract.

The CONTRACTOR shall make every effort to complete construction and allow immediate access to adjacent property at all driveway entrances located along the streets. Owners or tenants of improvements where access and/or entrance drives are located shall be notified at least eight (8) hours prior to the time the construction will be started at their drive-ins or entrances and informed as to the length of time driveways will be closed, which period shall not exceed six (6) hours.

The CONTRACTOR shall be responsible for all road and entrance reconstruction and repairs and maintenance of same for a period of one (1) year from the date of such reconstruction. In the event the repairs and maintenance are not made immediately to the satisfaction of the ENGINEER, and it becomes necessary for the OWNER to make such repairs, the CONTRACTOR shall reimburse the OWNER for the cost of such repairs.

The CONTRACTOR shall, at all times, keep a sufficient width of the roadway clear of dirt and other material to allow the free flow of traffic. The CONTRACTOR shall assume any and all responsibility for damage, personal or otherwise, that may be caused by the construction along road or private drives.

5. PROPERTY LINES AND MONUMENTS:

The CONTRACTOR shall protect all property corner markers, and when any such markers or monuments are in danger of being disturbed, they shall be properly referenced and if disturbed shall be reset at the expense of the CONTRACTOR.

6. EXISTING STRUCTURES AND UTILITIES:

The plans show the locations of all known surface and subsurface structures and underground utilities. However, the OWNER assumes no responsibility for failure to show any or all of these structures or utilities on the Plans, or to show them in their exact location. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional compensation for extra Work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered such as to necessitate changes in the lines or grades, or requires the building of special Work, provisions for which are not made in the Plans or Proposal, in which case the provisions in these Specifications for extra Work shall apply. The CONTRACTOR shall be responsible for the protection of all existing utilities or service lines crossed or exposed by his construction operations. Where existing utilities or service lines are cut, broken or damaged, the CONTRACTOR shall replace or repair the utilities or service lines with the same type of original material and construction, or better, at his own cost and expense.

7. FENCES AND DRAINAGE CHANNELS:

Boundary fences or other improvements removed to permit this construction shall be replaced in the same location and left in a condition as good or better than that in which they were found. Where surface drainage channels are disturbed or blocked during construction, they shall be restored to their original condition of grade and cross section after Work of construction is completed.

8. USE OF EXPLOSIVES:

The use of explosives on this project will not be allowed. Excavations and any required demolition shall be made by other approved means.

9. PROJECT MAINTENANCE:

The CONTRACTOR shall maintain and keep in good repair the improvements covered by these Plans and Specifications during the life of this Contract.

10. CLEAN-UP:

(1) During Construction:

The CONTRACTOR shall at all times keep the job site free from all material, debris and rubbish as is practicable and shall remove same from any portion of the job site, when it becomes objectionable or interferes with the progress of the project in the opinion of the ENGINEER.

(2) Final:

Upon completion of the Work, the CONTRACTOR shall remove from the site, all plant, materials, tools and equipment belonging to him, and leave the site with an appearance acceptable to the ENGINEER.

The CONTRACTOR shall thoroughly clean all equipment and materials installed by him and shall deliver such materials and equipment in a bright, clean, polished and like new condition and appearance.

11. GUARANTY AGAINST DEFECTIVE WORK:

The CONTRACTOR (i) hereby indemnifies the OWNER against any repairs which may become necessary to any part of the Work performed under the Contract, arising from defective Workmanship or materials used therein, and (ii) hereby warrants there will be no defects in the Work (including all labor and materials used therein), with such indemnity and warranty to apply for a period of one (1) year from the date of final acceptance of the Work.

Such indemnity and warranty includes the obligation of the CONTRACTOR to repair or replace all defective Work, such repairs or replacement to be completed at the site of the Work so that CONTRACTOR shall pay all:

- (1) tear out charges for defective Work
- (2) costs of removal of defective Work from the site
- (3) transportation costs, so that repair or replacement of defective Work occurs at the site
- (4) the costs of any labor and/or materials necessary to repair or replace defective Work.

This determination of whether to repair or replace, and whether Work or Workmanship is defective, shall be made by the ENGINEER. The CONTRACTOR agrees to abide by such determination. The repaired or replaced Work shall bear a one (1) year warranty from the date of repair or replacement.

Work or Workmanship shall be deemed defective if it (i) fails to meet the requirements of the Specifications or other Contract Documents or (ii) fails to perform its intended particular purpose.

The parties acknowledge that the Performance Bond covers the indemnity and warranty work required by this section.

The rights granted to OWNER by this section are in addition to those set forth in Sections 13.06, 13.07, 13.08, and 13.09 of the General Conditions, and the OWNER may enforce its rights either hereunder or under those sections of the General Conditions.

This warranty and indemnity does not limit any rights the OWNER otherwise may have under applicable law (for example, but not limited to, claims involving latent defects or warranty claims against equipment suppliers).

12. COPIES OF PLANS AND SPECIFICATIONS:

Three (3) copies of Plans and Specifications will be furnished to the CONTRACTOR at no charge. Additional copies may be obtained at the cost of reproduction upon request.

13. RIGHT-OF-WAY:

Without cost to the CONTRACTOR, the OWNER has provided easements for the project. The CONTRACTOR, as a part of the project construction operation, shall clear all rights-of-way or easements of obstructions which must be removed to make possible proper execution of the Work. This also includes grading of the site in accordance with furnished contours shown in the Plans. The CONTRACTOR shall replace, repair, and restore any improvements on or along the right-of-way of easements which may have been removed or damaged due to his operations when ordered by the ENGINEER to do so.

14. LINES AND GRADES:

The lines and grades shall be furnished by the CONTRACTOR.

15. TEMPORARY WATER:

The CONTRACTOR shall make the necessary arrangements for securing and transporting all water required in construction, including water required for jetting, sprinkling, flushing, etc. Water for testing and disinfection shall be the responsibility of the CONTRACTOR.

16. POWER:

The CONTRACTOR shall provide temporary power as required for proper execution of Work. The temporary power facilities shall be installed in such a manner as not to interfere with construction. Power for construction shall be at the CONTRACTOR's expense.

17. ACCEPTANCE OF WORK:

All Work damaged through vandalism, natural causes, "Acts of God," and other unforeseen circumstances, prior to final acceptance by the OWNER, shall be fully repaired by the CONTRACTOR. Expense arising from such Work will be the responsibility of the CONTRACTOR.

18. TRENCH SAFETY SYSTEM:

The CONTRACTOR will submit to the ENGINEER the planned safety program and trench safety plan to be used on this construction project. This program will include the type of system, designed by a professional engineer of the State of Texas and meeting the specifications of the current OSHA standards, and the qualifications of the person designated as "Inspector" during the project. Daily inspections are to be made to insure that changing conditions in the soils by weather or location of Work has not jeopardized the integrity of the safety system used. Reports shall indicate date, type of weather, soils observed, problems observed and corrective measures taken to insure employee safety during the Work. After submittal of the Trench Plan to the ENGINEER, the CONTRACTOR may begin to execute the Contract.

19. TESTING MATERIALS:

The CONTRACTOR shall bear the cost of all material testing required in the contract Documents. Testing shall be done by an approved certified laboratory under the supervision of a registered professional engineer. The OWNER and ENGINEER shall be furnished a copy of all test results.

20. INSURANCE:

A. General Conditions

1. The CONTRACTOR shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the OWNER. Furthermore, the CONTRACTOR shall not allow any subcontractor to commence work on his subcontract until all similar insurance of the subcontractor has been so obtained and approved.
2. City of Killeen (OWNER) and ENGINEER must be listed as additional insured with waiver of subrogation on all insurance, with the exception of workers' compensation.
3. The CONTRACTOR must provide a certificate of coverage to the OWNER prior to being awarded the contract.

4. If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the Project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
5. The CONTRACTOR shall obtain from each person providing services on the Project, and provide to the OWNER:
 - a. a certificate of coverage, prior to that person beginning Work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - b. no later than seven (7) days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
6. The CONTRACTOR shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
7. The CONTRACTOR shall notify the OWNER in writing by certified mail or personal delivery, within ten (10) days after the CONTRACTOR knew or should have known, of any change that materially affects the provisions of coverage of any person providing services on the Project.
8. The CONTRACTOR's failure to comply with any of these provisions is a breach of contract by the CONTRACTOR which entitles the OWNER to declare the contract void if the CONTRACTOR does not remedy the breach within ten (10) days after receipt of notice of breach from the OWNER.
9. Such insurance will be subject to the following deductible amount: \$250.00. The City of Killeen, Texas (OWNER) shall be named as additional insured for the Project, with a waiver of subrogation.
10. Proof of Carriage of Insurance: The CONTRACTOR shall furnish the OWNER with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the OWNER."
11. On all new or remodeling building projects: All Risk Builders Risk Insurance for insurable building projects shall be insured in the amount of

the Contract price for such improvements. The OWNER and CONTRACTOR waive all rights against each other for damages caused by fire or other perils to the extent covered by Building Risk Insurance required under this section, except as to such rights as they may have in the proceeds of such insurance. CONTRACTOR shall require similar waivers by Subcontractors and Sub-subcontractors.

12. The insurance specified in these supplementary conditions is in addition to other insurance required in Article 5 of the general conditions.

B. Worker's Compensation Insurance Coverage:

1. Definitions

Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the Project.

Duration of the Project – includes the time from the beginning of the Work on the Project until the CONTRACTOR's/person's work on the Project has been completed and accepted by the OWNER.

Persons providing services on the Project ("subcontractor") – includes all persons or entities performing all or part of the services the CONTRACTOR has undertaken to perform on the Project, regardless of whether that person contracted directly with the CONTRACTOR and regardless of whether that person has employees. This includes, without limitation, independent CONTRACTORS, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2. The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the CONTRACTOR providing services on the Project, for the duration of the Project.

3. The CONTRACTOR shall post on each Project site a notice, in the text, form and manner prescribed the Texas Workers' Compensation Commission ("Commission"), informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
4. The CONTRACTOR shall contractually require each person with whom it contracts to provide services on the Project, to:
 - a. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the Project, for the duration of the Project;
 - b. provide the CONTRACTOR, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - c. provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - d. obtain from each other person with whom it contracts, and provide to the CONTRACTOR:
 - i. a certificate of coverage, prior to the other person beginning work on the Project; and
 - ii. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - e. retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
 - f. notify the OWNER in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
 - g. contractually require each person with whom it contracts, to perform as required by paragraphs (a) – (g), with the certificates of coverage to be provided to the person for whom they are providing services.
5. By signing this Contract or providing or causing to be provided a certificate of coverage, the CONTRACTOR is representing to the OWNER that all employees of the CONTRACTOR who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all

coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CONTRACTOR to administrative penalties, criminal penalties, civil penalties, or other civil actions.

C. Comprehensive General Liability and Property Damage Insurance.

The CONTRACTOR shall take out and maintain during the life of this Contract such Comprehensive General Liability and Property Damage Insurance as shall protect him and any subcontractor performing Work covered by this contract from claims for damages or personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, and including explosion, collapse and underground coverage, whether such operations be by himself or by a subcontractor or by anyone directly or indirectly employed by either of them, and the minimum amounts of such insurance shall be as follows:

Bodily Injury.

- (1) Each Occurrence - \$1,000,000
- (2) Annual Aggregate - \$2,000,000

Property Damage Insurance.

- (1) Each Occurrence - \$1,000,000
- (2) Annual Aggregate - \$2,000,000

Property damage liability insurance providing Explosion, Collapse and Underground coverages.

D. Comprehensive Automobile Liability.

Bodily Injury

- (1) Each Person - \$500,000
- (2) Each Accident - \$1,000,000

Property Damage

- (1) Each Occurrence - \$1,000,000

E. Contractual Liability.

Bodily Injury

(1) Each Occurrence - \$1,000,000

Property Damage

(1) Annual Aggregate - \$1,000,000

21. SURETY, BOND AND INSURANCE:

All sureties, bonds and insurance required of the CONTRACTOR shall be issued by companies licensed with the Attorney General Office of Texas.

22. INSURED OR ADDITIONAL INSURED:

Upon award of this Contract, the OWNER shall provide the CONTRACTOR with a list of all persons, entities and agents/representatives of the OWNER which shall be listed on the CONTRACTOR's required insurance policies as insured or additional insured, in accordance with the provisions of paragraphs 5.6 and 5.6.1 of the General Conditions.

23. The CONTRACTOR will be required to secure approval of the OWNER of all Sub-Contractors.

24. PREVAILING WAGE RATE:

CONTRACTOR and subcontractors shall comply with V.T.C.A. Government Code Chapter 2258, as amended, in performing this Project, if applicable. In accordance with Chapter 2258, as amended, the prevailing wage rates as set forth in the Contract shall be paid on this Project and shall be posted at the job site or other area generally accessible to the employees working on the Project. In the event that a CONTRACTOR or subcontractor seeks to hire a craft or type of worker not listed in the wage rates set forth in this Contract, such entity shall, in advance of hiring the worker, request an official determination of the prevailing wage rate for the craft or type of worker from the OWNER. For overtime work and legal holidays, the hourly rate shall be one and one-half times the basic hourly rate set forth in the schedule of prevailing wage rates, which is incorporated herein for all purposes.

The CONTRACTOR and any subcontractor(s) shall keep a record showing the name, occupation, and actual per diem wages paid each worker employed by the CONTRACTOR or subcontractor in the construction of the public work. The OWNER may require an affidavit stating that the CONTRACTOR has complied with the prevailing wage rate provisions of the Contract prior to acceptance of the Project or at any time during or after completion of the Contract.

The OWNER reserves the right to conduct interviews with the CONTRACTOR's and subcontractor's employees to insure compliance with Government Code, Chapter 2258, as amended, and with all applicable local, state and federal laws. Upon written request by OWNER, the CONTRACTOR shall be responsible for submitting the above required

records to the OWNER for all employees performing work on the Project, whether employed by the CONTRACTOR or a subcontractor. Each submittal shall be certified by the CONTRACTOR as to completeness and accuracy.

A CONTRACTOR or subcontractor in violation of Government Code, Chapter 2258, as amended, is liable for a penalty. That CONTRACTOR or subcontractor, by statute, shall pay to the OWNER Sixty and 00/100 Dollars (\$60.00) for each laborer, worker, or mechanic employed for each calendar day, or portion thereof, that such laborer, worker, or mechanic is paid less than the prevailing wage rates specified herein for Work done under this Contract. Nothing herein shall preclude the CONTRACTOR or subcontractor from paying higher wages than specified herein.

In the event that OWNER receives written information or complaint attesting to a violation of the prevailing wage rate, OWNER shall proceed under Government Code, Chapter 2258.

A CONTRACTOR or subcontractor violating a requirement of this section may be determined ineligible to bid on or receive any additional work from the OWNER for a period of twelve-months following a final determination that the violation(s) occurred.

WAGE RATES

"General Decision Number: TX20230007 01/06/2023

Superseded General Decision Number: TX20220007

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClennon and Williamson Counties) and HIGHWAY Construction Projects

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract.	
	. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.	
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract.	
	. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.	

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the

Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
 0 01/06/2023

SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE		
FINISHER (Paving and Structures).....	\$ 12.56	**
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 12.94	**
Structures.....	\$ 12.87	**
LABORER		
Asphalt Raker.....	\$ 12.12	**
Flagger.....	\$ 9.45	**
Laborer, Common.....	\$ 10.50	**
Laborer, Utility.....	\$ 12.27	**
Pipelayer.....	\$ 12.79	**
Work Zone Barricade Servicer.....	\$ 11.85	**
PAINTER (Structures).....	\$ 18.34	
POWER EQUIPMENT OPERATOR:		
Agricultural Tractor.....	\$ 12.69	**
Asphalt Distributor.....	\$ 15.55	**
Asphalt Paving Machine.....	\$ 14.36	**
Boom Truck.....	\$ 18.36	
Broom or Sweeper.....	\$ 11.04	**
Concrete Pavement Finishing Machine.....	\$ 15.48	**
Crane, Hydraulic 80 tons or less.....	\$ 18.36	
Crane, Lattice Boom 80 tons or less.....	\$ 15.87	**
Crane, Lattice Boom over 80 tons.....	\$ 19.38	
Crawler Tractor.....	\$ 15.67	**
Directional Drilling Locator.....	\$ 11.67	**
Directional Drilling Operator.....	\$ 17.24	

Excavator 50,000 lbs or		
Less.....	\$ 12.88	**
Excavator over 50,000 lbs...	\$ 17.71	
Foundation Drill, Truck		
Mounted.....	\$ 16.93	
Front End Loader, 3 CY or		
Less.....	\$ 13.04	**
Front End Loader, Over 3 CY.	\$ 13.21	**
Loader/Backhoe.....	\$ 14.12	**
Mechanic.....	\$ 17.10	
Milling Machine.....	\$ 14.18	**
Motor Grader, Fine Grade....	\$ 18.51	
Motor Grader, Rough.....	\$ 14.63	**
Pavement Marking Machine....	\$ 19.17	
Reclaimer/Pulverizer.....	\$ 12.88	**
Roller, Asphalt.....	\$ 12.78	**
Roller, Other.....	\$ 10.50	**
Scraper.....	\$ 12.27	**
Spreader Box.....	\$ 14.04	**
Trenching Machine, Heavy....	\$ 18.48	
 Servicer.....	\$ 14.51	**
 Steel Worker		
Reinforcing.....	\$ 14.00	**
Structural.....	\$ 19.29	
 TRAFFIC SIGNALIZATION:		
Traffic Signal Installation		
Traffic Signal/Light Pole		
Worker.....	\$ 16.00	**
 TRUCK DRIVER		
Lowboy-Float.....	\$ 15.66	**
Off Road Hauler.....	\$ 11.88	**
Single Axle.....	\$ 11.79	**
Single or Tandem Axle Dump		
Truck.....	\$ 11.68	**
Tandem Axle Tractor w/Semi		
Trailer.....	\$ 12.81	**
 WELDER.....	\$ 15.97	**

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any

solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that

no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal

process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"

ACORDTM CERTIFICATE OF LIABILITY INSURANCE

DATE

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

INSURER A:

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> PREMISES/OPERATION _____ GENL AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURANCE	\$
					FIRE DAMAGE (Any one fire)	\$
					MED EXP (Any one person)	\$
					PERSONAL & ADV INJURY	\$
					GENERAL AGGREGATE	\$
					PRODUCTS - COMP/OP AGG	\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NPN-OWNED AUTOS _____ <input type="checkbox"/>				COMBINED SINGLE LIMIT (Ea accident)	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/>				AUTO ONLY EA ACCIDENT	\$
					OTHER THAN AUTO ONLY	EA ACC AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURANCE	\$
					AGGREGATE	\$
						\$
						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTH -ER
					E.L.EACH ACCIDENT	\$
					E.L.DISEASE - EA EMPLOYEE	\$
					E.L.DISEASE- POLICY LIMIT	\$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Certificate of Insurance is issued as evidence of coverage.

CERTIFICATE HOLDER | ADDITIONAL INSURED: INSURER LETTER:

CANCELATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURED WILL ENDEAVOR TO MAIL DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

NOTICE OF AWARD

Dated: August 28, 2023

TO: ARGUIJO CORPORATION

(BIDDER)

ADDRESS: 3701 Bee Caves, Suite 205

Austin, Texas 78746

Project: Chaparral Road Wastewater Improvements

OWNER's Contract No. Bid No. 23-41

You are notified that your Bid dated August 10, 2023, for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a Contract for Installation of:

The base bid for the Chaparral Road Wastewater Improvements.

(Indicate total Work, alternates or sections or Work awarded)

The Contract Price of your Contract is two million, seven hundred twenty-nine thousand, six hundred three Dollars and ninety-one cents (\$2,729,603.91).

2 copies of each of the proposed Contract Documents accompany this Notice of Award.

You must comply with the following conditions precedent:

1. Within fifteen (15) days of the date of this Notice of Award; that is, by:
 - Deliver to the ENGINEER 2 fully executed counterparts of the Contract Documents. (Each of the Contract Documents must bear your signature on every appropriate page.)
 - Deliver with the executed Contract Documents the Contract Security (Bonds) as specified in the Instructions to Bidders, General Conditions (paragraph 5.01) and Supplementary Conditions.
 - Deliver with the executed Contract Documents and Contract Security (Bonds) a Certificate of Insurance that complies with the Supplementary Conditions.
 - (List other conditions precedent).

2. By the Pre-Construction Meeting on _____:
3. Prior to Construction:
 - SWPPP (approximately a 30-day process to approve)

Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid in default, to annul this Notice of Award and to declare your Bid Security forfeited.

Within ten days after you comply with the above conditions, OWNER will return to you one fully executed counterpart of the Contract Document.

CITY OF KILLEEN

(OWNER)

By: _____
(AUTHORIZED SIGNATURE)

(TITLE)

August 21, 2023

City of Killeen
PO Box 1329
Killeen, Texas 76540

Attn: Steve Kana, PE, Director of Water and Sewer Utilities

Re: Chaparral Road Wastewater Improvements
Engineer's Letter of Recommendation to Award
Project No.: 2-01612.01

Dear Mr. Kana:

On August 10, 2023, two competitive sealed bids were received for the Chaparral Road Wastewater Improvements. A tabulation of the proposals is attached. The lowest responsible bidder was Arguijo Corporation, with a total base bid of \$2,729,603.91.

Walker Partners recommends awarding the Base Bid to Arguijo Corporation for a total of \$2,729,603.91.

Please contact me if you have any questions or require additional information.

Sincerely,



Otto E. Wiederhold, P.E.
Senior Vice President

Attachments: Bid Tabulation

Cc: Project File

Walker Partners, LLC
Bid Tabulation

City of Killeen
Chaparral Road Wastewater Improvements
Project No.: 2-01612.01
August 10, 2023 | 2:00pm

Bidders

Item No.	Bid Item Description	Estimated		Arguijo Corporation		Bell Contractors, Inc.	
		Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount
1.00	General Conditions						
1.01	Mobilization & Bonds	1	LS	120,923.97	120,923.97	135,903.54	135,903.54
1.02	Storm Water Pollution Prevention Plan & Implementation	1	LS	52,250.00	52,250.00	36,656.25	36,656.25
1.03	Traffic Control Plan and Implementation	1	LS	27,500.00	27,500.00	87,400.00	87,400.00
1.04	Trench Safety Plan	1	LS	935.00	935.00	1,265.00	1,265.00
1.05	Trench Safety Implementation	11,650	LF	2.20	25,630.00	5.75	66,987.50
	Subtotal General Conditions				227,238.97		328,212.29
2.00	Water System Improvements						
2.01	10" C900 PVC Force Main Line (Open Cut)	6,454	LF	99.23	640,430.42	86.43	557,819.22
2.02	Tie in to Existing 10-inch Force Main	1	LS	3,298.53	3,298.53	2,906.78	2,906.78
2.03	Remove 10" Force Main	1,511	LF	17.26	26,079.86	13.80	20,851.80
2.04	Plug Existing 10" Force Main	3	EA	3,298.51	9,895.53	898.45	2,695.35
2.05	10" SDR-26 PVC Wastewater Line (Open Cut)	1,511	LF	76.87	116,150.57	71.34	107,794.74
2.06	15" SDR-26 PVC Wastewater Line (Open Cut)	2,825	LF	167.41	472,933.25	111.63	315,354.75
2.07	18" SDR-26 PVC Wastewater Line (Open Cut)	960	LF	204.29	196,118.40	140.56	134,937.60
2.08	21" SDR-26 PVC Wastewater Line (Open Cut)	42	LF	160.57	6,743.94	358.34	15,050.28
2.09	18" DR 14 HDPE (or equal) Wastewater Line (Directional Drill)	800	LF	192.49	153,992.00	813.84	651,072.00
2.10	18" Steel Encasement Pipe (Bore)	52	LF	562.89	29,270.28	526.17	27,360.84
2.11	24" Steel Encasement Pipe (Bore)	50	LF	625.45	31,272.50	654.49	32,724.50
2.12	10" 45 Degree Bend	8	EA	1,335.76	10,686.08	1,478.47	11,827.76
2.13	6' Diameter Manhole @ LS	1	EA	15,998.16	15,998.16	16,770.83	16,770.83
2.14	6' Diameter Manhole @ 10" Force Main Discharge Manhole with Raven Coating Applied	1	EA	12,699.66	12,699.66	9,466.03	9,466.03
2.15	4' Diameter Manhole	26	EA	8,385.37	218,019.62	5,623.43	146,209.18
2.16	4' Diameter Drop Manhole	2	EA	10,738.61	21,477.22	5,929.29	11,858.58
2.17	Raven Coating applied to Existing Manhole downstream of 6' Manhole at discharge of 10" Force Main	1	LS	792.00	792.00	7,223.53	7,223.53
2.18	1" ARV & Vault	2	EA	9,954.30	19,908.60	9,068.65	18,137.30
2.19	Remove Existing 1" ARV Vault	1	EA	2,500.00	2,500.00	2,357.50	2,357.50
2.20	Tie 21-inch Gravity line into Wet Well	1	LS	6,597.04	6,597.04	25,012.50	25,012.50
2.21	Bypass Pumping @ 450gpm for tie ins to wet well and 10" force main	1	LS	11,000.00	11,000.00	20,125.00	20,125.00
2.22	24" CMP Removal & Replacement	40	LF	32.98	1,319.20	96.34	3,853.60
2.23	18" CMP Removal & Replacement	20	LF	32.99	659.80	69.91	1,398.20
2.24	Install 8" Standard Clean-Out	1	EA	3,396.77	3,396.77	3,036.53	3,036.53
2.25	Install Residential Wastewater Service to Existing Residential Septic Line & Demo Existing Septic System as noted on the Construction Plans	2	EA	6,597.01	13,194.02	3,356.21	6,712.42
2.26	Install Additional Wastewater Service per Owners at their directed location	3	EA	6,597.02	19,791.06	3,186.78	9,560.34
2.27	Concrete Driveway Removal & Replacement	75	SY	99.00	7,425.00	120.75	9,056.25
2.28	Asphalt Driveway Removal & Replacement	386	SY	49.50	19,107.00	46.00	17,756.00
2.29	Gravel Driveway Removal & Replacement	403	SY	22.56	9,091.68	18.42	7,423.26
2.30	Concrete Rip Rap Removal & Replacement	84	SY	99.00	8,316.00	97.75	8,211.00
2.31	Concrete Pavement Replacement	27	SY	99.00	2,673.00	120.75	3,260.25
2.32	Chain Link Fence Removal & Replacement	60	LF	109.95	6,597.00	23.00	1,380.00
2.33	Barbed Wire Fence Removal & Replacement	360	LF	18.33	6,598.80	26.45	9,522.00
2.34	Remove Tree	17	EA	549.75	9,345.75	230.00	3,910.00
2.35	CLFB Trench Backfill	6,305	LF	42.84	270,106.20	58.68	369,977.40
2.36	Topsoil, Seeding, Soil Retention Blanket	16,000	SY	7.43	118,880.00	3.18	50,880.00
	Subtotal Water System Improvements				2,502,364.94		2,643,493.32
	Total Bid				\$2,729,603.91		\$2,971,705.61

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**

Certificate Number:
2023-1066916

Date Filed:
08/31/2023

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
Arguijo Corporation
Odessa, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
City of Killeen

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
Chaparral Road
Sewer Construction

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Hibler, James	Midland, TX United States	X	
	Hibler, Lisa	Midland, TX United States	X	
	Hibler, Jon	Austin, TX United States	X	
	Hibler, Jacob	Midland, TX United States	X	

5 Check only if there is NO Interested Party.

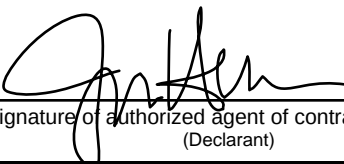
6 UNSWORN DECLARATION

My name is JON HIBLER, and my date of birth is _____.


My address is 311 WESTHAVEN DRIVE, AUSTIN, TX, 78746, US.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in TRAVIS County, State of TEXAS, on the 31 day of AUGUST, 2023.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)



AWARD BID NO. 23-41, WASTEWATER
IMPROVEMENTS FOR CHAPARRAL
ROAD PROJECT

RS-23-151

September 19, 2023

344

Background and Findings

- The 2019 Water and Wastewater Master Plan includes project 7S – Construction of a Sewer Line and Force Main north of Chaparral Road and west of Trimmier Road.
 - ▣ The force main will allow wastewater from this area to be diverted from Lift Station No. 24 to the South Wastewater Treatment Plant.
- The completion of this project will bring sewer service to the area and is critical for construction of the American Rescue Plan Act (ARPA) funded Fire Station No. 4 / Emergency Operations Center (EOC) project.

Background and Findings

- On August 10, 2023, two (2) bids were received from the following vendors:

BIDDERS	BID
Arguijo Corporation	\$2,729,603.91
Bell Contractors, Inc	\$2,971,705.61

- Arguijo Corporation is the selected vendor for Bid 23-41, Wastewater Improvements for Chaparral Road, based on performance and best value to the city.

Alternatives

4

- Do not authorize the award of Bid No. 23-41, Wastewater Improvements for Chaparral Road Project.
- Authorize the award of Bid No. 23-41, Wastewater Improvements for Chaparral Road Project to the lowest responsible bidder, Arguijo Corporation.

Recommendation

5

- Authorize the award of Bid No. 23-41, Wastewater Improvements for Chaparral Road Project to Arguijo Corporation; authorize the City Manager, or designee, to execute a construction contract in the amount of \$2,729,604 with Arguijo Corporation, and furthermore, authorize the City Manager, or designee, to execute any and all change orders within the amounts set by State and Local law.



City of Killeen

Staff Report

File Number: RS-23-152

1	City Council Workshop	09/19/2023	Reviewed and Referred	09/26/2023
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Consider a memorandum/resolution to approve an Interlocal Mutual Aid Agreement between the cities of Killeen and Nolanville for Fire Department services.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Jim Kubinski, Fire Chief

SUBJECT: Interlocal Mutual Aid Agreement with Nolanville Fire Department

BACKGROUND AND FINDINGS:

Mutual aid agreements supply fire department services with additional resources when a single, or multiple, incidents deplete all resources from one entity. The agreements are the legal documents which set, in writing, the conditions under which all entities agree to operate.

THE ALTERNATIVES CONSIDERED:

1. Not enter into the agreement and allow each entity to serve their own community individually.
2. Enter into agreement and work with the local cities to deal with large scale events.

Which alternative is recommended? Why?

2. Entering into this agreement creates cooperation between the neighboring cities and the Killeen Fire Department to help mitigate large scale incidents for each entity.

CONFORMITY TO CITY POLICY:

This Interlocal Mutual Aid Agreement conforms to city policy and state laws. Council would reapprove when a change of command occurs.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

The only cost would be overtime in the event of a large incident. Surrounding cities will assist should this occur and, depending on the size of incident, overtime could be avoided.

Is this a one-time or recurring expenditure?

Incidents of this nature are unpredictable.

Is this expenditure budgeted?

Depending on the scale of event and the required contribution.

If not, where will the money come from?

Emergency Declaration would be needed only in the event of a very low frequency large-scale event.

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes.

RECOMMENDATION:

Staff recommends that the City Council approve the Interlocal Mutual Aid Agreement, and authorize the City Manager, or his designee, to execute the agreement.

DEPARTMENTAL CLEARANCES:

Purchasing
Legal
Fire

ATTACHED SUPPORTING DOCUMENTS:

Mutual Aid Agreement

INTERLOCAL AGREEMENT FOR MUTUAL AID FIRE SERVICES BETWEEN THE NOLANVILLE FIRE DEPARTMENT AND THE KILLEEN FIRE DEPARTMENT

This Interlocal Agreement for Automatic Aid Fire Services (“Agreement”) is entered into by and between the City of Nolanville, a home rule municipality in the State of Texas (“Nolanville”) and the City of Killeen, also a home rule municipality in the State of Texas (“Killeen”) for the mutual automatic aid assistance between the Nolanville Fire Department (NFD) and the Killeen Fire Department (KFD). Nolanville and Killeen may hereinafter be referred to individually as the “Party” and/or collectively as the “Parties.”

WHEREAS the governmental entities which are Parties to this Agreement desire to enter into an agreement concerning automatic aid fire services.

WHEREAS, the Texas Government Code, Chapter 791, the “Interlocal Cooperation Act,” authorizes local government entities to enter into interlocal contracts for governmental purposes; and

WHEREAS the Texas Government Code §791 et seq. specifically authorizes interlocal agreements for fire services.

THEREFORE, the Parties mutually agree to provide automatic aid assistance as set forth below:

TERMS.

- 1) Each Party agrees to provide automatic assistance to the other upon the occurrence of an emergency condition in any portion of the designated service area as set forth in Attachment ‘A,’ attached hereto and incorporated herein for all purposes, with the predetermined amount of firefighting equipment, emergency medical equipment and/or personnel in order to assist in the protection of life and property. For the purposes of this Agreement, “emergency conditions” shall include any condition requiring fire protection or emergency medical services, or both.
- 2) The amounts and types of assistance to be dispatched shall be agreed to by the Chief of the Killeen Fire Department and the Chief of the Nolanville Fire Department and may be amended or revised at any time by mutual agreement of the Fire Chiefs as conditions may warrant. The current scope of this mutual aid agreement is outlined in Attachment ‘A.’
- 3) The predetermined amount of aid, type of equipment, and number of personnel shall be sent, unless such amount of assistance is unavailable due to emergency conditions confronting either Party’s forces at the time of need for assistance under this Agreement.
- 4) In fulfilling their obligations provided for in this Agreement, both Parties shall comply with the procedures set forth in Attachment ‘A.’
- 5) Each Party shall always be and remain legally responsible for the conduct of their respective fire department employees regardless of whether such employees were performing duties under this Agreement at the request of the requesting City and

regardless of whether such employees were acting under the authority, direction, suggestion, or orders of an officer of the requesting City. This assignment of civil liability is specifically permitted by section 791 et seq of the Texas Government Code and is intended to be different than the liability otherwise assigned under section 791 et seq of the Texas Government Code.

- 6) All personnel acting on behalf of the Party's fire department under this agreement during the time services are required, shall be paid firefighters of the Party's fire department at the time of performance, or members of an organized volunteer fire department which renders firefighting services.
- 7) All claims for workers' compensation benefits arising out of this agreement shall be the sole responsibility of the party who is the general employer of the employee filing such claim. At no time shall the employees of the responding party be considered to be borrowed servants or on loan to the requesting party under this agreement.
- 8) Nothing in this Agreement shall be construed as making either Party responsible for the payment of compensation and/or any benefits, including health, property, motor vehicle, or workers' compensation, disability, death, and dismemberment insurance for the other Party's employees and/or equipment. Nothing contained in this Agreement shall be construed as making the Requesting Party responsible for wages, materials, logistical support, equipment, or related travel expenses incurred by the Responding Party.
- 9) Each Party shall own, lease, or rent all equipment used by that Party in the execution of this Agreement, and each Party shall be solely responsible for its equipment and property, including any losses or damages, in the performance of this Agreement.
- 10) Each Party shall bear their own costs in the execution of this Agreement. Neither Party shall be reimbursed by the other for costs incurred pursuant to this agreement.
- 11) The mutual obligations herein shall constitute full compensation for all services, and neither Party shall be entitled to any reimbursement for assistance hereunder. Neither Party shall have any liability for failure to expend funds to provide aid hereunder. Each Party understands and agrees that both Parties have certified funds under this Agreement, and neither Party shall have a cause of action for money against the other Party under this Agreement irrespective of the nature thereof. The sole remedy for failure to provide aid in accordance with this Agreement or for breach of any provision of this Agreement is termination.
- 12) The Parties agree that at all times while equipment and/or personnel are traveling to, from, or within the geographical limits of the other Party in performance of this Agreement, such equipment and/or personnel shall be deemed to be employed or used, as the case may be, in the full line and cause of duty of the Party which regularly utilizes or employs such equipment or personnel. Further, such personnel shall be deemed to be engaged in a governmental function of their respective City.
- 13) Each party agrees to furnish Emergency Medical Service to each other upon request for assistance from the Fire Chief or his/her designee, City Manager, Emergency Medical

Services Coordinator, County Judge, or other individuals as designated in writing by the respective City.

TERM.

This Agreement shall be in full force and effect until rescinded in writing by either party. This agreement shall be reviewed annually and may be amended or revised from time to time as required and upon mutual agreement of the Parties' Fire Chiefs.

NOTICE.

Unless otherwise provided herein, all notices required or permitted by this Agreement shall be made to the following:

CITY OF NOLANVILLE
Nolanville Fire Department
Chief Robert Cunningham
101 North 5th Street
Nolanville, Texas 76559

CITY OF KILLEEN
Killeen Fire Department
Chief James Kubinski
201 South 28th Street
Killeen, Texas 76541

COMPLIANCE.

Both Parties shall comply with all Federal, State and City statutes, ordinances, and regulations applicable to the performance of the services under this Agreement.

ENTIRE AGREEMENT.

This document embodies the entire agreement and understanding between the Parties hereto, and there are no other agreements, understandings, oral or written, with reference to the subject matter contained herein that are not merged here or superseded by this Agreement.

AMENDMENTS.

No alteration, change, modification, or amendment of the terms of this Agreement shall be valid or effective unless made in writing and signed by both Parties hereto and approved by appropriate action of the governing body of each Party.

WAIVER.

No waiver of performance by either Party shall be construed as, or operate as, a waiver for any subsequent default of any terms, covenants, and conditions of this Agreement.

GOVERNING LAW AND VENUE.

In the event of any action arising under this Agreement, venue shall be in Bell County, Texas or in the United States District Court for the Western District of Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

SEVERABILITY.

If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

TERMINATION/FORCE MAJEURE.

This Agreement may be terminated by either Party for any reason with 30 days advance written notice to the other Party. Neither Party shall be responsible for damages nor expected to fulfill its obligations under this Agreement should an act of God or other unforeseen catastrophe, or other event beyond the control of the Party, occur and cause such damage or prevent the performance of any obligation contained within this Agreement.

EXECUTION.

This Agreement shall be executed by the duly authorized official(s) of each party as expressed in the approving resolution or order of the governing body of such party.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

THE CITY OF NOLANVILLE, TEXAS

THE CITY OF KILLEEN, TEXAS

By: _____
City Manager

By: _____
City Manager

ATTEST:

ATTEST:

City Secretary

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

APPROVED AS TO FORM:

City Attorney's Office

ATTACHMENT 'A'

Fire Apparatus will respond on first alarm structural fire incidents and non-structural fire incidents, if designated, in the stipulated response areas.

Fire/EMS units required in addition to first alarm assignment must be requested in accordance with procedures established in the most recently executed Interlocal Mutual Aid Agreement for Fire Services executed between the Parties, as may be amended from time to time.

Response Areas

A. Killeen will provide the following to Nolanville:

Fire Response

- a. Ladder Truck or Fire Engine and three personnel for confirmed structure fire response when requested and available.
- b. Booster response to assist per the county wide response framework.
- c. Emergency Medical Service response when requested and available.

Water Rescue

- a. One boat and three personnel

B. Nolanville will provide the following to Killeen:

Structure fire and Grass Fire Response

- a. When requested and available, as needed by command, one booster truck or one engine with two personnel will respond to the scene or to a fire station to change quarters until released by command.

Training

Training exercises are to be conducted, at a minimum of four times per year to comply with the Insurance Service Organization (ISO). The training exercises will be coordinated and observed by the respective department training officer or designee, for the purpose of maintaining coordination in firefighting procedures, dispatching and communications. The following topics may be utilized for the establishment of training parameters, when applicable:

1. Apparatus Familiarization
2. Boat operation procedures
3. Coordination of Engine Companies and EMS units
4. EMS procedures

5. Equipment/Minor Tools Carried
6. 5-Inch Hose Program Procedures
7. Incident Command System
8. Communication Procedures

Communications

- Dispatch of an Automatic Aid request will be toned out on the responder's primary radio channel.
- Communications from the Dispatch Center to mobile units and fire ground communications utilizing portable radios will be on the radio Talk group utilized by the Department in whose district the emergency incident occurs.
- Communications procedures and documents will be provided at the initial training session and updated as needed thereafter.
- Upon receipt of an alarm in any of the designated response areas, the dispatch center receiving the alarm will dispatch the proper assignment. Should the agreed upon assistance not be available, the requesting department will be so notified.

Incident Command

The officer on the first arriving company will take command of the incident until relieved by the appropriate authority. Overall command of the incident will be assumed by the jurisdictional department upon arrival at the scene.

Fire Incident Reporting

Each department will be responsible for obtaining needed information to complete fire and emergency medical service reports for incidents within their respective districts. Assisting units shall cooperate with jurisdictional units to provide necessary information.



INTERLOCAL MUTUAL AID
AGREEMENT FOR FIRE
SERVICES WITH NOLANVILLE
FIRE DEPARTMENT

RS-23-152

September 19, 2023

358

Background

2

- Mutual aid agreements supply fire services with additional resources when a single, or multiple, incidents deplete all resources from one entity. The agreements are the legal documents which set, in writing, the conditions under which all entities agree to operate.
- In addition the agreement also outlines joint training, communications, initial dispatch responses, and guidelines for borrowing/lending equipment by either entity.

Impact

3

- The fiscal impact will be minimal but is not measurable.
- This expenditure is recurring and budgeted in the utilization of the 24 hour / 7 day staffed Fire units which are provided for in the annual budget.

Alternatives

4

- Not enter agreement and allow each entity to serve their own community individually.
- Enter into the agreement and work with local cities to deal with large scale events.

Recommendation

5

- Entering into this agreement creates cooperation between the Nolanville and Killeen Fire Departments to help mitigate large scale incidents for each entity.



City of Killeen

Staff Report

File Number: RS-23-153

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution to award RFQ 23-29, Fire Department Mental Health Clinician to A & L Solutions in the amount of \$45,000 annually.

DATE: September 19, 2023

TO: Kent Cagle - City Manager

FROM: Jim Kubinski - Fire Chief

SUBJECT: Fire Department Firefighter Mental Health Services Contract

BACKGROUND AND FINDINGS:

Repeated exposure to traumatic events while on-duty has been proven to have a negative effect on the mental health of firefighters throughout the nation. Firefighters and EMT's are 1.39 times more likely to die by suicide than the public according to a recent study released by the CDC in 2021, with anywhere from 100-200 firefighter suicides reported each year. The issues is being addressed by governments throughout the country in many different ways with some entities considering the suicide of a firefighter as a "line of duty death".

The Killeen Fire Department recognized this issue and implemented a Firefighter Peer Support Team approximately five years ago. Many studies showed that the first line of defense against firefighter suicide was having a peer that could listen to a members' struggles while being guaranteed total confidentiality. Numerous members were trained through the International Association of Firefighters (IAFF) Peer Support Training program. After completing the training, members have the necessary knowledge and skills to provide support to their peers, have a basic understanding of common behavioral health issues affecting the fire service, can serve as a bridge to community resources or behavioral health treatment when indicated, and are able to build or enhance their peer support programs. However, the team has recognized that the peer support program alone is not a complete solution. Many Killeen Fire Department members that have made contact with a peer support team member and needed more assistance resulting in their recommendation to make an appointment with a mental health professional was made by the team member. The use of the city's EAP and health insurance can result in a broken continuum of care and delays in obtaining an appointment that often deterred the individual from seeking additional treatment.

City Council directed the use of American Rescue Plan Act (ARPA) funds for firefighter mental health and wellness initiatives to help combat this increasing problem. The Killeen Fire Department Peer Support Team issued a Request for Qualifications to obtain a trained mental health team that would be available twenty-four hours per day and seven days per week that would allow for immediate

treatment by a trained professional for any Killeen Fire Department member who is struggling from the mental stresses of our profession. A list of qualifications, with items specific to the unique needs of the fire service, was created by the team. Two vendors submitted proposals to the team with one vendor meeting all of the requirements set forth in the RFQ.

ARPA funding will be utilized for the contract through December 31, 2024, which is the deadline for use of ARPA funding received by the City of Killeen. The remaining contract period and extensions will be funded through the Fire Department operating budget.

The term of the agreement is for one (1) year with the option to up to four (4) additional one (1) year periods if both parties agree, in writing, ninety (90) days before the end of the initial term.

THE ALTERNATIVES CONSIDERED:

- Option 1- Disapprove the contract with A & L Solutions and re-issue a RFQ.
- Option 2- Approve the contract with A & L Solutions.

Which alternative is recommended? Why?

Option 2 - Approve the contract with A & L solutions to provide mental health services to Killeen Fire Department personnel and authorize the City Manager or his designee to execute the contract as applicable local ordinances and state law.

CONFORMITY TO CITY POLICY:

This item conforms to all applicable city policies.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

The annual expenditure is \$45,000. Total ARPA funds to be spent is \$56,250 (10/1/2023 through 12/31/2024). The FY 2025 Budget will need to include \$33,750 for 1/1/2025 through 9/30/2025). FY 2026 through FY 2028 will need to include \$45,000 per year. The total 5-year contract amount is \$225,000.

Is this a one-time or recurring expenditure?

Recurring

Is this expenditure budgeted?

Yes, ARPA funds are available in the General Fund Non-Department account 010-9501-491.50-86 for Fire Department Mental Health for the first fifteen months. Future funding will need to be included in future budgets.

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes

RECOMMENDATION:

Staff recommends that the City Council authorize the award of RFQ 23-29, Fire Department Mental Health Clinician to A & L Solutions in the amount of \$45,000 annually to provide mental health services to Killeen Fire Department Fire Fighters and that the City Manager or designee be authorized to execute any change orders as permitted by state and local law.

DEPARTMENTAL CLEARANCES:

Finance
Legal
Purchasing

ATTACHED SUPPORTING DOCUMENTS:

Contract
Evaluation Matrix

Evaluation Matrix

RFQ 23-29 Fire Department Mental Health Clinician

Vendor	Describe	yr Experience	References	Total Score
A&L Solutic	43	40	10	93
TeleHelp 2	25	24	7.33	56.33

CONTRACT FOR MENTAL HEALTH CLINICAL ADVISOR

This Services Agreement (“Agreement”) is entered into by and between the City of Killeen, Texas, a municipal corporation, (“City”) and A&L Solutions, Inc. (“Provider”) for services of a Mental Health Clinical Advisor, specifically services rendered by Alton R. McCallum, Ed.D, M.A., to the Killeen Fire Department (“Department”) collectively the “Parties”.

In consideration of the premises and of the mutual covenants and agreements contained in this Agreement, the Parties hereby agree as follows:

1. Effective date: The Agreement will be effective from the last date signed below (“Effective Date”).

2. Term of Agreement: This Agreement shall commence on the Effective Date and will expire one year from the Effective Date. This Agreement may be terminated, with or without cause, by any Party, in the Party’s sole discretion, upon fifteen (15) days written notice via United States Postal Service, return receipt requested at the address listed below. Provider shall be entitled to all fees earned prior to cancellation. This Agreement may be renewed for up to up to four (4) additional one (1) year renewals terms if both parties agree in writing at least ninety (90) days before the end of the initial term. This Agreement will begin on October 1, 2023.

3. Scope of Agreement. The purpose of this Agreement is to enlist the services of Provider to as a Mental Health Clinical Advisor.

4. Duties as Consideration. The Parties agree that the promised duties are good and valuable consideration to enter into this Agreement.

A. Duties of Provider: City agrees to enlist the service of the Provider to perform services in critical incident stress debriefing intervention within 24-72 hours of incident for individuals and/or groups; create a team to provide holistic support for mental health and well-being of the Department; facilitate training for peers to support each other; provide critical incident stress management assistance to the Department; reserve minimum 4 hours for counseling per week for providing individual therapy, coaching, and chaplaincy services related to workplace trauma, burnout, anxiety, or other line of duty related challenges; and provide training curriculum in support of personnel wellness and other services as requested and agreed by the Parties. Provider will require all caregivers to the Department who lack emergency services background, to complete 48 hours, in 24-hour increments, of direct observation of Department crews in the work environment. Provider will keep all information confidential as required by law. Provider will supply off-site administrative support. Provider will submit proof of licensing and any insurance that must be maintained under Texas law. Provider will immediately inform City in writing if Provider has any issue which would affect the ability to compete these services, including but not limited to, revocation of licensing and lapse of insurance.

B. Duties of Department: will provide internal scheduling; reasonable access to key personnel; on-site administrative support; access to documentation as allowed by law; and facilities for services, upon reasonable advanced notice, if so requested.

5. Compensation: The City agrees to pay Provider for services rendered pursuant to this Agreement. Provider shall invoice City for services rendered each month and the City shall be given at least thirty (30) days to pay the invoice. City shall pay Provider on City’s normal pay schedule. The total annual cost of services provided within is \$45,000. The services listed within are federally funded using federal American Rescue Plan Act (ARPA) grant monies through the end of the year 2024. All provision listed in Appendix A must be followed. Additional years, if agreed upon, will be funded through the City.

6. Indemnification: To the fullest extent permitted by Texas law, City or Provider, as applicable, shall indemnify and hold harmless the other party, and the other party’s officers, directors, partners and employees from and against any and all costs, losses and damages (including, without limitation, all fees and charges of attorneys and other professionals, and all court or dispute resolutions costs) caused by the negligent acts or omissions of the City or Provider, as applicable, or their respective officers, directors, partners, employees and consultants with respect to the performance under this Agreement.

7. Non-Assignment. Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third person without the prior written consent of the other Party. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns and the assigning Party will remain liable for the performance of any assignee.

8. Independent Contractor. Provider shall act as an Independent Contractor. Under no circumstances shall Provider be deemed an employee or partner of Owner.

9. Insurance. Provider shall procure and maintain insurance in the following amounts:

Worker’s Compensation	Statutory
Automobile Liability	\$500,000 Combined single Limit for each accident (Bodily injury and property damage).
General Liability	\$1,000,000 each occurrence (Bodily injury and property damage).
Professional Liability	\$1,000,000 general aggregate.

On all policies, except Worker’s Compensation and Professional Liability, City shall be listed as an additional insured with a full waiver of subrogation. A certificate of coverage shall be provided to the City prior to commencing work.

10. Texas Law. This Agreement shall be subject to and governed by the laws of the State of Texas. The Parties agree that for venue purposes, all lawsuits, disputes, or causes of action shall be in Bell County, Texas.

11. Severability. If any provision of this Agreement shall, for any reason, be held to violate any applicable law, then the invalidity of such a specific provision in this Agreement shall not be held to invalidate the remaining provisions of this Agreement.

12. Survival. Any provision of this Agreement providing for indemnity, insurance or a duty that necessarily will not be completed until after the expiration or termination of this Agreement shall continue in full force and effect until such a time as all duties have been fully performed.

13. Non-waiver. Failure to enforce any provision of this Agreement by either party shall not constitute a waiver of that provision for purposes of the subsequent enforcement of that provision or the remainder of this Agreement.

14. Contract Verification. Texas law provides that a governmental entity may not enter certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. Boycott Israel is defined in Government Code Chapter 808.

Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. Boycott energy company is defined in Government Code Chapter 809.

Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

15. Modification. This Agreement shall not be modified except in a writing duly signed by both Parties.

16. Entire Agreement. This Agreement shall represent the entire agreement by and between the Parties and it may not be changed except by written amendment duly executed by all Parties.

17. Authority to Sign. Each of the persons signing below on behalf of any party hereby represents and warrants that they are signing with full and complete authority to bind the party on whose behalf of whom are signing, to each and every term of this Agreement.

SIGNED, ACCEPTED AND AGREED TO this ____ day, _____, 2023, by the undersigned Parties who acknowledge that they have read and understand this Agreement and that the Agreement is issued in accordance with local, State, and Federal laws, and the undersigned Parties hereby execute this legal document voluntarily and of their own free will.

For A&L SOLUTIONS, INC:

Signature: Alton McCallum Digitally signed by Alton McCallum
Date: 2023.09.06 11:53:36 -05'00'

Name: Alton R. McCallum, Ed.D, M.A.

Title: Founder

Date: 6 Sept 2023

Address: 2609 Twin Ridge Ct.
Belton, Tx. 76513

For KILLEEN FIRE DEPARTMENT:

Signature: _____

Name: Kent Cagle

Title: City Manager

Date: _____

Address: 101 N. College St.
Killeen, Tx. 76541



Fire Department Mental Health Professional Services Contract

RS-23-153

September 19, 2023

371

Background

- City Council directed the use of American Rescue Plan Act (ARPA) funds for firefighter mental health and wellness initiatives to help combat this increasing problem.
- The Killeen Fire Department Peer Support Team issued a Request for Qualifications to obtain a trained mental health team that would:
 - Be available twenty-four hours per day, seven days per week.
 - Allow for immediate treatment by a trained behavioral health professional to any Killeen Fire Department member who is struggling from the mental stresses of our profession.

Background

- A list of qualifications, with items specific to the unique needs of the fire service, was created by the team.
- Two vendors submitted proposals to the team with one vendor meeting all of the requirements set forth in the RFQ.
- ARPA funding will be utilized for the contract through December 31, 2024, which is the deadline for use of ARPA funding received by the City of Killeen. The remaining contract period, and extensions, will be funded through the fire department operating budget.

Impact

- Annual Cost \$45,000
- Total ARPA Funds to be spent: \$56,250
(10/1/2023 through 12/31/2024)
- FY25 Operating Budget \$33,750
- FY26-28 Amount \$45,000/year (\$135,000 total)
- Total 5 Year contract amount: \$225,000

Services Provided

- Provide direct counseling to members of the Killeen Fire Department during times of crisis and in response to traumatic events.
 - 16 Hours Reserved monthly
- Coordinate escalating mental health services requirements and needs.
- Provide clinical oversight to peer support programs.
 - Develop curriculum and training.

Services Provided

- Be available for escalated care following critical incidents and critical incident debriefings.
 - Within 24-72 hours after incident
- Complete 72 hours of ride-along “field intern” training inside an active Killeen Fire Station.
 - Completion date of December 31, 2023
 - 24-hour increments preferred
 - Required for all current and future counselors having contact with KFD personnel.

Impact

- This expenditure is recurring and ARPA funds will be available in the ARPA account 010-9501-491.50-86
- The remaining annual funds will be available in the Professional Services account 010-7070-442.47-99.

Alternatives

4

- Approve the contract with A & L Solutions.
- Disapprove the contract with A & L Solutions and re-issue a RFQ.

Recommendation

- Staff recommends that the City Council authorize the purchase of the A&L Solutions contract to provide mental health services to Killeen Fire Department Fire Fighters and the City Manager or designee be authorized to execute the professional services agreement in the amount of \$225,000 and any change orders as permitted by state and local law.



City of Killeen

Staff Report

File Number: RS-23-154

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution of support for the selection of Railhead Energy Resiliency as the FY 2024 Defense Economic Adjustment Assistance Grant (DEAAG) project.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Kent Cagle, City Manager

SUBJECT: FY 2024 Defense Economic Adjustment Assistance Grant (DEAAG) Project

BACKGROUND AND FINDINGS:

At the September 7, 2023 DEAAG Review Board Meeting, the board selected the Railhead Energy Resiliency which converts one of the six Fort Cavazos’ diesel locomotive switch engines to an electric locomotive switch engine for Fort Cavazos’ Rail Operations Center improving deployment rail operations, reducing operational costs, and providing back-up power for rail operations as the proposed FY 2024 DEAAG project.

This project improves capability by converting Fort Cavazos’ one diesel switch engine to an electric engine with lithium-ion batteries for increased availability while reducing operations cost by 60% and reducing maintenance cost by 40%. The lithium-ion batteries provide 2.4MW of battery storage that will provide emergency back-up power in the event of a power loss at the railhead. This capability would be especially critical during deployment operations to maintain continued flow of equipment and forces while providing a hedge against power loss from extreme weather or adversary attacks on the electrical infrastructure.

Fort Cavazos is home to the Army’s only Armored Corps and 27% of the active-duty armored brigades along with multiple enabling brigades. As a power projection platform, Fort Cavazos must be able to rapidly deploy and mobilize units. Fort Cavazos is one of two Army Mobilization Force Generating Installations that mobilize and deploy all Army Reserve and National Guard units. Since 2002, the installation deployed over 1.2 million Soldiers and averages 5,737 Soldiers deployed monthly. Consequently, Fort Cavazos is #2 in rail traffic volume for Army installations in the US. The selection of this Railhead Energy Resiliency Project will significantly enhance Fort Cavazos’ military value. It improves the installation’s deployment operations through refurbishment of a diesel locomotive to electric power. It improves effectiveness and efficiency by reducing maintenance and operations costs for rail operations. It also improves rail operations resiliency by ensuring continuous operations with a 2.4MW battery storage in the event of power interruptions. Fort Cavazos is one of only two Army installations rated as unique “strategic Power Projection Platforms.”

Fort Cavazos has endorsed moving forward with the Railhead Energy Resiliency Project. The Railhead Resiliency Project has a total cost of \$12.3M (\$7.3M local cost share & \$5M DEAAG). Local Cost Share will be covered by Fort Cavazos for this project. The City of Harker Heights as the Project Sponsor will have in kind costs for the project. All other local communities are asked to submit a resolution of support from each City Council.

THE ALTERNATIVES CONSIDERED:

1. Do not approve a resolution of support for the FY 2024 DEAAG Project - Railhead Energy Resiliency.
2. Approve a resolution of support for the FY 2024 DEAAG Project - Railhead Energy Resiliency.

Which alternative is recommended? Why?

Alternative two is recommended.

CONFORMITY TO CITY POLICY:

This item conforms to state and local law.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

N/A

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

City Staff recommends the approval of a resolution of support for the selection of Railhead Energy Resiliency as the FY 2024 DEAAG Project.

DEPARTMENTAL CLEARANCES:

Legal

ATTACHED SUPPORTING DOCUMENTS:

Resolution of Support

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS SUPPORTING THE PROPOSED FY 2024 DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT (DEAAG) PROJECT – RAILHEAD ENERGY RESILIENCY

WHEREAS, the Defense Economic Adjustment Assistance Grant (DEAAG) Review Board selected Railhead Energy Resiliency which will convert one of the six Fort Cavazos’ diesel locomotive switch engines to an electric locomotive switch engine for Fort Cavazos’ Rail Operations Center improving deployment rail operations, reducing operational costs, and providing back-up power for rail operations as the FY 2024 DEAAG Project and

WHEREAS, Fort Cavazos has endorsed the Railhead Energy Resiliency Project and the City of Harker Heights has committed to be the project sponsor. It is hereby

RESOLVED, that the City of Killeen, acting through its governing body, hereby confirms that it supports the proposed FY 2024 Defense Economic Adjustment Assistance Grant Project Railhead Energy Resiliency and that this formal action has been taken to put on record the opinion expressed by the City of Killeen on September 26, 2023, and

FURTHER RESOLVED that for and on behalf of the Governing Body, the City Council of the City of Killeen, Texas are hereby authorized, empowered, and directed to certify these resolutions to the Texas Military Preparedness Commission.

APPROVED

Debbie Nash King, Mayor

APPROVED AS TO FORM:

Holli Clements, City Attorney

ATTEST:

Laura Calcote, City Secretary



FY 2024 DEFENSE ECONOMIC ADJUSTMENT
ASSISTANCE GRANT (DEAAG) PROJECT –
RAILHEAD ENERGY RESILIENCY

Background Information

- The Defense Economic Adjustment Assistance Grant (DEAAG) Program is an infrastructure grant program designed to assist defense communities by the Texas Military Preparedness Commission (TMPC).
 - Funding is available to local municipalities, counties, defense base development authority, junior college districts and Texas State Technical College campuses, and regional planning commissions representing these communities.
 - Funding can be used for proactive projects that will increase the military value of the installation.
 - Projects can include the purchase of Department of Defense property, new construction or rehabilitation of facilities in support of job creating projects and opportunities.

Railhead Energy Resiliency

3

- On September 7, 2023, the DEAAG Review Board selected the Railhead Energy Resiliency Project as the FY 2024 DEAAG project.
- Fort Cavazos must be able to rapidly deploy and mobilize units. Fort Cavazos is one of two Army Mobilization Force Generating Installations that mobilize and deploy all Army Reserve and National Guard units.
- This project increases military value by improving the installation's deployment operations through refurbishment of a diesel locomotive to electric power for increased availability. It will reduce operations cost by 60% and maintenance cost by 40%.

Railhead Energy Resiliency, cont'd.

4

- Fort Cavazos has endorsed moving forward with the Railhead Energy Resiliency Project.
- The Railhead Resiliency Project has a total cost of \$12.3M (\$7.3M local cost share & \$5M DEAAG). Local Cost Share will be covered by Fort Cavazos for this project. The City of Harker Heights as the Project Sponsor will have in kind costs for the project.
- All other local communities, including the City of Killeen, are asked to submit a resolution of support from each City Council.

Alternatives

5

- Do not approve a resolution of support for the FY 2024 DEAAG Project - Railhead Energy Resiliency.
- Approve a resolution of support for the FY 2024 DEAAG Project - Railhead Energy Resiliency.

Recommendation

6

City Council approve a resolution of support for the selection of Railhead Energy Resiliency as the FY 2024 DEAAG Project.



City of Killeen

Staff Report

File Number: RS-23-147

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution renaming the Killeen-Fort Hood Regional Airport.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Mike Wilson, Executive Director of Aviation

SUBJECT: Consider Renaming the Killeen-Fort Hood Regional Airport

BACKGROUND AND FINDINGS:

On May 9, 2023, the name of Fort Hood transitioned to Fort Cavazos. Ahead of this change, the Aviation Department collaborated closely with our consultant, Airport Strategies and Marketing (ASM), to craft a comprehensive rebranding plan for the Killeen-Fort Hood Regional Airport. This strategy also encompasses suggestions for a new airport name.

The initial phase of the four-phase initiative commenced with an inaugural meeting between the consultant and our team. The objective was to outline the methodology and set the program's ambitions. Subsequently, preliminary market research was conducted, which involved analyzing passenger feedback from various online platforms and social media channels. This was completed to gauge the public's perception and sentiment concerning the Airport. Furthermore, we distributed surveys to key airport stakeholders to acquire feedback about their perceptions and views on the GRK airport experience. On-site intercept surveys were also administered to passengers at the Airport.

A focus group was subsequently established, comprising delegates from local Chambers of Commerce, educational institutions, healthcare facilities, and Fort Cavazos. The inaugural session of this focus group took place on July 19, 2023. During this gathering, City staff presented the findings from the research and surveys. The members deliberated extensively on the data and were encouraged to submit written feedback post-discussion. On August 31, 2023, a subsequent focus group session took place. Here, members evaluated the collected feedback and studied a preliminary Brand Strategy crafted from their input. Based on the survey outcomes, and deliberations within the focus group, two potential names for the Killeen-Fort Hood Regional Airport were recommended for consideration.

1. Greater Killeen Regional Airport
2. Killeen Regional Airport

The final recommendation of the focus group is to change the name of the Killeen-Fort Hood Regional Airport to Greater Killeen Regional Airport.

If the City Council votes to change the name of the Airport, staff will submit a letter to the Federal Aviation Administration (FAA) requesting the change.

THE ALTERNATIVES CONSIDERED:

1. Do not change the name.
2. Select the name recommended by the focus group.
3. Select another name.

Which alternative is recommended? Why?

Alternative 2 is recommended because:

Based on the results of the surveys and deliberations within the focus group, Alternative 2 reflects the recommendations of the community and represents the preliminary brand strategy.

CONFORMITY TO CITY POLICY:

This item conforms to local and state policies.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

There will be no expenditure resulting from Alternative 2 in the current fiscal year. There will be costs in future years associated with the replacement of signage at the airport because of the name change. However, the exact cost for the replacement is unknown as it is dependent on the name chosen and the current costs at the time the change becomes effective.

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

Staff recommends City Council change the name of Killeen-Fort Hood Regional Airport to Greater Killeen Regional Airport as recommended by the focus group.

DEPARTMENTAL CLEARANCES:

Legal

ATTACHED SUPPORTING DOCUMENTS:

N/A



Travel made
EASY!

Rebrand Program



Killeen City Council
Resolution/Airport Renaming

September 2023



Rebrand Program: 4 Phase Process

1

RESEARCH
STRATEGY

2

DESIGN
ELEMENTS

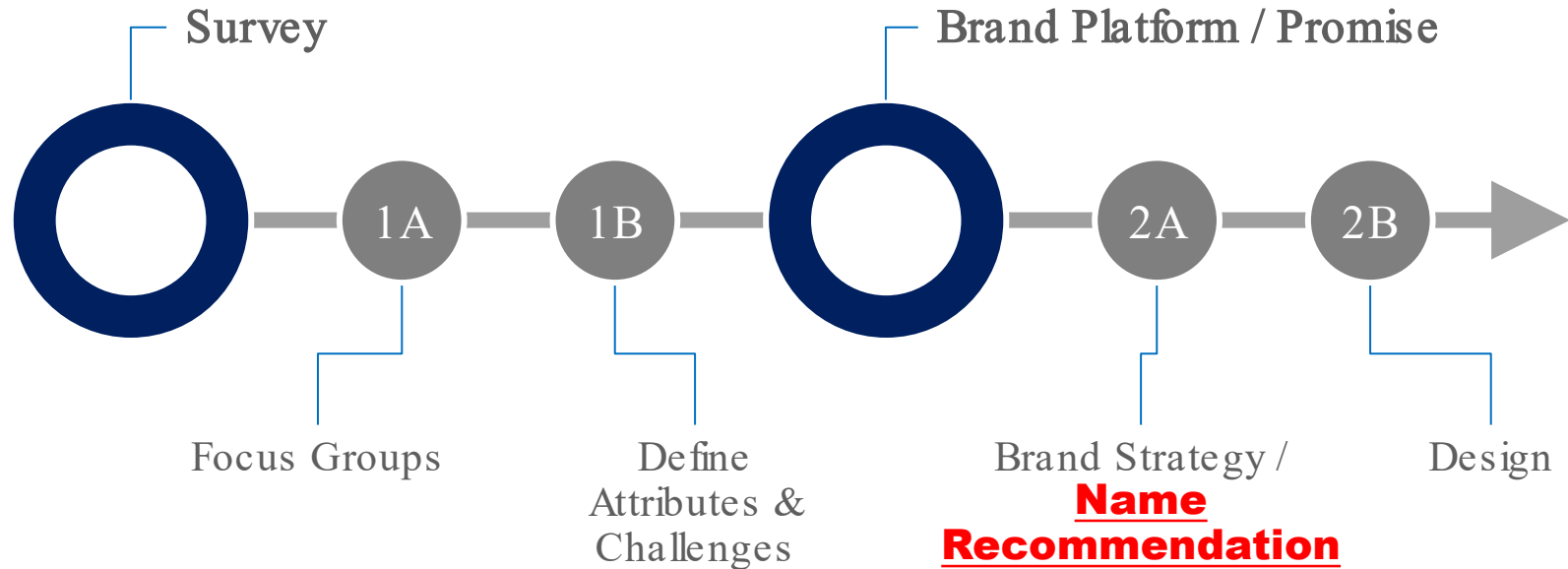
3

BRAND
IMPLEMENTATION

4

BRAND
LAUNCH

PHASE 1 – Task Outline



PHASE 1 – RESEARCH



SOFT MARKET RESEARCH



(41) PASSENGER INTERCEPT



(81) STAKEHOLDER SURVEY



(2) FOCUS GROUP SESSIONS

Passenger intercept surveys



Collection period: JUNE - AUG 2023



Total Surveys collected: 41



Visitors - 28%



Local – 72%



Stakeholder insight surveys



Collection period: JUNE – AUG 2023



Total Surveys collected: 81



SURVEY insights

Like

- Close and Convenient
- Easy parking
- Friendly staff
- Drive – easy access
- Clean facilities
- Simple process

Dislike

- Staffing shortages
- Flight connections
- Cancelled / delayed flights
- Airline and flight options limited
- Inconsistent customer service
- Expensive fares

ATTRIBUTES

Fort Cavazos
Close to Home
Short flights to hubs
Easy Connections
Cheap Parking
Close-In Parking
Competitive fares / cost effective
Short Drive Time
Small Terminal
Shorter lines
Convenience
Comfort
Customer Service/Ambassadors
Save time
Quick TSA processing
Growing community

CHALLENGES

Limited Air Carrier options
Limited schedule
(Perceived) unreliable service
Hub Connection required to get to most destinations
(Perceived) expensive fares
Limited concessions
Image/customer service
Website
No clear identity established
Military Airport only?
GSA reliance
Larger airports nearby
Improved ground access to AUS
Expanded air service at AUS

CORE VALUES

User-Friendly

- Small terminal
- Close in parking
- Short drive time
- Short security lines
- Friendly staff
- Clean facility

Cost Effective

- Save time=money
- Save on fuel
- Save on parking fees
- Save on hotel fees

Flyer-Friendly

- Easy access to major hubs
- 1 major air carrier
- One stop Global access

Positioned to Serve

- Growing economic hub
- Fort Cavazos
- Central Texas

PROPOSED NAMES:

FOCUS GROUP RECOMMENDATION

1

Greater Killeen
Regional Airport

2

Killeen Regional
Airport

ALTERNATIVES:

THE ALTERNATIVES CONSIDERED:

1. Do not change the name
2. Select the name recommended by the focus group
3. Select another name

Which alternative is recommended? Why?

Alternative 2 is recommended because:

Based on the results of the surveys and deliberations within the focus group, Alternative 2 reflects the recommendations of the community and represents the preliminary brand strategy.

RECOMMENDATION:

Staff recommends City Council change the name of Killeen-Fort Hood Regional Airport to Greater Killeen Regional Airport as recommended by the focus group.



City of Killeen

Staff Report

File Number: RS-23-155

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution approving a fireworks display application from Big Dog Pyro, LLC on behalf of Advent Health Medical Center.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Kent Cagle, City Manager

SUBJECT: Fireworks Display Application

BACKGROUND AND FINDINGS:

Section 11-6 of the Killeen Code of Ordinances provides that the City Council may permit the use of fireworks for public display. The ordinance requires an applicant to provide the following information: name of person/group sponsoring the display; evidence of financial responsibility naming the City as an additional insured; date and time of the display; confirmation of a permit from the State of Texas; the approximate number and kinds of fireworks to be discharged; the manner and place of storage; and a detailed diagram of the area of this display.

On September 1, 2023 the City Manager’s Office and the Fire Marshal received an application from Big Dog Pyro, LLC on behalf of Advent Health Medical Center for a public fireworks display on September 28, 2023 from 8:00 - 8:15 pm. The proposed location for firework setup is at Advent Health Medical Center, 2201 South Clear Creek Road. The public fireworks display will be held in conjunction with the Advent Health Breast Cancer Awareness Event.

Big Dog Pyro, LLC has provided the required information outlined in the ordinance except for a State of Texas permit for the display. The application for the state requires the approval of the local fire authority before issuance. The applicant indicated the number and size of fireworks to be discharged and that they will be transported on the day of event and under constant supervision of licensed pyrotechnicians. A diagram was also provided. Number & Size of Shells to be discharged: 32 1.4 gram firework cakes no greater than 2 inches in diameter.

The Killeen Fire Marshal and other staff have reviewed the application for compliance with fire codes.

THE ALTERNATIVES CONSIDERED:

1. Deny the fireworks display application.

2. Approve the fireworks display application with specific stipulations
3. Approve the fireworks application as submitted

Which alternative is recommended? Why?

At this time staff is not recommending any action due to weather and drought conditions. Staff plans to reinspect the site and conditions on Monday, September 25, 2023 and will provide a recommendation at the Tuesday, September 26, 2023 City Council Meeting.

CONFORMITY TO CITY POLICY:

This action confirms to city ordinances and policies.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

There is no expenditure associated with the approval or denial of a public display of fireworks application.

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

At this time staff is not recommending any action due to weather and drought conditions. Staff plans to reinspect the site and conditions on Monday, September 25, 2023 and will provide a recommendation on Tuesday, September 26, 2023.

DEPARTMENTAL CLEARANCES:

Fire Department
Police Department
Legal

ATTACHED SUPPORTING DOCUMENTS:

Application
Certificate of Insurance
Site Map
Material Safety Data Sheets
Licenses
Pyrotechnic Plan



CITY OF KILLEEN
APPLICATION FOR FIREWORKS PUBLIC DISPLAY PERMIT

Name of Applicant: AdventHealth Central Texas

Address: 2201 S. Clear Creek Rd, Killeen, TX 76549

Telephone: 254-519-8314 Secondary #: _____

Applicant doing business as: () Individual, () Partnership, (X) Corporation

DATE OF DISPLAY: September 28, 2023, Time: 8 PM to 8:50 PM

Location of Display (attach site plan): 2201 S. Clear Creek Rd, Killeen, TX 76549

Pyrotechnic operator licensed in Texas who will supervise the display:

Name: Joslyn Killey, License #: 550# 2299244 Exp. 5-16-24

Size and Number of Fireworks to be discharged: Up to 32 cakes with shell sizes no greater than 2" in diameter. We will only be using 1.4g firework cakes

Manner and place of storage of fireworks prior to and during the display: Firework will be transported day of the event and under constant supervision of licensed pyrotechnicians.

Manufacturer of distributor licensed in Texas who is to supply the fireworks:

Name: Big Dog Pyro LLC, License #: FWD-2852659

Texas public Display permit number: _____

In applying for a fireworks public display permit, I certify that I am familiar with and will comply with Section 11-6 of the Killeen Code of Ordinances, Article 5.43-4 of the Texas Insurance Code, Chapter 591, of Title 27 of the Texas Administrative Code and NFPA 1123. I hereby authorize the Fire Marshall to enter, examine, and inspect any premises, building, room or establishment used in connection with the permit for which I am applying to determine compliance with the above provisions.

I understand that I must complete this application and return it to the City Manager's Office at least twenty-one (21) days in advance along with a diagram of the grounds on which the outdoor fireworks display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways and other lines of communication, the lines behind which the audience will be restrained, and the location of other possible overhead obstructions.

Debi Hamilton
Applicant's Signature

8-31-2023
Date

Debi Hamilton
Printed Name

Certificate of Insurance

37336

Issue Date: 8/29/2023

PRODUCER
 Professional Program Insurance Brokerage
 Division of SPG Insurance Solutions LLC
 1304 Southpoint Blvd., Suite 101
 Petaluma, CA 94954

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
 Big Dog Pyro, LLC
 2028 E. Ben White Blvd Ste 240, Box 29825
 Austin, TX 78741

INSURER A: Certain Underwriter's at Lloyd's, London - AA-1128623

INSURER B:

INSURER C:

INSURER D:

COVERAGES:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE NAMED INSURED ABOVE FOR THE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (DD/MM/YY)	POLICY EXPIRATION DATE (DD/MM/YY)	LIMITS	
A	GENERAL LIABILITY CLAIMS MADE	PY/23-0037	4/11/2023	4/11/2024	EACH ACCIDENT	\$5,000,000
					MEDICAL EXP (any one person)	
					FIRE LEGAL LIABILITY	\$50,000
					GENERAL AGGREGATE	\$5,000,000
					PRODUCTS-COMP/ OPS AGG	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Certificate holder is additional insured as respects the following:

Date(s) of Display:	9/28/2023, 9/29/2023
Location:	AdventHealth Medical Center 2201 S Clear Creek Rd. Killeen, TX 76549
Additional Insured:	AdventHealth Medical Center, 2201 S Clear Creek Rd. Killeen, TX 76549, The City of Killeen Texas, Bell County This policy includes a 90 day extension for filing claims after the expiration of the policy
Rain Date(s):	
Type of Display:	Aerial/SPFX Fireworks Display

CERTIFICATE HOLDER
 AdventHealth Medical Center
 2201 S Clear Creek Rd.
 Killeen, TX 76549

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

Susan Etter
 AUTHORIZED REPRESENTATIVE

BIG DOG PYRO

SITE MAP

3 MINUTE FIREWORKS DISPLAY
ADVENT HEALTH CENTRAL TEXAS
2201 S CLEAR CREEK RD, KILLEEN, TX

SITE MAP KEY

Show Duration: 3 Minutes

Product: 1.4G fireworks up to 2" in shell size.

X Firing Site: Firing location, point of assembly for aerial fireworks display utilizing shell sizes up to 2 inches.

○ Fallout Zone: Safety radius of 140 feet from the Firing Site. Fallout zone to be secured and monitored by Big Dog Pyro personnel who will be the only ones permitted in this area.

- - - Safety Perimeter: or line behind which the audience and all vehicles shall be restricted.

AUDIENCE

AdventHealth Central Texas



Material Safety Data Sheet

May be used to comply with
OSHA's Hazard Communication Standard,
29 CFR 1910.1200. Standard must be
consulted for specific requirements.

U.S. Department of Labor

Occupational Safety and Health Administration
(Non-Mandatory Form)
Form Approved
OMB No. 1218-0072

IDENTITY Consumer Fireworks, 1.4G

Note: Blank spaces are not permitted. If any item is not applicable, or no information is available, the space must be marked to indicate that.

Section I

Name Spirit of '76 Fireworks	Emergency Telephone Number 1-800-535-5053 (INFOTRAC) (100581)
Address (Number Street) 6401 West Highway 40	Telephone Number for Information (573) 447-1776
Address (City, State, ZIP) Columbia, MO 65202	Date Prepared 01-23-09
Signature of Preparer (optional)	

Section II – Hazardous Ingredients/Identity Information

Hazardous Components (Specific Chemical Identity: Common Name(s))	OSHA PEL	ACGIH TLV	Other Limits Recommended	% (optional)
1.4G UN0336, PGII				.25 of gross weight

Contains pyrotechnic composition - a solid mixture of oxidizer and fuel that will burn if ignited. These items are classified as 1.4G explosive by DOT.

No chemical composition is exposed during normal handling and storage.

Section III – Physical/Chemical Characteristics

Boiling Point	n/a	Specific Gravity (H ₂ O = 1)	n/a
Vapor Pressure (mm Hg)	n/a	Melting Point	n/a
Vapor Density (AIR = 1)	n/a	Evaporation Rate (Butyl Acetate = 1)	n/a

Solubility in Water Slight

Appearance and Odor All pyrotechnic composition is contained in a cardboard casing.

Section IV – Fire and Explosion Hazard Data

Flash Point (Method Used) n/a	Flammable Limits n/a	LEL n/a	UEL n/a
-------------------------------	----------------------	---------	---------

Extinguishing Media Flood with water if a small amount of fireworks is involved.

Special Fire Fighting Procedures Do not use suffocation methods - devices contain their own oxygen. If a large amount of fireworks are involved, allow them to burn and prevent spread of fire.

Unusual Fire and Explosion Hazards Fireworks will burn rapidly in the event of fire.

(Reproduce Locally)

OSHA 174 Sept. 1985

Section V – Reactivity Data

Stability	Unstable	<input type="checkbox"/>	Conditions to Avoid Open flames, smoking.
	Stable	<input checked="" type="checkbox"/>	
Incompatibility (Materials to Avoid) Exposure to water may cause items to deteriorate.			
Hazardous Decomposition or Byproducts Smoke, nitrogen oxides, and sulfur oxides may be produced in a fire.			
Hazardous Polymerization	May Occur	<input type="checkbox"/>	Conditions to Avoid
	Will Not Occur	<input checked="" type="checkbox"/>	

Section VI – Health Hazard Data

Route(s) of Entry:	Inhalation? <input type="checkbox"/>	Skin? <input type="checkbox"/>	Ingestion? <input type="checkbox"/>
Health Hazards (Acute and Chronic) Exposure to finished items does not pose any health hazard.			
Carcinogenicity: No	NTP? No	IARC Monographs? No	OSHA Regulated? No
Signs and Symptoms of Exposure n/a			
Medical Conditions Generally n/a Aggravated by Exposure			
Emergency and First Aid Procedures n/a			

Section VII – Precautions for Safe Handling and Use

Steps to Be Taken in Case Material is Released or Spilled No smoking or open flames in vicinity of spilled material. Carefully pick up and place spilled items in cardboard cartons. Sweep up any exposed chemical composition with a natural fiber brush.
Waste Disposal Method In accordance with local, state, and federal regulations.
Precautions to Be Taken in Handling and Storing Avoid open flames, smoking, and high temperatures (above 120°F). Keep shipping cartons cool and dry.
Other Precautions None

Section VIII – Control Measures

Respiratory Protection (Safety Type) None required when handling finished items.		
Ventilation	Local Exhaust n/a	Special n/a
	Mechanical (General) n/a	Other n/a
Protective Gloves None required	Eye Protection n/a	
Other Protective Clothing or Equipment n/a		
Work/Hygienic Practices No smoking in vicinity of fireworks.		



MATERIAL SAFETY DATA SHEET

SECTION I - PRODUCT IDENTIFICATION

Product Name: PRO-STAGE II STAGE GERBS – 15' & 20'
Product Use: Pyrotechnic for technical use
WHMIS/OSHA Class: Not controlled
T.D.G./DOT Classification: 1.4G, UN0431 (EX2004080158)
Manufacturer/Supplier: Le Maitre Ltd
Address: Fourth Drove, Peterborough
 Cambs, PE1 5UR, England
Telephone: USA (512) 451-4392
Emergency Phone Number: CHEM-TEL USA (800) 255-3924

SECTION II - INGREDIENTS

<u>Ingredients</u>	<u>CAS#</u>	<u>ACGIH-TLV</u>	<u>LC₅₀</u>	<u>LD₅₀</u>
Meal A (explosive, blackpowder)		n/k	n/k	n/k
Potassium nitrate (oxidiser)	7757-79-1	n/k	n/k	n/k
Charcoal (fuel)	16291-96-6	n/k	n/k	n/k
Sulfur (fuel)	7704-34-9	n/k	n/k	n/k
Titanium (fuel)	7440-32-6	n/k	n/k	n/k

SECTION III - PHYSICAL DATA

Boiling Point (deg C): Not available
Vapour Pressure (mmHg @ 20°C): Not available
Vapour Density (Air = 1): Not available
Solubility in Water: Nitrate soluble
Physical State: Solid
Appearance and Odour: Compacted black powder within
 A rolled paper case, odourless
Specific Gravity (H₂O = 1): Not available
% Volatile (Wt %): Not available
Evaporation Rate (Water = 1): Not available
pH: Not known
Viscosity: Not available
Odour Threshold (ppm): Not available

SECTION IV - FIRE AND EXPLOSION DATA

Flammability: Flammable.
Flash Point (deg C, TCC): Not available **LEL:** Not available **UEL:** Not available
Hazardous Combustion Products: Not available
Auto ignition Temperature (deg C): Not available.
Means of Extinction: Fight fire with water.
Special Fire Hazards: Localised effect. Hazardous effects normally confined to the package unless the package has been degraded by fire, in which case not such that fire fighting is hindered.

=====
SECTION V - REACTIVITY DATA
=====

Conditions for Chemical Instability: Excessive humidity.
Incompatible Materials: Acids.
Reactivity, and Under What Conditions: Not available
Hazardous Decomposition Products: Not available

=====
SECTION VI - TOXICOLOGICAL PROPERTIES
=====

Route of Entry: Eye, inhalation.
EFFECTS OF EXPOSURE FROM FIRING:
Eye: May cause irritation.
Inhalation: May cause respiratory irritation, difficulty in breathing, headaches, nausea and vomiting.
Irritancy: Non-hazardous.
Respiratory Tract Sensitization: No data available.
Carcinogenicity: No data available.
Teratogenicity, Reproductive Effects: No data available.
Mutagenicity: No data available.
Synergistic Materials: Not available.

=====
SECTION VII- PREVENTATIVE MEASURES
=====

Gloves: Cotton or leather recommended.
Eye Protection: Safety glasses recommended.
Respiratory Protection: (If used in enclosed place with no ventilation) full-face respirator.
Other Protective Equipment: As required by employer code.
Engineering Controls: General ventilation normally adequate.
Leak and Spill Procedure: No smoking. No naked flames. Sweep or pick up articles. Swill down spillage area with water.
Waste Disposal: Pierce cap whilst holding underwater. Shake to allow water entry. Leave outside for 48 hours away from ignition sources. Review federal, provincial and local government requirements prior to disposal.
Storage and Handling Requirements: Store in cool, dry conditions. Keep area clean and employ good working practices.

=====
SECTION VIII - FIRST AID
=====

Eye: Immediately flush with water. Remove contact lenses, if applicable, and continue flushing for 15 minutes. Obtain medical attention if irritation develops.
Skin: Not a normal route of harmful exposure. Flush with water. Wash thoroughly with soap and water. Obtain medical attention if irritation develops.
Inhalation: Not a normal route of harmful exposure. If symptoms develop, move victim to fresh air. If symptoms persist, obtain medical attention.
Ingestion: Do not induce vomiting. Rinse mouth with water, then drink one glass of water. Obtain medical attention. Never give anything by mouth if victim is unconscious, is rapidly losing consciousness or is convulsing.

=====
SECTION IX - PREPARATION INFORMATION
=====

Date: 16th July 2009 **MSDS Prepared by:** Le Maitre Ltd
Telephone: UK +44 (0) 1733 346824 Updated version at www.lemaitreusa.com

Disclaimer Information for this material safety data sheet was obtained from sources considered technically accurate and reliable. While every effort has been made to ensure full disclosure of product hazards, in some cases data is not available and is so stated. No warranty, expressed or implied, is made and supplier will not be liable for any losses, injuries or consequential damages which may result from the use of or reliance on any information contained in this form. May be used to comply with OSHA's Hazard Communication Standard 29 CFR 1910.1200.

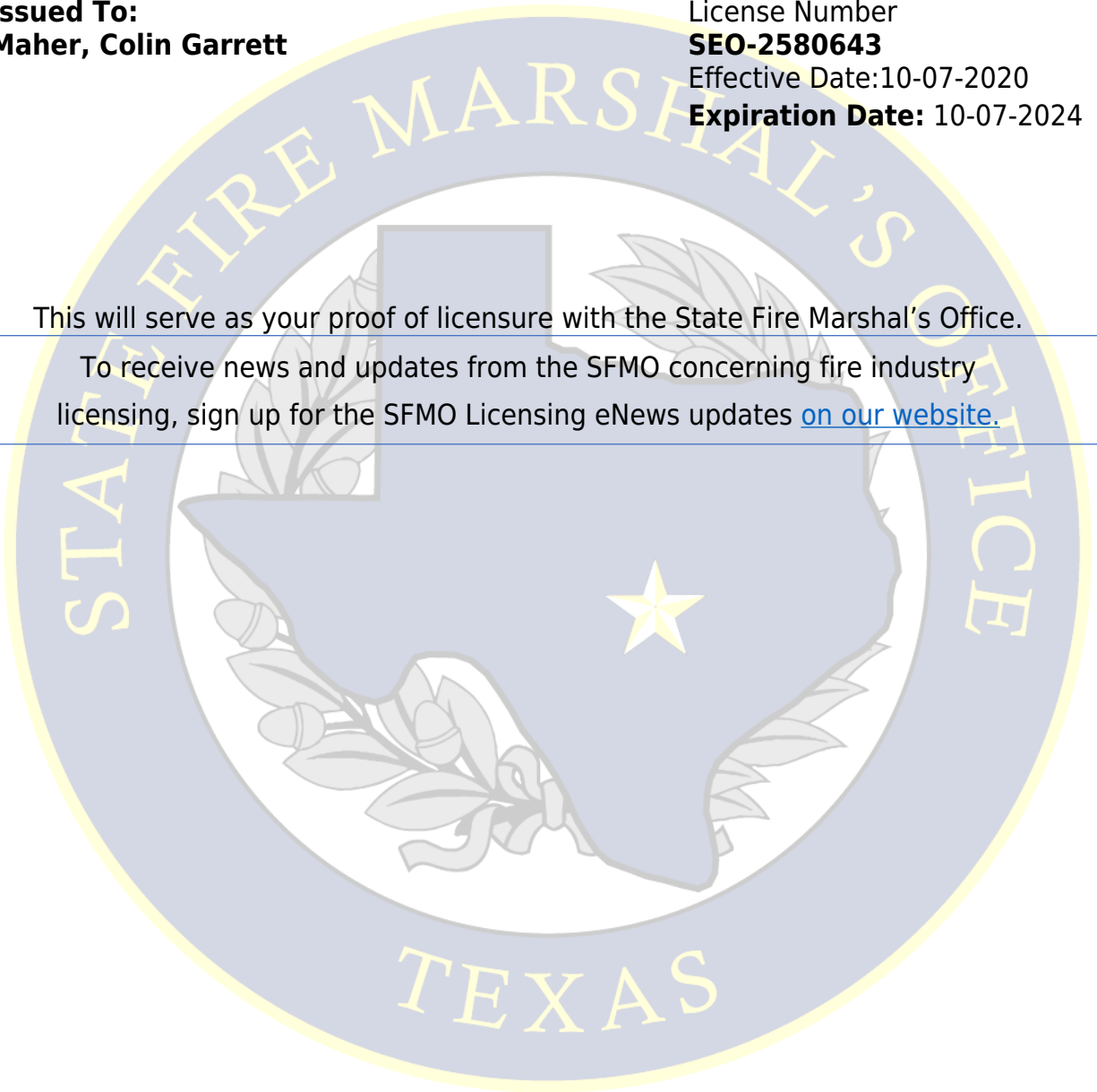
**FIREWORKS SPECIAL EFFECTS OPERATOR'S LICENSE
TEXAS DEPARTMENT OF INSURANCE
STATE FIRE MARSHAL'S OFFICE**

**Issued To:
Maher, Colin Garrett**

License Number
SEO-2580643
Effective Date:10-07-2020
Expiration Date: 10-07-2024

This will serve as your proof of licensure with the State Fire Marshal's Office.

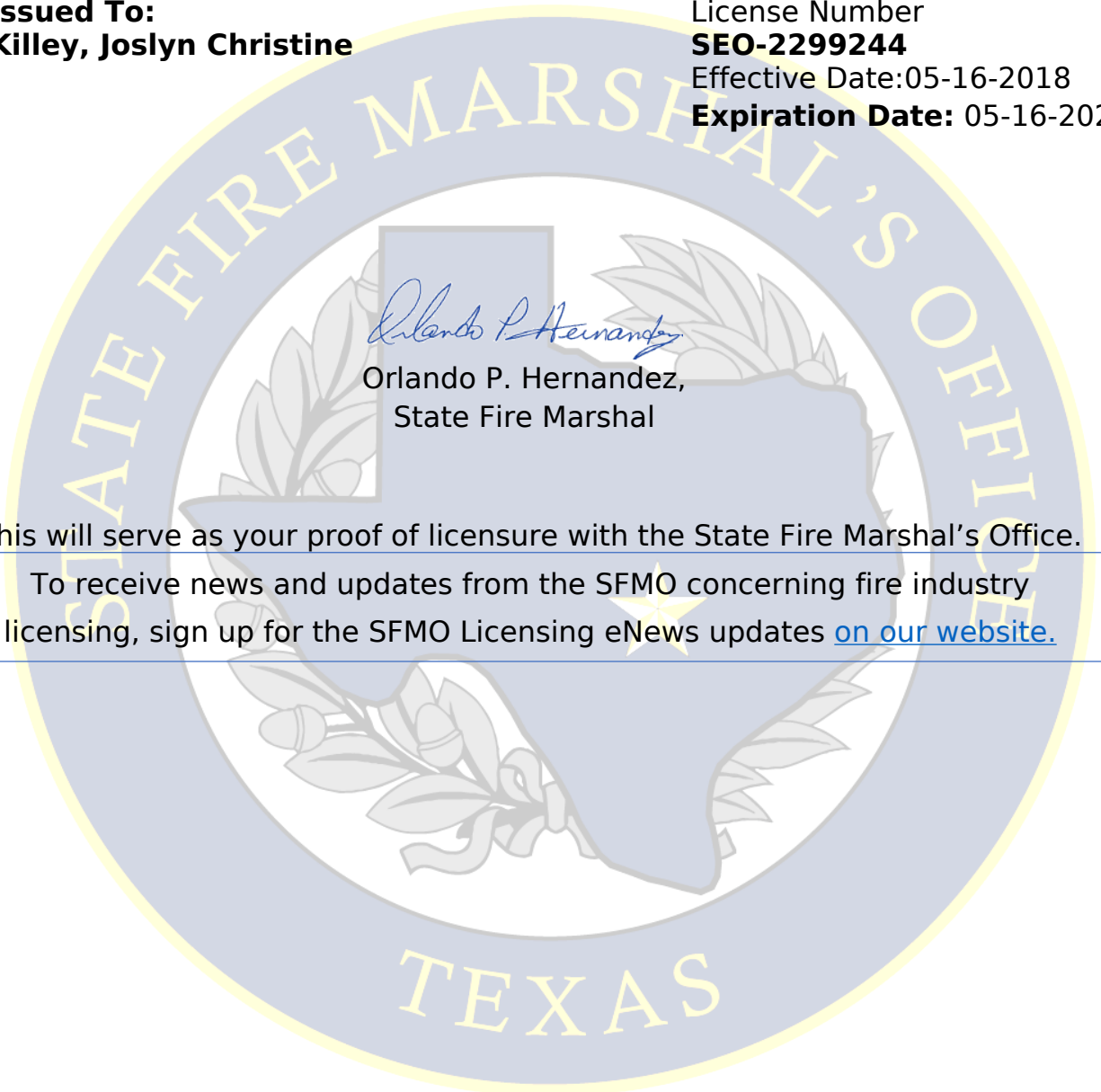
To receive news and updates from the SFMO concerning fire industry licensing, sign up for the SFMO Licensing eNews updates [on our website.](#)



**FIREWORKS SPECIAL EFFECTS OPERATOR'S LICENSE
TEXAS DEPARTMENT OF INSURANCE
STATE FIRE MARSHAL'S OFFICE**

**Issued To:
Killey, Joslyn Christine**

License Number
SEO-2299244
Effective Date:05-16-2018
Expiration Date: 05-16-2024



Orlando P. Hernandez
Orlando P. Hernandez,
State Fire Marshal

This will serve as your proof of licensure with the State Fire Marshal's Office.

To receive news and updates from the SFMO concerning fire industry licensing, sign up for the SFMO Licensing eNews updates [on our website.](#)

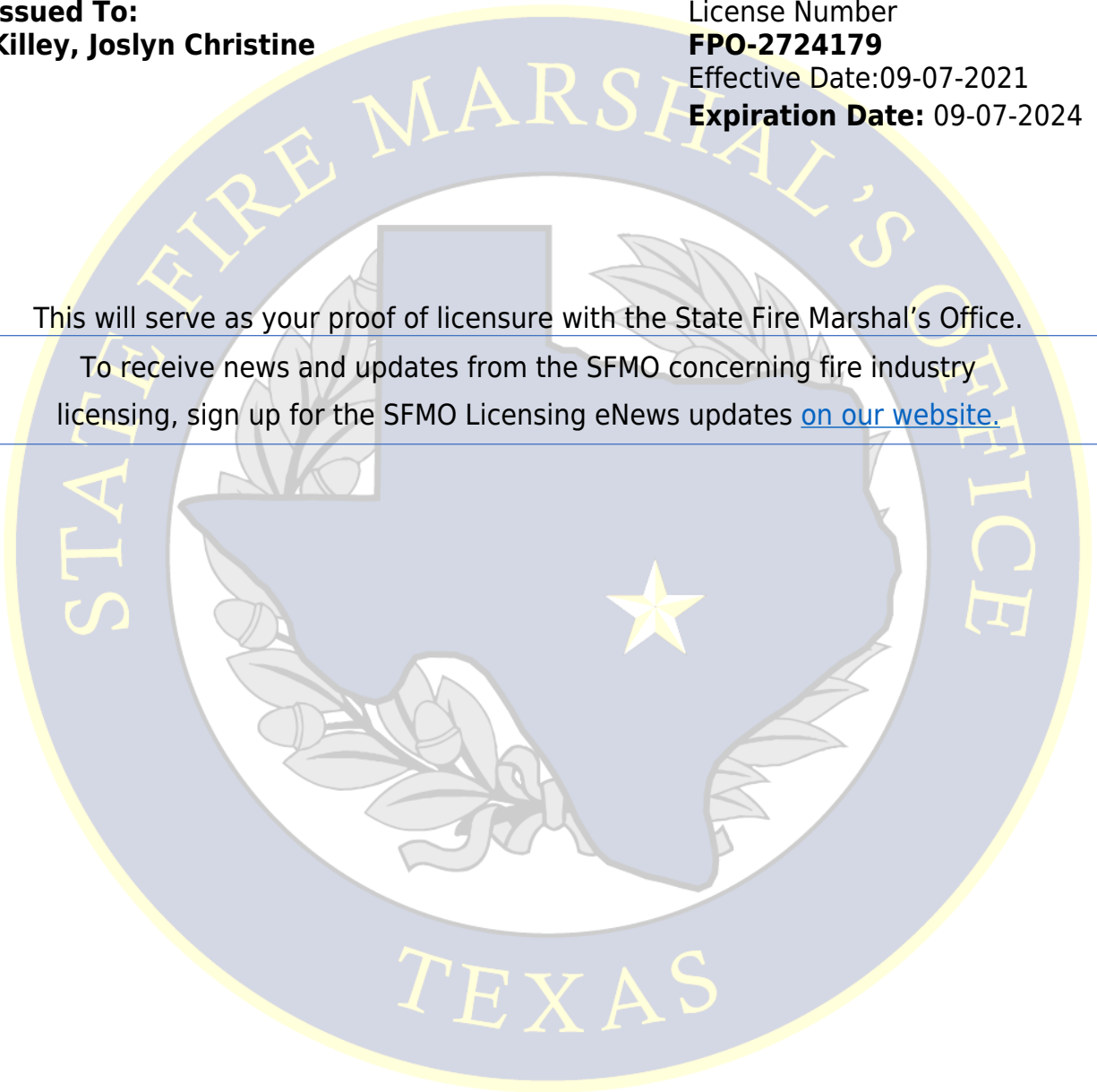
**FIREWORKS PYROTECHNIC OPERATOR'S LICENSE
TEXAS DEPARTMENT OF INSURANCE
STATE FIRE MARSHAL'S OFFICE**

**Issued To:
Killey, Joslyn Christine**

License Number
FPO-2724179
Effective Date:09-07-2021
Expiration Date: 09-07-2024

This will serve as your proof of licensure with the State Fire Marshal's Office.

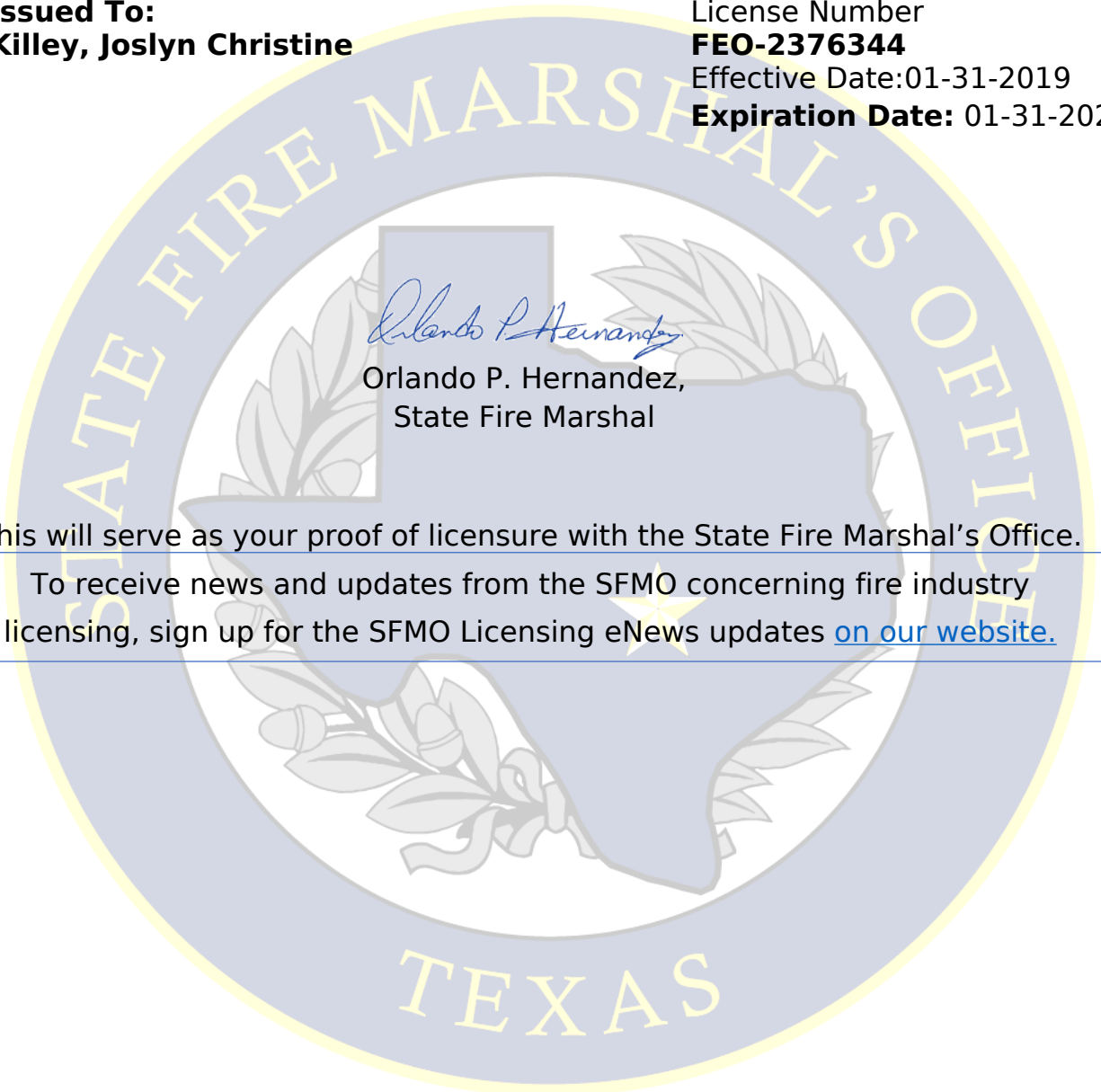
To receive news and updates from the SFMO concerning fire industry licensing, sign up for the SFMO Licensing eNews updates [on our website.](#)



**FIREWORKS FLAME EFFECTS OPERATOR'S LICENSE
TEXAS DEPARTMENT OF INSURANCE
STATE FIRE MARSHAL'S OFFICE**

**Issued To:
Killey, Joslyn Christine**

License Number
FEO-2376344
Effective Date:01-31-2019
Expiration Date: 01-31-2024



Orlando P. Hernandez
Orlando P. Hernandez,
State Fire Marshal

This will serve as your proof of licensure with the State Fire Marshal's Office.

To receive news and updates from the SFMO concerning fire industry licensing, sign up for the SFMO Licensing eNews updates [on our website.](#)

Use of Pyrotechnics Before A Proximate Audience - Pyrotechnic Plan

Location of Display: AdventHealth Medical Center-2201 S Clear Creek Rd., Killeen, TX 76549

Date: Thursday, September 28, 2023

Time: Approximately 8:00pm to 8:15 pm

Licensed Pyrotechnic Operators

Joslyn Killey-TX.SEO#2299244 Expires 5-16-2024, TX.FPO#2724179 Expires 9-7-2024

Colin Maher, TX SEO#2580643 Expires 10-7-2023, TX FEO#2635484 Expires 2-26-2023

We will have additional Pyro/SPFX technicians on-site to meet the needs of this event.

Lead Pyrotechnician On The Job Contact Info:

Joslyn Killey

(512) 563-6070

Description of Event: A 3 minute 1.4g fireworks display and an outdoor 20 second cold spark gerb display.

Insurance

Big Dog Pyro, LLC is insured with a commercial general liability policy aggregating to \$5 million.

We have named the appropriate parties as additional insureds.

(See attached insurance certificate)

Site Map

We have provided a diagram of the grounds where the production is to be held. The diagram shows the point at which fireworks are to be fired, the fallout zone (safety radius) and the lines behind which the audience shall be restrained.

Number and Type of Devices To Be Used

Aerial Fireworks Display

- Up to 32 firework cakes with shell sizes no greater than 2" in diameter. We will be using only 1.4g firework cakes.
- The show will be electronically fired.
- The duration of this display will be approximately 3 minutes.

Number and Type of Devices To Be Used

- 20 close-proximity Gerb devices (sparkling fountains) will be fired simultaneously.
- Each Gerb device will fire up to 20 seconds.
- Each Gerb device will have a maximum firing height of 20 feet.
- Each Gerb device has no fallout, no debris, and creates “cold sparks”
- All devices will be positioned at or beyond 15ft from the audience.

Material Safety Data Sheets (MSDS) for the pyrotechnic materials to be used have been attached. (See attached MSDS)

Safety

Only as much active material will be on site as is needed to meet the needs of this event. The pyrotechnics will be secured when not in use, under the full time supervision of a licensed pyrotechnician. We certify that the location, set, scenery, rigging materials, equipment, and all materials worn by crew in the fallout area during the use of pyrotechnic effects are inherently flame-retardant or will be treated to achieve flame retardancy.

We will have multiple fire extinguishers, fire suppression equipment, and a designated fire watch on-site at all times. Our pyrotechnic plans have been designed with safety distances that meet or exceed NFPA 1123 and 1126 standards.

We will be happy to provide a walk-through and/or a representative demonstration of the pyrotechnics at your convenience.

Thank you!

Carolina Moody Bear

Big Dog Pyro LLC | Owner

office: (512) 710-7976 cell: (512) 363-6388

Carolina@bigdogpyro.com



ADVENT HEALTH FIREWORKS DISPLAY

RS-23-155

September 19, 2023

421

Background Information

- ❑ Section 11-6 of the Killeen Code of Ordinances provides that the City Council may permit use of fireworks for public display
- ❑ Application Requirements
 - ❑ name of person/group sponsoring the display
 - ❑ evidence of financial responsibility naming the City as an additional insured
 - ❑ date and time of the display
 - ❑ confirmation of a permit from the State of Texas
 - ❑ the approximate number and kinds of fireworks to be discharged
 - ❑ the manner and place of storage
 - ❑ a detailed diagram of the area of this display

Background Information

- Big Dog Pyro, LLC submitted an application for a fireworks display on behalf of Advent Health Medical Center on September 1, 2023
 - ▣ Breast Cancer Awareness Event
 - ▣ September 28, 2023 8:00 – 8:15 pm
 - ▣ Advent Health Medical Center
 - ▣ Licensing, insurance, site plan, storage and type of fireworks provided
- Fire Marshal has reviewed the application
 - ▣ Submitted documentation is approved
 - ▣ Fire Department approval contingent on improvement of weather conditions
 - Fire Chief will reserve right to cancel display of appropriate amount of ran not received prior to the date of the event
 - Fire Department will reinspect site and conditions on Monday, September 25, 2023

Alternatives

4

- ❑ Deny the fireworks display application
- ❑ Approve the fireworks display application with specific stipulations
- ❑ Approve the fireworks display application as submitted

Recommendation

5

At this time staff is not recommending any action due to weather and drought conditions.

Staff will reinspect the site and conditions on Monday, September 25, 2023, and will provide a recommendation at the Tuesday, September 26, 2023, City Council Meeting.



City of Killeen

Staff Report

File Number: RS-23-156

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution appointing members to vacant and unexpired terms on various boards and commissions.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Laura Calcote, City Secretary

SUBJECT: Boards, Commissions & Committees - Citizen Engagement

BACKGROUND AND FINDINGS:

The City of Killeen has various citizen boards, commissions and committees that serve in an advisory capacity. Per City Code of Ordinances, Sec. 2-116, all appointments and reappointments to citizen boards, commissions and committees shall be made by the city council prior to October 1st of each year for all positions to be filled that fiscal year.

Listed below are boards and commissions seats that have become vacant due to a resignation or are expiring September 30, 2023.

THE ALTERNATIVES CONSIDERED:

No other alternatives were considered.

Which alternative is recommended? Why?

It is recommended that the City Council appoint individuals to fill identified vacancies and expired terms.

CONFORMITY TO CITY POLICY:

Making these appointments conforms to relevant city ordinances and policies.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

There is no current or future expenditure associated with these appointments.

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

It is recommended that the City Council appoint individuals to fill identified vacancies and expired terms.

DEPARTMENTAL CLEARANCES:

City Attorney

ATTACHED SUPPORTING DOCUMENTS:

N/A

FY 2023 -2024 Boards and Commissions

***Requested Reappointment (RR)**

Animal Advisory Committee (Sub-Comm: Riakos Adams)

Current Member	Status	New Member	Comments	Termed?	*RR
Jessica Green	Term Expired	Jessica Green	Animal Services Manager	No	Yes
Michael Joyner	Term Expired	Veterinarian	Yes No		
Vacant	City Official				
Vacant	John Louch	Citizen Rep.			

Arts Commission (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Van Fraley	Term Expired	Van Fraley	Music/Radio/TV/ Tape/Sound Recording	No	Yes
John Miller	Term Expired	John Miller	Folk Art/Painting/Sculpture	Yes	Yes
Erin Hughley	Term Expired	Ashley Rodriguez	At-Large Member	No	No

*Current Member, Christopher Brown, meets the Educator/Arts Representative designation.

Audit Committee (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Jack Ralston	Term Expired	Jack Ralston	Citizen Rep.	Yes	Yes
Bob Blair	Term Expired	Bob Blair	Citizen Rep.	Yes	Yes

Board of Adjustment - Construction (Sub-Comm: Ramon Alvarez)

Current Member	Status	New Member	Comments	Termed?	*RR
Chet Southworth	Term Expired	Chet Southworth	Master Electrician/ Alternate	No	Yes
Robert "Bob" Mitchell	Term Expired	Robert "Bob" Mitchell	Engineer	Yes	Yes
Philip Marley	Term Expired	Philip Marley	Architect	Yes	Yes
Tracy Archer	Term Expired	Tracy Archer	Plumbing Contractor	Yes	Yes

Board of Adjustment - Zoning (Sub-Comm: Ramon Alvarez, Debbie Nash-King)

Current Member	Status	New Member	Comments	Termed?	*RR
Claudia Conroy	Term Expired	Van Fraley	Citizen Rep.	No	No
Leo Gukeisen	Term Expired	Leo Gukeisen	Citizen Rep.	No	Yes
Bear Jones	Term Expired	Bear Jones	Citizen Rep.	No	Yes
Tad Dorroh	Term Expired	Tad Dorroh	Citizen Rep.	No	Yes

Capital Improvement Advisory Committee (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Louie Minor	Term Expired	Real Estate Develop.	No	No	
Josh Welch	Term Expired	Josh Welch	Real Estate Develop.	No	Yes
Camille Francis-Howard	Term Expired	Camille Francis-Howard	Real Estate Develop.	No	Yes
Chet Southworth	Term Expired	Chet Southworth	Real Estate Develop.	No	Yes
Johnny Frederick	Term Expired	Johnny Frederick	Community Rep.	No	Yes
Patsy Bracey	Term Expired	Patsy Bracey	Community Rep.	No	Yes
Angela Ann Santos	Term Expired	Levi Bannigan	Community Rep.	No	Yes
Cyndi Rowe	Term Expired	Angela Ann Santos	ETJ Resident	No	No
Vacant	Sandra Wooten	Community Rep.	N/A	N/A	

Civil Service Commission (City Manager)

Current Member	Status	New Member	Comments	Termed?	*RR
Kenneth Hawthorne	Term Expired	Kenneth Hawthorne	Citizen Rep.	Yes	Yes

Community Development Advisory Committee (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Mary Taylor	Term Expired	Mary Taylor	Citizen Rep.	No	Yes
Teresa Cossey	Term Expired	Teresa Cossey	Citizen Rep.	No	Yes
Jonathan Hildner	Term Expired	Toni Ringgold	Citizen Rep.	No	No
Angela Ann Santos	Term Expired	Angela Ann Santos	Citizen Rep.	No	Yes

Downtown Advisory Committee (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Vacant	Resigned	Kristin Wright	Killeen Arts Commission		

Heritage Preservation Board (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Albert Galbreth	Term Expired	Treymont Cannon	At-Large Rep.	No	No

Vivian Bark	Term Expired	Rebecca Williams	At-Large Rep.	No	No
Mark Manning	Term Expired	Mark Manning	KAHA	No	Yes

Killeen Economic Development Corp (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Jose Guzman	Term Expired	Jose Guzman	KIF Rep.	No	Yes
Bobby Hoxworth	Term Expired	Todd Fox	Chamber Rep.	Yes	No

Killeen Sister Cities (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Monique Brand	Term Expired	Ladonna Barbee	Citizen Rep.	No	No

Planning and Zoning Commission (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Luvina Sabree	Term Expired	Luvina Sabree	Position 7	No	Yes
Cyndi Rowe	Term Expired	Cyndi Rowe	Position 8	No	Yes
Sandra O'Brien	Term Expired	Sandra O'Brien	Position 9	No	Yes

Recreation Services Advisory Board (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Holly Teel	Term Expired	Holly Teel	District 1	No	Yes
Joe Davis	Term Expired	Joe Davis	District 3	No	Yes
Anthony Kendrick	Term Expired	Anthony Kendrick	At-Large	No	Yes
David Fleming	Term Expired	David Fleming	At-Large	No	Yes

Senior Citizens Advisory Board (Sub-Comm: Nina Cobb, Joseph Solomon)

Current Member	Status	New Member	Comments	Termed?	*RR
Emilio Fenderson	Term Expired	Stella Hinkson	Citizen Rep.	No	No
Bear Jones	Term Expired	Bear Jones	Citizen Rep.	No	Yes
Lee Choe	Term Expired	Lee Choe	Citizen Rep.	No	Yes
Rosalind Stubbs	Term Expired	Rosalind Stubbs	Citizen Rep.	No	Yes
Deborah Voigt	Term Expired	Julio Hinkson	Citizen Rep.	No	No
Barbara Henke	Unexpired Term		Citizen Rep.	No	N/A

Tax Increment Reinvestment Zone Number Two Board (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Bobby Whitson	Term Expired	Bobby Whitson	Bell County Rep.	No	Yes



APPOINT CITIZENS TO BOARDS, COMMISSIONS & COMMITTEES

RS-23-156

September 26, 2023

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Boards, Commissions & Committees

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- The Mayor and City Council make annual appointments to various boards, commissions and committees each year and throughout the year, as vacancies occur
- The following tables show members with Expiring Terms or Resignations and whether the member:
 - ▣ Is term limited – generally six (6) years unless specialized knowledge is required, or other good cause is found by Council
 - ▣ Requested Reappointment (*RR)

Animal Advisory Committee

(Sub-Comm: Riakos Adams)

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Current Member	Status	New Member	Comments	Termed?	*RR
Jessica Green	Term Expired	Jessica Green	Animal Services Director	No	Yes
Michael Joyner, DMV	Term Expired		Veterinarian	Yes	No
Vacant			City Official		
Vacant		John Louch	Citizen Rep.		

Arts Commission (All Council)

4

Current Member	Status	New Member	Comments	Termed?	*RR
Van Fraley	Term Expired	Van Fraley	Music/Radio/TV/ Tape/Sound Recording	No	Yes
John Miller	Term Expired	John Miller	Folk Art/Painting/ Sculpture	Yes	Yes
Erin Hughley	Term Expired	Ashley Rodriguez	At-Large Member	No	No

*Current Member, Christopher Brown, meets the Educator/Arts Representative designation.

Audit Committee (All Council)

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Current Member	Status	New Member	Comments	Termed?	*RR
Jack Ralston	Term Expired	Jack Ralston	Citizen Rep.	Yes	Yes
Bob Blair	Term Expired	Bob Blair	Citizen Rep.	Yes	Yes

Board of Adjustment – Construction (Sub-Comm: Ramon Alvarez)

6

Current Member	Status	New Member	Comments	Termed?	*RR
Chet Southworth	Term Expired	Chet Southworth	Master Electrician/ Alternate	No	Yes
Robert “Bob” Mitchell	Term Expired	Robert “Bob” Mitchell	Engineer	Yes	Yes
Philip Marley	Term Expired	Philip Marley	Architect	Yes	Yes
Tracy Archer	Term Expired	Tracy Archer	Plumbing Contractor	Yes	Yes

Board of Adjustment – Zoning

(Sub-Comm: Ramon Alvarez, Debbie Nash-King)

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Current Member	Status	New Member	Comments	Termed?	*RR
Claudia Conroy	Term Expired	Van Fraley	Citizen Rep.	No	No
Leo Gukeisen	Term Expired	Leo Gukeisen	Citizen Rep.	No	Yes
Bear Jones	Term Expired	Bear Jones	Citizen Rep.	No	Yes
Tad Dorroh	Term Expired	Tad Dorroh	Citizen Rep.	No	Yes

Capital Improvement Advisory Committee (All Council)

Current Member	Status	New Member	Comments	Termed?	*RR
Louie Minor	Term Expired		Real Estate Develop.	No	N/A
Josh Welch	Term Expired	Josh Welch	Real Estate Develop.	No	Yes
Camille Francis-Howard	Term Expired	Camille Francis-Howard	Real Estate Develop.	No	Yes
Chet Southworth	Term Expired	Chet Southworth	Real Estate Develop.	No	Yes
Johnny Frederick	Term Expired	Johnny Frederick	Community Rep.	No	Yes
Patsy Bracey	Term Expired	Patsy Bracey	Community Rep.	No	Yes
Angela Ann Santos	Term Expired	Levi Bannigan	Community Rep.	No	Yes
Cyndi Rowe	Term Expired	Angela Ann Santos	ETJ Resident	No	No
Vacant		Sandra Wooten	Community Rep.		437

Civil Service Commission (City Manager)

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Current Member	Status	New Member	Comments	Termed?	*RR
Kenneth Hawthorne	Term Expired	Kenneth Hawthorne	Citizen Rep.	Yes	Yes

Community Development Advisory Committee (All Council)

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Current Member	Status	New Member	Comments	Termed?	*RR
Mary Taylor	Term Expired	Mary Taylor	Citizen Rep.	No	Yes
Teresa Cossey	Term Expired	Teresa Cossey	Citizen Rep.	No	Yes
Jonathan Hildner	Term Expired	Toni Ringgold	Citizen Rep.	No	No
Angela Ann Santos	Term Expired	Angela Ann Santos	Citizen Rep.	No	Yes

Downtown Advisory Committee (All Council)

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Current Member	Status	New Member	Comments	Termed?	*RR
Vacant	Resigned	Kristin Wright	Killeen Arts Commission		

Heritage Preservation Board (All Council)

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Current Member	Status	New Member	Comments	Termed?	*RR
Albert Galbreth	Term Expired	Treymont Cannon	At-Large Rep.	No	No
Vivian Bark	Term Expired	Rebecca Williams	At-Large Rep.	No	No
Mark Manning	Term Expired	Mark Manning	KAHA	No	Yes

Killeen Economic Development Corporation (All Council)

13

Current Member	Status	New Member	Comments	Termed?	*RR
Jose Guzman	Term Expired	Jose Guzman	KIF Rep.	No	Yes
Bobby Hoxworth	Term Expired	Todd Fox	Chamber Rep.	Yes	No

Killeen Sister Cities (All Council)

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Current Member	Status	New Member	Comments	Termed ?	*RR
Monique Brand	Term Expired	Ladonna Barbee	Citizen Rep.	No	No

Planning and Zoning Commission (All Council)

15

Current Member	Status	New Member	Comments	Termed?	*RR
Luvina Sabree	Term Expired	Luvina Sabree	Position 7	No	Yes
Cyndi Rowe	Term Expired	Cyndi Rowe	Position 8	No	Yes
Sandra O'Brien	Term Expired	Sandra O'Brien	Position 9	No	Yes

Recreation Services Advisory Board (All Council)

16

Current Member	Status	New Member	Comments	Termed?	*RR
Holly Teel	Term Expired	Holly Teel	District 1	No	Yes
Joe Davis	Term Expired	Joe Davis	District 3	No	Yes
Anthony Kendrick	Term Expired	Anthony Kendrick	At-Large	No	Yes
David Fleming	Term Expired	David Fleming	At-Large	No	Yes

Senior Citizens Advisory Board

(Sub-Comm: Nina Cobb, Joseph Solomon)

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Current Member	Status	New Member	Comments	Termed ?	*RR
Emilio Fenderson	Term Expired	Stella Hinkson	Citizen Rep.	No	No
Bear Jones	Term Expired	Bear Jones	Citizen Rep.	No	Yes
Lee Choe	Term Expired	Lee Choe	Citizen Rep.	No	Yes
Rosalind Stubbs	Term Expired	Rosalind Stubbs	Citizen Rep.	No	Yes
Deborah Voigt	Term Expired	Julio Hinkson	Citizen Rep.	No	No
Barbara Henke	Unexpired Term		Citizen Rep.	No	N/A

Tax Increment Reinvestment Zone #2 Board (All Council)

18

Current Member	Status	New Member	Comments	Termed?	*RR
Bobby Whitson	Term Expired	Bobby Whitson	Bell County Rep.	No	Yes

Recommendation

19

- Staff recommends that the City Council appoint individuals to fill identified vacancies and expired terms.



City of Killeen

Staff Report

File Number: RS-23-157

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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Consider a memorandum/resolution authorizing the remainder of funds previously approved for Fiscal Year 2023 to defend the Bell County lawsuit related to marijuana enforcement be carried forward into FY 2024.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Holli Clements, City Attorney

SUBJECT: Carry Forward Funds for Bell County lawsuit from FY 2023 to FY 2024

BACKGROUND AND FINDINGS:

On February 8, 2023, the City engaged Sheils Winnubst, PC, to represent the City with regard to potential litigation regarding the marijuana enforcement ordinance. At the end of December 2022, Bell County authorized its attorneys to file suit against the City of Killeen related to the marijuana enforcement ordinance and on April 11, 2023, Bell County did file a lawsuit against the City seeking to invalidate the marijuana enforcement ordinance.

The marijuana enforcement ordinance was adopted pursuant to the City Charter initiative process where the citizens of Killeen placed Proposition A on the November 8, 2022 ballot. The initiative ordinance was then passed by majority vote of the citizens of Killeen. The ordinance limits certain enforcement action of low-level marijuana offenses.

On June 27, 2023, City Council ratified the agreement with Sheils Winnubst for legal services in an amount not to exceed \$100,000 for Fiscal Year 2023 without further Council approval. To date, \$42,213.68 is remaining in authorized funding for Fiscal Year 2023.

This item would not increase the amount of funding, but would carry forward the remainder of funds previously approved for FY 2023 into FY 2024.

THE ALTERNATIVES CONSIDERED:

The Council's alternatives are to:

1. Not authorize previously approved funds to defend the lawsuit be carried forward into FY 2024;
or
2. Authorize the previously approved funds to defend the lawsuit be carried forward into FY 2024.

Which alternative is recommended? Why?

It is recommended that the City Council authorize the previously approved funds to defend the lawsuit be carried forward into FY 2024.

CONFORMITY TO CITY POLICY:

Approval of this item is in compliance with state law and city policy. Expenses for legal services are professional services and exempt from competitive purchasing requirements.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

Expenditures for legal services for this contract will be determined by decisions made by the City with regard to the litigation, but limited to \$100,000 without future Council action. This item would not increase the amount of funding, but would carry forward the remainder of funds previously approved for FY 2023 into FY 2024.

Is this a one-time or recurring expenditure?

Recurring until resolution of litigation.

Is this expenditure budgeted?

Funds are available in the General Fund Non-Departmental account 010-9501-491.47-11.

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes.

RECOMMENDATION:

It is recommended that the City Council authorize the previously approved funds to defend the lawsuit be carried forward into FY 2024.

DEPARTMENTAL CLEARANCES:

Purchasing
Finance
City Manager

ATTACHED SUPPORTING DOCUMENTS:

Agreement

Philip Kingston
of counsel to:

SHEILS WINNUBST PC

UTAH | ANDREWS
Attorneys and Counselors
1100 ATRIUM II
1701 N. COLLINS BLVD
RICHARDSON, TEXAS 75080
(972) 644-8181

Philip Kingston
philip@sheilswinnubst.com

FACSIMILE (972)644-8180

February 2, 2023

via email: hclements@killeentexas.gov

Holli Clements
Killeen City Attorney
101 N College Street
Killeen, TX 76541

Re: *Bell County dispute*

Dear Ms. Clements:

This letter is our agreement regarding all legal services to be rendered on Killeen's ("you" and "your") behalf with regard to the above-referenced matters. The scope of the engagement is further defined as anticipated litigation and other advocacy defending your marijuana enforcement policies.

Fees and Expenses

You have chosen, and we have chosen to accept, to pay for the legal services described herein on an hourly fee basis. You agree to compensate Shiels Winnubst, PC, at the following rates for any time spent on your case.

Philip Kingston	\$450 per hour
Latrice Andrews	\$400 per hour
Paige Calabrese	\$195 per hour

"Time spent on your case" refers to any period of time in which our attention is focused on your case. This will include personal as well as telephone conferences with you or any party that needs to be consulted with regard to your case, legal research, preparation of documents and pleadings, review of documents and correspondence, drafting of letters, as well as time spent in preparation for and actual representation in a proceeding.

Our rates are subject to periodic increases. Our current billing rates are on a per hour basis with a two-tenths (2/10) hour minimum charge. We will send you monthly statements for legal

services rendered, plus any additional expenses incurred, e.g., filing fees, fees for issuance and service of process, copying charges, postage, delivery fees, long distance telephone calls, necessary non-professional overtime, expert witness and consultant fees, court reporter fees and parking fees. All statements sent to you for legal services and expenses are due and payable within thirty (30) days after receipt, unless prior arrangements are made.

My firm typically requires an advance against fees, but this requirement is waived because of your relationship with Lloyd Gosselink.

Communications

If you have provided us with an address, phone number, mobile phone number and/or email address, you agree that we can communicate with you through any of the methods, though some forms of communication may be less secure than others. You are representing to us that you are permitted to receive and send confidential messages (including emails and text messages) to and from the provided contact information. You understand that standard text messages from your carrier will apply. You also agree that you have put in place reasonably necessary safeguards to protect the confidentiality of information transmitted via email. Please note that forwarding or sharing emails and/or text messages with third parties may jeopardize the attorney-client relationship. You agree to promptly notify us of any change in your contact information.

Other Obligations

You further agree to cooperate fully in the case by promptly providing requested information and maintaining communication, as well as to appear at reasonable times for consultation, depositions and hearings as we may deem necessary or as the Court may require. You also understand that the firm has made no representations concerning the successful outcome of any contested claim or negotiation or the favorable outcome of any legal action that may be filed. We have not guaranteed that it will obtain reimbursement of any of your costs and expenses incurred.

We reserve the right to terminate representation immediately, regardless of the status of representation or litigation at that time, in the event (1) any payment of fees and expenses becomes more than thirty days past due; (2) a misrepresentation on your part is discovered in connection with the representation; or (3) you or any agent of yours engages in any conduct or activities contrary to the advice of our firm, which could, in the opinion of the firm, constitute a violation of law. Of course, you may terminate the representation at any time.

You further acknowledge and agree that in accordance with *Rule 13* of the *Texas Rules of Civil Procedure* and *Section 9.001, et seq.*, of the *Texas Civil Practice & Remedies Code*, this firm will not advance any specious claims nor sign any pleadings or other instruments that to the best of our knowledge, information and belief, formed after reasonable inquiry, are groundless or brought in bad faith or for the purpose of harassment.

Notice

All lawyers in Texas have an obligation to maintain a high standard of ethical conduct toward their clients and others. To enforce this standard, the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. If you feel that misconduct may have occurred or if you have questions regarding the disciplinary process, you may call or write the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711, or call the State Bar of Texas at (512) 463-1381 or 1-800-932-1900 (toll free).

This agreement is performable in Bell County, Texas, and is to be governed by Texas law. This agreement may be changed or terminated only in writing.

If this correctly sets forth our agreement, please execute a copy of this letter and return it to me at the earliest occasion.

Best regards,



Philip Kingston

AGREED TO AND ACCEPTED:

City of Killeen

Kent Cagle Digitally signed by Kent Cagle
Date: 2023.02.08 15:57:17
-06'00'

hcc

By: Kent Cagle

Its: City Manager



CARRY FORWARD FUNDS FOR BELL COUNTY LAWSUIT

RS-23-157

September 19, 2023

455

Background

2

- On April 11, 2023, Bell County sued the City seeking to invalidate the marijuana enforcement ordinance adopted by the citizens of Killeen.
- On June 27, 2023, the City Council ratified an agreement with Sheils Winnubst for legal services in an amount not to exceed \$100,000 for FY 2023 without further Council approval.
- The balance remaining in authorized funding for FY 2023 is \$42,213.68.

Carry forward

3

- The lawsuit was not resolved in 2023.
- To continue to defend the lawsuit, approval is needed to carry forward the remainder of funds previously approved for FY 2023 into FY 2024.
 - ▣ This would not increase the amount of funding previously approved.

Recommendation

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- To continue to defend the lawsuit filed by Bell County, Staff recommends that the City Council approve carrying forward the remainder of previously approved funds into FY 2024.



City of Killeen

Staff Report

File Number: PH-23-052

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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HOLD a public hearing and consider an ordinance amending the FY 2023 Annual Budget of the City of Killeen to adjust revenue and expenditure accounts in multiple funds.

DATE: September 19, 2023

TO: Kent Cagle, City Manager

FROM: Miranda Drake, Assistant Director of Finance

SUBJECT: Budget Amendment

BACKGROUND AND FINDINGS:

The Year End Budget Amendment serves to align budgets with projected revenues and expenditures. The City Charter authorizes the City Manager to approve budget amendments between accounts of the same department and fund. The City Council must approve budget amendments between accounts of different departments and to increase the overall budget of a fund.

The amendment focuses on sixteen non-grant initiatives and appropriates funds as follows:

1. Accounting for revenue received from reimbursable Texas Task Force 1 deployments and offsetting Fire Department overtime expenses.
2. Addressing insurance proceeds for claims across different General Fund departments, including claims for traffic control equipment and a fire claim from the Chamber of Commerce.
3. Appropriating revenue across multiple funds from reimbursable FEMA events (Winter Storm & COVID) and appropriating the General Fund's portion to address the Fire Department's budget shortfall caused by separation pay expenditures.
4. Recognizing the acquisition of newly leased assets in the General Fund, including a SendPro P Series Meter Mail Machine and a Canon Digital Copier at the Finance Department, Canon Digital Copiers at Human Resources, and Code Enforcement, Turf Equipment at Parks & Recreation, and a SendPro Mail Machine at the Police Department.
5. Facilitating the transfer of three assets (mowers) from the General Fund to the Solid Waste Fund.
6. Transferring funds within the Water & Sewer Fund to account for the additional costs incurred from water purchases from Bell County Water Control Improvement District (WCID) #1.
7. Recognizing the acquisition of a new leased asset in the Water & Sewer Fund, specifically a

- SendPro Mail Machine at Utility Collections.
8. Transferring funds within the Water & Sewer Fund to accommodate increased costs for recently leased office equipment (postage machine).
 9. Recognizing the acquisition of a new leased asset in the Solid Waste Fund, specifically a Canon Digital Copier.
 10. Transferring funds within the Solid Waste Fund to account for the initial year of property tax charged in arrears for a leased Wheel Loader and addressing an arbitrage shortage in Solid Waste Debt Service.
 11. Transferring funds within the Fleet Services Fund to accommodate increased costs for recently leased office equipment (printer).
 12. Appropriating additional Mixed Beverage revenue and corresponding expenses directly tied to the increase in revenue and allocating extra funds to address Accounting Services expenses for two additional audits.
 13. Recognizing the acquisition of a new leased asset in the Community Development Block Grant (CDBG) Fund, specifically a Canon Digital copier.
 14. Appropriating Special Revenue Fund revenue for Opioid Settlement funds and Park Development Fund.
 15. Accounting for TML insurance proceeds related to the December 2022 freeze damage to the Family Aquatics Center, which was originally covered with Governmental CIP Contingency funding.
 16. Closing out two completed bond funds: Fund 386 Water & Sewer Improvement Bond Series 2013 and Fund 576 Drainage Utility CO Bond Series 2006.

Fund	Revenues	Expenditure		
General Fund	\$801,154	\$797,754		
Water & Sewer Fund	141,283	54,728		
Solid Waste Fund	19,615	8,093		
Drainage Utility Fund	55,977	-		
Aviation Fund	4,201	-		
Hotel Occupancy Tax Fund	108,883	73,167		
Community Development Block Grant Fund			4,738	4,738
Park Development Benefit Fund		8,400	-	
Opioid Settlement Fund	168,152	-		
CIP/Bond Funds	198,331	198,331		
Total	\$1,510,734	\$1,136,811		

The amendment includes one grant related item:

1. GRK Passenger Terminal Improvement. Appropriate revenue for an BIL Airport Infrastructure Grant from the FAA and the offsetting project expense. Appropriate the required match from the Passenger Facility Charge Fund.

Fund	Revenues	Expenditure
Aviation AIP Grants Fund	\$267,322	\$267,322
Aviation PFC Fund	-	29,703
Total	\$267,322	\$297,025

THE ALTERNATIVES CONSIDERED:

Option 1 - Do not approve the ordinance amending the FY 2023 Annual Budget.

Option 2 - Approve the ordinance amending the FY 2023 Annual Budget.

Which alternative is recommended? Why?

Option 2 is recommended to approve the ordinance amending the FY 2023 Annual Budget.

CONFORMITY TO CITY POLICY:

The City's Financial Governance Policies, Section V. Budget Administration (B)(1) states that City Council may amend or change the budget by ordinance.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

This FY 2023 budget amendment includes:

- General Fund: increase \$801,154 in revenues and \$797,754 in expenditures
- Water and Sewer Fund: increase \$141,283 in revenues and \$54,728 in expenses
- Solid Waste Fund: increase \$19,615 in revenues and \$8,093 in expenses
- Drainage Fund: increase \$55,977 in revenues and \$0 in expenses
- Aviation Fund: increase \$4,201 in revenues and \$0 in expenses
- Hotel Occupancy Tax Fund: increase \$108,883 in revenues and \$73,167 in expenses
- Other Special Revenue Funds: increase \$181,290 in revenues and \$4,738 in expenditures
- Capital Improvement Program Funds: increase \$465,653 in revenues and \$495,356 in expenses

Is this a one-time or recurring expenditure?

One-time

Is this expenditure budgeted?

Upon approval of the attached ordinance amending the FY 2023 Annual Budget.

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

Upon approval of the attached ordinance amending the FY 2023 Annual Budget.

RECOMMENDATION:

City Council approve the ordinance amending the FY 2023 Annual Budget.

DEPARTMENTAL CLEARANCES:

Legal

ATTACHED SUPPORTING DOCUMENTS:

Ordinance

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS, AMENDING THE FY 2023 ANNUAL BUDGET OF THE CITY OF KILLEEN TO ADJUST REVENUE AND EXPENDITURE ACCOUNTS IN MULTIPLE FUNDS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, a budget for operating the municipal government of the City of Killeen for the Fiscal Year October 1, 2022 to September 30, 2023, has been adopted by City Council in accordance with the City Charter; and

WHEREAS, it is the desire of the Killeen City Council to amend the FY 2023 Annual Budget; and

WHEREAS, the budget amendment requires City Council approval;

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

SECTION 1. That Ordinance 22-067, adopting a budget for operating the municipal government of the City of Killeen for the Fiscal year October 1, 2022 to September 30, 2023, be amended as to the portion of said budget as follows:

Revenues:

Account Number	Description	Budget Change	Budget
010-0000-333.02-03	DHS-EMERGENCY DECLARATION		\$ -
	Allocate revenue from reimbursable FEMA events (Winter Storm & COVID) to address Fire Department's budget shortfall caused by Separation Pay expenses	494,150	
	Budget Change Sub-total	494,150	
	Account Sub-total		494,150
010-0000-334.02-05	TEEX-TASK FORCE		129,831
	Appropriate revenue received from reimbursable Texas Task Force 1 deployments and offsetting overtime expense.	24,151	
	Budget Change Sub-total	24,151	
	Account Sub-total		153,982
Account Number	Description	Budget Change	Budget
010-0000-391.05-40	TRANSFER FROM FUND 540		2,958,862
	Allocate funds to facilitate the transfer of three assets (mowers) from the General Fund to the Solid Waste Fund	3,400	
	Budget Change Sub-total	3,400	
	Account Sub-total		2,962,262

Revenues (continued):

010-0000-392.02-01	INSURANCE PROCEEDS		257,173
	Allocate insurance proceeds for claims across different General Fund departments, encompassing claims for traffic control equipment and a fire claim from the Chamber of Commerce	177,450	
	Budget Change Sub-total	177,450	
	Account Sub-total		434,623
010-0000-393.07-01	LEASE PROCEEDS		-
	Allocate funds to formally recognize the acquisition of newly leased assets in the General Fund. These assets comprise a SendPro P Series Meter Mail Machine and a Canon Digital Copier at the Finance Department, Canon Digital Copiers at Human Resources, and Code Enforcement, Turf Equipment at Parks & Recreation, and a SendPro Mail Machine at the Police Department.	102,003	
	Budget Change Sub-total	102,003	
	Account Sub-total		102,003
214-0000-333.02-03	DHS-EMERGENCY DECLARATION		-
	Allocate revenue from reimbursable FEMA events (Winter Storm & COVID).	35,716	
	Budget Change Sub-total	35,716	
	Account Sub-total		35,716
214-0000-348.01-04	MIXED BEVERAGE SALES		168,259
	Allocate additional Mixed Beverage revenue and corresponding expenses directly tied to the increase in revenue and allocate extra funds to address Accounting Services expenses for two additional audits.	73,167	
	Budget Change Sub-total	73,167	
	Account Sub-total		241,426
228-0000-393.07-01	LEASE PROCEEDS		-
	Allocate funds to acknowledge the procurement of new leased asset within the CDBG Fund, specifically a Canon Digital Copier.	4,738	
	Budget Change Sub-total	4,738	
	Account Sub-total		4,738
253-0000-347.08-01	PARK DEVELOPMENT FEE		-
	Allocate Park Development Fees received.	4,650	
	Budget Change Sub-total	4,650	
	Account Sub-total		4,650

Revenues (continued):

Account Number	Description	Budget Change	Budget
253-0000-347.08-02	FEE IN LIEU OF PARKLAND		-
	Allocate Park Development Fees received.	3,750	
	Budget Change Sub-total	3,750	
	Account Sub-total		3,750
254-0000-338.10-02	OPIOID SETTLEMENT		-
	Allocate Opioid Settlement funds received.	168,152	
	Budget Change Sub-total	168,152	
	Account Sub-total		168,152
349-0000-392.02-01	INSURANCE PROCEEDS		-
	Appropriate TML insurance proceeds related to the December 2022 freeze damage to the Family Aquatics Center which was originally covered with Contingency funding.	97,720	
	Budget Change Sub-total	97,720	
	Account Sub-total		97,720
375-0000-391.05-76	TRANSFER FROM FUND 576		-
	Appropriate budget to close out Fund 576 Drainage Utility CO Bond Series 2006	36,591	
	Budget Change Sub-total	36,591	
	Account Sub-total		36,591
387-0000-391.03-86	TRANSFER FROM FUND 386		-
	Appropriate budget to close out Fund 386 Water & Sewer Improvement Bond Series 2013	64,020	
	Budget Change Sub-total	64,020	
	Account Sub-total		64,020
524-0000-332.15-02	USDOT-FAA		22,220,282
	GRK Passenger Terminal Mechanical Improvement Project. Appropriate revenue for an BIL Airport Infrastructure Grant from the FAA and the offsetting project expense. Appropriate the required match from the Passenger Facility Charge Fund.	267,322	
	Budget Change Sub-total	267,322	
	Account Sub-total		22,487,604
525-0000-333.02-03	DHS-EMERGENCY DECLARATION		-
	Allocate revenue from reimbursable FEMA events (Winter Storm & COVID).	4,201	
	Budget Change Sub-total	4,201	
	Account Sub-total		4,201

Revenues (continued):

Account Number	Description	Budget Change	Budget
540-0000-333.02-03	DHS-EMERGENCY DECLARATION		-
	Allocate revenue from reimbursable FEMA events (Winter Storm & COVID).	14,922	
	Budget Change Sub-total	14,922	
	Account Sub-total		14,922
540-0000-393.07-01	LEASE PROCEEDS		-
	Allocate funds to recognize the acquisition of a newly leased asset in the Solid Waste Fund, specifically a Canon Digital Copier.	4,693	
	Budget Change Sub-total	4,693	
	Account Sub-total		4,693
550-0000-333.02-03	DHS-EMERGENCY DECLARATION		-
	Allocate revenue from reimbursable FEMA events (Winter Storm & COVID).	86,555	
	Budget Change Sub-total	86,555	
	Account Sub-total		86,555
550-0000-393.07-01	LEASE PROCEEDS		-
	Allocate funds to acknowledge the procurement of new leased asset within the Water & Sewer Fund, specifically a SendPro Mail Machine at Utility Collections.	54,728	
	Budget Change Sub-total	54,728	
	Account Sub-total		54,728
575-0000-333.02-03	DHS-EMERGENCY DECLARATION		-
	Allocate revenue from reimbursable FEMA events (Winter Storm & COVID).	55,977	
	Budget Change Sub-total	55,977	
	Account Sub-total		55,977
	REVENUES TOTAL	\$ 1,778,056	\$ 27,512,463

Expenditures:

Account Number	Description	Budget Change	Budget
010-2010-415.61-40	EQUIPMENT AND MACHINERY		\$ -
	Allocate funds to formally recognize the acquisition of newly leased assets in the General Fund. These assets comprise a SendPro P Series Meter Mail Machine and a Canon Digital Copier at the Finance Department, Canon Digital Copiers at Human Resources, and Code Enforcement, Turf Equipment at Parks & Recreation, and a SendPro Mail Machine at the Police Department.	4,462	
	Budget Change Sub-total	4,462	
	Account Sub-total		4,462

Expenditures (continued):

Account Number	Description	Budget Change	Budget
010-2305-418.61-40	COMP EQUIP/SOFTWARE		-
	Allocate funds to formally recognize the acquisition of newly leased assets in the General Fund. These assets comprise a SendPro P Series Meter Mail Machine and a Canon Digital Copier at the Finance Department, Canon Digital Copiers at Human Resources, and Code Enforcement, Turf Equipment at Parks & Recreation, and a SendPro Mail Machine at the Police Department.	5,120	
	Budget Change Sub-total	5,120	
	Account Sub-total		5,120
010-3025-425.61-40	COMP EQUIP/SOFTWARE		-
	Allocate funds to formally recognize the acquisition of newly leased assets in the General Fund. These assets comprise a SendPro P Series Meter Mail Machine and a Canon Digital Copier at the Finance Department, Canon Digital Copiers at Human Resources, and Code Enforcement, Turf Equipment at Parks & Recreation, and a SendPro Mail Machine at the Police Department.	58,700	
	Budget Change Sub-total	58,700	
	Account Sub-total		58,700
010-4053-450.61-40	COMP EQUIP/SOFTWARE		-
	Allocate funds to formally recognize the acquisition of newly leased assets in the General Fund. These assets comprise a SendPro P Series Meter Mail Machine and a Canon Digital Copier at the Finance Department, Canon Digital Copiers at Human Resources, and Code Enforcement, Turf Equipment at Parks & Recreation, and a SendPro Mail Machine at the Police Department.	4,841	
	Budget Change Sub-total	4,841	
	Account Sub-total		4,841
010-6050-441.61-40	COMP EQUIP/SOFTWARE		-
	Allocate funds to formally recognize the acquisition of newly leased assets in the General Fund. These assets comprise a SendPro P Series Meter Mail Machine and a Canon Digital Copier at the Finance Department, Canon Digital Copiers at Human Resources, and Code Enforcement, Turf Equipment at Parks & Recreation, and a SendPro Mail Machine at the Police Department.	10,353	
	Budget Change Sub-total	10,353	
	Account Sub-total		10,353

Expenditures (continued):

Account Number	Description	Budget Change	Budget
010-7070-442.40-15	OVERTIME		1,150,940
	Appropriate revenue received from reimbursable Texas Task Force 1 deployments and offsetting overtime expense.	24,151	
	Budget Change Sub-total	24,151	
	Account Sub-total		1,175,091
010-7070-442.40-24	SEPARATION PAY		-
	Allocate revenue from reimbursable FEMA events (Winter Storm & COVID) to address Fire Department's budget shortfall caused by Separation Pay expenses	494,150	
	Budget Change Sub-total	494,150	
	Account Sub-total		494,150
010-9501-441.61-40	COMP EQUIP/SOFTWARE		-
	Allocate funds to formally recognize the acquisition of newly leased assets in the General Fund. These assets comprise a SendPro P Series Meter Mail Machine and a Canon Digital Copier at the Finance Department, Canon Digital Copiers at Human Resources, and Code Enforcement, Turf Equipment at Parks & Recreation, and a SendPro Mail Machine at the Police Department.	18,527	
	Budget Change Sub-total	18,527	
	Account Sub-total		18,527
010-9501-491.44-85	CLAIMS AND DAMAGES		257,173
	Allocate insurance proceeds for claims across different General Fund departments, encompassing claims for traffic control equipment and a fire claim from the Chamber of Commerce	177,450	
	Budget Change Sub-total	177,450	
	Account Sub-total		434,623
214-0706-457.41-65	SUPPLIES		11,350
	Allocate additional Mixed Beverage revenue and corresponding expenses directly tied to the increase in revenue and allocate extra funds to address Accounting Services expenses for two additional audits.	1,831	
	Budget Change Sub-total	1,831	
	Account Sub-total		13,181

Expenditures (continued):

Account Number	Description	Budget Change	Budget
214-0706-457.44-15	INSURANCE		8,700
	Allocate additional Mixed Beverage revenue and corresponding expenses directly tied to the increase in revenue and allocate extra funds to address Accounting Services expenses for two additional audits.	12,900	
	Budget Change Sub-total	12,900	
	Account Sub-total		21,600
214-0706-457.44-19	MERCHANT SERVICES		9,524
	Allocate additional Mixed Beverage revenue and corresponding expenses directly tied to the increase in revenue and allocate extra funds to address Accounting Services expenses for two additional audits.	4,971	
	Budget Change Sub-total	4,971	
	Account Sub-total		14,495
214-0706-457.47-99	PROFESSIONAL SERVICES		72,000
	Allocate additional Mixed Beverage revenue and corresponding expenses directly tied to the increase in revenue and allocate extra funds to address Accounting Services expenses for two additional audits.	37,253	
	Budget Change Sub-total	37,253	
	Account Sub-total		109,253
214-0706-457.50-17	COST OF GOODS SOLD		43,500
	Allocate additional Mixed Beverage revenue and corresponding expenses directly tied to the increase in revenue and allocate extra funds to address Accounting Services expenses for two additional audits.	13,016	
	Budget Change Sub-total	13,016	
	Account Sub-total		56,516
214-9501-491.47-30	ACCOUNTING SERVICES		11,923
	Allocate additional Mixed Beverage revenue and corresponding expenses directly tied to the increase in revenue and allocate extra funds to address Accounting Services expenses for two additional audits.	3,196	
	Budget Change Sub-total	3,196	
	Account Sub-total		15,119

Expenditures (continued):

Account Number	Description	Budget Change	Budget
228-3250-426.61-40	COMP EQUIP/SOFTWARE		-
	Allocate funds to acknowledge the procurement of new leased asset within the CDBG Fund, specifically a Canon Digital Copier.	4,738	
	Budget Change Sub-total	4,738	
	Account Sub-total		4,738
349-8995-493.69-05	CONTINGENCY		67,495
	Appropriate TML insurance proceeds related to the December 2022 freeze damage to the Family Aquatics Center which was originally covered with Contingency funding.	97,720	
	Budget Change Sub-total	97,720	
	Account Sub-total		165,215
375-8934-493.69-03	CONSTRUCTION		4,618,295
	Appropriate budget to close out Fund 576 Drainage Utility CO Bond Series 2006	36,591	
	Budget Change Sub-total	36,591	
	Account Sub-total		4,654,886
386-3495-800.54-99	18" GRAVITY MAIN (11S)		110,737
	Appropriate budget to close out Fund 386 Water & Sewer Improvement Bond Series 2013	(63,860)	
	Budget Change Sub-total	(63,860)	
	Account Sub-total		46,877
386-9501-491.93-87	TRANSFER TO FUND 387		-
	Appropriate budget to close out Fund 386 Water & Sewer Improvement Bond Series 2013	64,020	
	Budget Change Sub-total	64,020	
	Account Sub-total		64,020
387-8934-493.69-01	DESIGN/ENGINEERING		1,683,034
	Appropriate budget to close out Fund 386 Water & Sewer Improvement Bond Series 2013	63,860	
	Budget Change Sub-total	63,860	
	Account Sub-total		1,746,894
524-0515-521.44-28	NOTICES REQUIRED BY LAW		55
	GRK Passenger Terminal Mechanical Improvement Project. Appropriate revenue for an BIL Airport Infrastructure Grant from the FAA and the offsetting project expense. Appropriate the required match from the Passenger Facility Charge Fund.	450	
	Budget Change Sub-total	450	
	Account Sub-total		505

Expenditures (continued):

Account Number	Description	Budget Change	Budget
524-0515-521.69-01	DESIGN/ENGINEERING		1,785,617
	GRK Passenger Terminal Mechanical Improvement Project. Appropriate revenue for an BIL Airport Infrastructure Grant from the FAA and the offsetting project expense. Appropriate the required match from the Passenger Facility Charge Fund.	266,872	
	Budget Change Sub-total	266,872	
	Account Sub-total		2,052,489
529-0510-521.69-07	PFC PROJECTS		1,601,330
	GRK Passenger Terminal Mechanical Improvement Project. Appropriate revenue for an BIL Airport Infrastructure Grant from the FAA and the offsetting project expense. Appropriate the required match from the Passenger Facility Charge Fund.	29,703	
	Budget Change Sub-total	29,703	
	Account Sub-total		1,631,033
540-3465-439.61-40	COMP EQUIP/SOFTWARE		-
	Allocate funds to recognize the acquisition of a newly leased asset in the Solid Waste Fund, specifically a Canon Digital Copier.	4,693	
	Budget Change Sub-total	4,693	
	Account Sub-total		4,693
540-9000-489.72-11	ARBITRAGE CALCULATION		500
	Transfer funds within the Solid Waste Fund to account for the initial year of property tax charged in arrears for a leased Wheel Loader and address arbitrage shortage in Solid Waste Debt Service.	220	
	Budget Change Sub-total	220	
	Account Sub-total		720
540-9034-489.72-14	OTHER LEASE COST		3,790
	Transfer funds within the Solid Waste Fund to account for the initial year of property tax charged in arrears for a leased Wheel Loader and address arbitrage shortage in Solid Waste Debt Service.	3,547	
	Budget Change Sub-total	3,547	
	Account Sub-total		7,337

Expenditures (continued):

Account Number	Description	Budget Change	Budget
540-9501-491.47-30	ACCOUNTING SERVICES		15,788
	Transfer funds within the Solid Waste Fund to account for the initial year of property tax charged in arrears for a leased Wheel Loader and address arbitrage shortage in Solid Waste Debt Service.	(3,767)	
	Budget Change Sub-total	(3,767)	
	Account Sub-total		12,021
540-9501-491.90-10	TRANSFER TO FUND 010		2,958,862
	Allocate funds to facilitate the transfer of three assets (mowers) from the General Fund to the Solid Waste Fund	3,400	
	Budget Change Sub-total	3,400	
	Account Sub-total		2,962,262
550-2050-411.61-40	COMP EQUIP/SOFTWARE		-
	Allocate funds to acknowledge the procurement of new leased asset within the Water & Sewer Fund, specifically a SendPro Mail Machine at Utility Collections.	54,728	
	Budget Change Sub-total	54,728	
	Account Sub-total		54,728
550-3410-436.50-92	WATER PURCHASE		4,303,711
	Transfer funds within the Water & Sewer Fund to account for the additional costs incurred from water purchases.	289,800	
	Budget Change Sub-total	289,800	
	Account Sub-total		4,593,511
550-9020-489.71-12	LEASE PRINCIPAL		25,034
	Transfer funds within the Water & Sewer Fund to accommodate increased costs for recently leased office equipment (postage machine).	1,716	
	Budget Change Sub-total	1,716	
	Account Sub-total		26,750
550-9501-491.47-30	ACCOUNTING SERVICES		53,527
	Transfer funds within the Water & Sewer Fund to accommodate increased costs for recently leased office equipment (postage machine).	(1,716)	
	Budget Change Sub-total	(1,716)	
	Account Sub-total		51,811
550-9501-491.50-90	BAD DEBT		289,800
	Transfer funds within the Water & Sewer Fund to account for the additional costs incurred from water purchases.	(289,800)	
	Budget Change Sub-total	(289,800)	
	Account Sub-total		-

Expenditures (continued):

Account Number	Description	Budget Change	Budget
576-9591-495.44-28	NOTICES REQUIRED BY LAW		404
	Appropriate budget to close out Fund 576 Drainage Utility CO Bond Series 2006	(404)	
	Budget Change Sub-total	(404)	
	Account Sub-total		-
576-9591-495.63-26	GREENFOREST CIRCLE		89,012
	Appropriate budget to close out Fund 576 Drainage Utility CO Bond Series 2006	(19,455)	
	Budget Change Sub-total	(19,455)	
	Account Sub-total		69,557
576-9591-495.63-28	WOLF DITCH DRAINAGE		146,211
	Appropriate budget to close out Fund 576 Drainage Utility CO Bond Series 2006	(16,732)	
	Budget Change Sub-total	(16,732)	
	Account Sub-total		129,479
576-9591-495.93-75	TRANSFERS TO FUND 375		-
	Appropriate budget to close out Fund 576 Drainage Utility CO Bond Series 2006	36,591	
	Budget Change Sub-total	36,591	
	Account Sub-total		36,591
601-2033-415.47-30	ACCOUNTING SERVICES		1,242
	Transfer funds within the Fleet Services Fund to accommodate increased costs for recently leased office equipment (printer).	(140)	
	Budget Change Sub-total	(140)	
	Account Sub-total		1,102
601-9020-489.71-12	LEASE PRINCIPAL		2,108
	Transfer funds within the Fleet Services Fund to accommodate increased costs for recently leased office equipment (printer).	120	
	Budget Change Sub-total	120	
	Account Sub-total		2,228
601-9020-489.72-13	LEASE INTEREST		767
	Transfer funds within the Fleet Services Fund to accommodate increased costs for recently leased office equipment (printer).	20	
	Budget Change Sub-total	20	
	Account Sub-total		787
	EXPENDITURES TOTAL	\$ 1,433,836	\$ 20,756,265

SECTION II: That the City Council finds that the public notice and public hearing requirements of Section 38 and 56 of the City Charter have been complied with prior to the enactment of this ordinance.

SECTION III: That should any section or part of any section or paragraph of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

SECTION IV: That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION V: That this ordinance shall be effective after its passage and publication according to law.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 26th day of September, 2023, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED

Debbie Nash-King
Mayor

ATTEST:

APPROVED AS TO FORM:

Laura J. Calcote
City Secretary

Holli C. Clements
City Attorney



FY 2023 YEAR-END BUDGET AMENDMENT

PH-23-052

September 19, 2023

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Budget Amendment - Overview

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- **General Fund**
 - Asset Transfer
 - Insurance Proceeds
 - Lease Inceptions
 - Reimbursements
 - Separation Pay
- **Water & Sewer Fund**
 - Lease Costs
 - Lease Inception
 - Reimbursements
 - Water Purchase
- **Solid Waste Fund**
 - Arbitrage Cost
 - Asset Transfer
 - Lease Costs
 - Lease Inception
 - Reimbursements
- **Drainage Utility Fund**
 - Reimbursements
- **Aviation Fund**
 - Reimbursements
- **Fleet Service Fund**
 - Lease Costs
- **Hotel Occupancy Tax Fund**
 - Audit Costs
 - Merchant Services
 - Mixed Beverage Sales
 - Reimbursement
- **CDBG Fund**
 - Lease Inception
- **Special Revenue Funds**
 - Opioid Settlement
 - Park Development Fee
- **Capital Improvement Funds**
 - Aviation Grant
 - Bond Completions
 - Insurance Proceeds

Budget Amendment - General Fund

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Description	FY 2023 Budget	Budget Change	Amended Budget
DHS-Emergency Declaration	\$ -	\$ 494,150	\$ 494,150
TEEX-Task Force	129,831	24,151	153,982
Transfer From Fund 540	2,958,862	3,400	2,962,262
Insurance Proceeds	257,173	177,450	434,623
Lease Proceeds	-	102,003	102,003
Total Revenue	\$ 3,345,866	\$ 801,154	\$ 4,147,020
Comp Equip/Software	\$ -	\$ 102,003	\$ 102,003
Overtime	1,150,940	24,151	1,175,091
Separation Pay	-	494,150	494,150
Claims And Damages	257,173	177,450	434,623
Total Expense	\$ 1,408,113	\$ 797,754	\$ 2,205,867

Budget Amendment - Water & Sewer Fund

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Description	FY 2023 Budget	Budget Change	Amended Budget
DHS-Emergency Declaration	\$ -	\$ 86,555	\$ 86,555
Lease Proceeds	-	54,728	54,728
Total Revenue	\$ -	\$ 141,283	\$ 141,283
Comp Equip/Software	\$ -	54,728	\$ 54,728
Water Purchase	4,303,711	289,800	4,593,511
Bad Debt	289,800	(289,800)	-
Lease Principal	25,034	1,716	26,750
Accounting Services	53,527	(1,716)	51,811
Total Expense	\$ 4,672,072	\$ 54,728	\$ 4,726,800

Budget Amendment - Solid Waste Fund

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Description	FY 2023 Budget	Budget Change	Amended Budget
DHS-Emergency Declaration	\$ -	\$ 14,922	\$ 14,922
Lease Proceeds	-	4,693	4,693
Total Revenue	\$ -	\$ 19,615	\$ 19,615
Comp Equip/Software	\$ -	\$ 4,693	\$ 4,693
Arbitrage Calculation	500	220	720
Other Lease Cost	3,790	3,547	7,337
Accounting Services	15,788	(3,767)	12,021
Transfer To Fund 010	2,958,862	3,400	2,962,262
Total Expense	\$ 2,978,940	\$ 8,093	\$ 2,987,033

Budget Amendment - Drainage Utility Fund

Description	FY 2023 Budget	Budget Change	Amended Budget
DHS-Emergency Declaration	\$ -	\$ 55,977	\$ 55,977
Total Revenue	\$ -	\$ 55,977	\$ 55,977

Budget Amendment - Aviation Fund

Description	FY 2023 Budget	Budget Change	Amended Budget
DHS-Emergency Declaration	\$ -	\$ 4,201	\$ 4,201
Total Revenue	\$ -	\$ 4,201	\$ 4,201

Budget Amendment - Fleet Service Fund

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Description	FY 2023 Budget	Budget Change	Amended Budget
	\$ -	\$ -	\$ -
Total Revenue	\$ -	\$ -	\$ -
Lease Principal	\$ 2,108	\$ 120	\$ 2,228
Lease Interest	767	20	787
Accounting Services	1,242	(140)	1,102
Total Expense	\$ 4,117	\$ -	\$ 4,117

Budget Amendment - Hotel Occupancy Tax Fund

Description	FY 2023 Budget	Budget Change	Amended Budget
DHS-Emergency Declaration	\$ -	\$ 35,716	\$ 35,716
Mixed Beverage Sales	168,259	73,167	241,426
Total Revenue	\$ 168,259	\$ 108,883	\$ 277,142
Supplies	\$ 11,350	\$ 1,831	\$ 13,181
Insurance	8,700	12,900	21,600
Merchant Services	9,524	4,971	14,495
Professional Services	72,000	37,253	109,253
Cost Of Goods Sold	43,500	13,016	56,516
Accounting Services	11,923	3,196	15,119
Total Expense	\$ 156,997	\$ 73,167	\$ 230,164

Budget Amendment - CDBG Fund

Description	FY 2023 Budget	Budget Change	Amended Budget
Lease Proceeds	\$ -	\$ 4,738	\$ 4,738
Total Revenue	\$ -	\$ 4,738	\$ 4,738
Comp Equip/Software	\$ -	\$ 4,738	\$ 4,738
Total Expense	\$ -	\$ 4,738	\$ 4,738

Budget Amendment - Special Revenue Funds

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□ Opioid Settlement Fund

Description	FY 2023 Budget	Budget Change	Amended Budget
Opioid Settlement	\$ -	\$ 168,152	\$ 168,152
Total Revenue	\$ -	\$ 168,152	\$ 168,152

□ Park Development Benefit Fund

Description	FY 2023 Budget	Budget Change	Amended Budget
Park Development Fee	\$ -	\$ 4,650	\$ 4,650
Fee In Lieu Of Parkland	-	3,750	3,750
Total Revenue	\$ -	\$ 8,400	\$ 8,400

Budget Amendment - CIP Bond Completion

- Finalize closure of Fund 386 Water & Sewer Improvement Bond Series 2013

Description	FY 2023 Budget	Budget Change	Amended Budget
Transfer From Fund 386	\$ -	\$ 64,020	\$ 64,020
Total Revenue	\$ -	\$ 64,020	\$ 64,020
Design/Engineering	\$ 1,683,034	\$ 63,860	\$ 1,746,894
Transfer To Fund 387	-	64,020	64,020
18" Gravity Main (11S)	110,737	(63,860)	46,877
Total Expense	\$ 1,793,771	\$ 64,020	\$ 1,857,791

Budget Amendment - CIP Bond Completion

- Finalize closure of Fund 576 Drainage Utility CO Bond Series 2006

Description	FY 2023 Budget	Budget Change	Amended Budget
Transfer From Fund 576	\$ -	\$ 36,591	\$ 36,591
Total Revenue	\$ -	\$ 36,591	\$ 36,591
Construction	\$ 4,618,295	\$ 36,591	\$ 4,654,886
Transfers To Fund 375	-	36,591	36,591
Notices Required By Law	404	(404)	-
Greenforest Circle	89,012	(19,455)	69,557
Wolf Ditch Drainage	146,211	(16,732)	129,479
Total Expense	\$ 4,853,922	\$ 36,591	\$ 4,890,513

Budget Amendment - CIP Aviation Funds

- GRK Passenger Terminal Mechanical Improvements Project
 - ▣ Appropriate revenue for a BIL Airport Infrastructure Grant from the FAA, offsetting project expense, and allocate the required match from the Passenger Facility Charge Fund

Description	FY 2023 Budget	Budget Change	Amended Budget
USDOT-FAA	\$ 22,220,282	\$ 267,322	\$ 22,487,604
Total Revenue	\$ 22,220,282	\$ 267,322	\$ 22,487,604
Notices Required By Law	\$ 55	\$ 450	\$ 505
Design/Engineering	1,785,617	266,872	2,052,489
Pfc Projects	1,601,330	29,703	1,631,033
Total Expense	\$ 3,387,002	\$ 297,025	\$ 3,684,027

Budget Amendment - CIP Governmental

- Allocate TML insurance proceeds tied to the December 2022 freeze originally covered by Governmental CIP Contingency funds

Description	FY 2023 Budget	Budget Change	Amended Budget
Insurance Proceeds	\$ -	\$ 97,720	\$ 97,720
Total Revenue	\$ -	\$ 97,720	\$ 97,720
Contingency	\$ 67,495	\$ 97,720	\$ 165,215
Total Expense	\$ 67,495	\$ 97,720	\$ 165,215

Recommendation

16

City Council approve the ordinance amending the
FY 2023 Annual Budget



City of Killeen

Staff Report

File Number: PH-23-053

1	City Council Workshop	09/19/2023	Reviewed and Referred	City Council	09/26/2023
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HOLD a public hearing and consider an ordinance submitted by Bianca Hall, on behalf of Rebecca Tinkshell, who is deceased (**Case #Z23-19**) to rezone Lot 1, Block 2, out of the Morris & Goode Survey, from "B-5" (Business District) to "R-1" (Single-Family Residential District). The property is locally addressed as 801 E. Avenue G, Killeen, Texas.

DATE: September 19, 2023.

TO: Kent Cagle, City Manager.

FROM: Edwin Revell, Executive Director of Development Services

SUBJECT: Zoning Case #23-19: "B-5" (Business District) to "R-1" (Single-Family Residential District).

BACKGROUND AND FINDINGS:

Property Information:

Property Owner: Rebecca Tinkshell (Deceased)

Agent: Bianca Hall

Current Zoning: "B-5"

Proposed Zoning: "R-1"

Current FLUM Designation: 'Residential Mix'

Summary of Request:

Bianca Hall, on behalf of Rebecca Tinkshell (Deceased), has submitted a request to rezone Lot 1, Block 1, Morris & Goode, from "B-5" (Business District) to "R-1" (Single-Family Residential District). The purpose of the request is to change the zoning of the subject property to make it consistent with the actual land use of "R-1" (Single-Family Residential District) zoning. The property owner's intent is to bring the property into conformance with the current district regulations.

Killeen Code of Ordinances Chapter 31 Compliance:

In accordance with Killeen Code of Ordinances Sec. 31-168(1), one-family dwellings, including site-built and modular construction, are allowed by right in the "R-1" (Single-Family Residential) zoning district. The current structure is currently considered a legal non-conforming use, which is subject to Killeen Code of Ordinances Sec. 31-51. The intent of this request is to bring the existing structure into conformance.

Zoning/Plat Case History:

Staff was unable to determine the date of the zoning. The property was platted as part of the Morris Goode Subdivision Pre-1950.

Character of the Area:

North: Existing commercial businesses zoned "B-5" (Business District)

South: Existing commercial businesses zoned "B-5" (Business District)

West: Existing Single-Family Residences zoned "B-5" (Business District) and "R-2" (Two-Family Residential District)

East: Existing Single-Family Residences zoned "B-5" (Business District)

Future Land Use Map Analysis:

This property is located within the 'Neighborhood Infill' area on the Growth Sector Map and is designated as 'Residential Mix' on the Future Land Use Map (FLUM) of the 2022 Comprehensive Plan.

The 'Neighborhood Infill' growth sector includes areas of the city that are already developed and have access to city services and infrastructure, but have vacant, underutilized, or poorly developed properties. Growth policies for this sector should encourage development or redevelopment of these properties with accessory dwelling units, small-plexes (2-4 units), and micro commercial that provides incremental increases in density. Development should match the existing character and improve walkable access to businesses and amenities for people living and working in the vicinity.

The request supports or furthers the following 2022 Comprehensive Plan recommendations:

- LU3 - Encourage incremental evolution of neighborhoods
- LU3.2 Recommends rezoning properties in areas which need revitalization in Traditional Neighborhoods.
- LU4 - Prioritize infill and revitalization in north Killeen
- NH6 - Shift the market to include existing housing

The Comprehensive Plan promotes incremental redevelopment of properties in Killeen that can add to a widespread improvement. Additionally, staff finds the proposed rezoning is consistent with the surrounding area, which consists of a mix of housing types.

Neighborhood Analysis:

Land use:

- This property is located within Killeen Development Zone #1
- Current land use mix within this area comprises approximately:
 - 16% non-residential zoning districts
 - 84% residential uses

Zoning district breakdown in DZ2:

- 33% non-residential zoning districts
- 66% residential zoning districts
- 1% Special Districts*

*These numbers exclude a detailed breakdown of special districts such as conditional or special use permits and planned unit developments.

Water, Sewer and Drainage Services:

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: Water, sanitary sewer, and drainage utility service is located within the City of Killeen municipal utility service area and available to the subject tract.

Transportation and Thoroughfare Plan:

Ingress and egress to the property is from E. Avenue G and S. 16th St., which are classified as a 60 ft. wide Local Streets on the City of Killeen Comprehensive Plan. Staff estimates that there will be 9.44 trips per day and has determined that a Traffic Impact Analysis is not required for the proposed land use.

Environmental Assessment:

The property is not within any FEMA regulatory Special Flood Hazard Area (SFHA). There are no other known wetland areas on or adjacent to the property as identified on the National Wetlands Inventory.

Public Notification:

Staff notified thirty-nine (39) surrounding property owners regarding this request. Of those property owners notified, twenty-four (24) reside outside of the 200-foot notification boundary required by the State, but within the 400-foot notification boundary required by Council; and eleven (11) reside outside of Killeen. As of date of this staff report, staff has received zero (0) written responses regarding the request.

Staff Findings:

Please see the Future Land Use Map Analysis and Neighborhood Analysis sections.

THE ALTERNATIVES CONSIDERED:

The City Council may:

- Disapprove the applicant’s request;
- Approve a more restrictive zoning district than requested; or
- Approve the request as presented by the applicant

Which alternative is recommended? Why?

Staff recommends approval of the applicant’s request to rezone the subject property from “B-5” (Business District) to “R-1” (Single-Family Residential District) as presented.

Staff supports the applicant’s intent to rezone to “R-1” (Single-Family Residential District). The

current structure is currently considered a legal non-conforming use, which is subject to Killeen Code of Ordinances Sec. 31-51. The intent of this request is to bring the existing structure into conformance with the zoning ordinance.

The request is consistent with the Future Land Use Map (FLUM).

CONFORMITY TO CITY POLICY:

This zoning request conforms to the City's policy and procedures, as detailed in Chapter 31 of the Killeen Code of Ordinances.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

This zoning request does not involve the expenditure of City funds.

Is this a one-time or recurring expenditure?

This is not applicable.

Is this expenditure budgeted?

This is not applicable.

If not, where will the money come from?

This is not applicable.

Is there a sufficient amount in the budgeted line-item for this expenditure?

This is not applicable.

RECOMMENDATION:

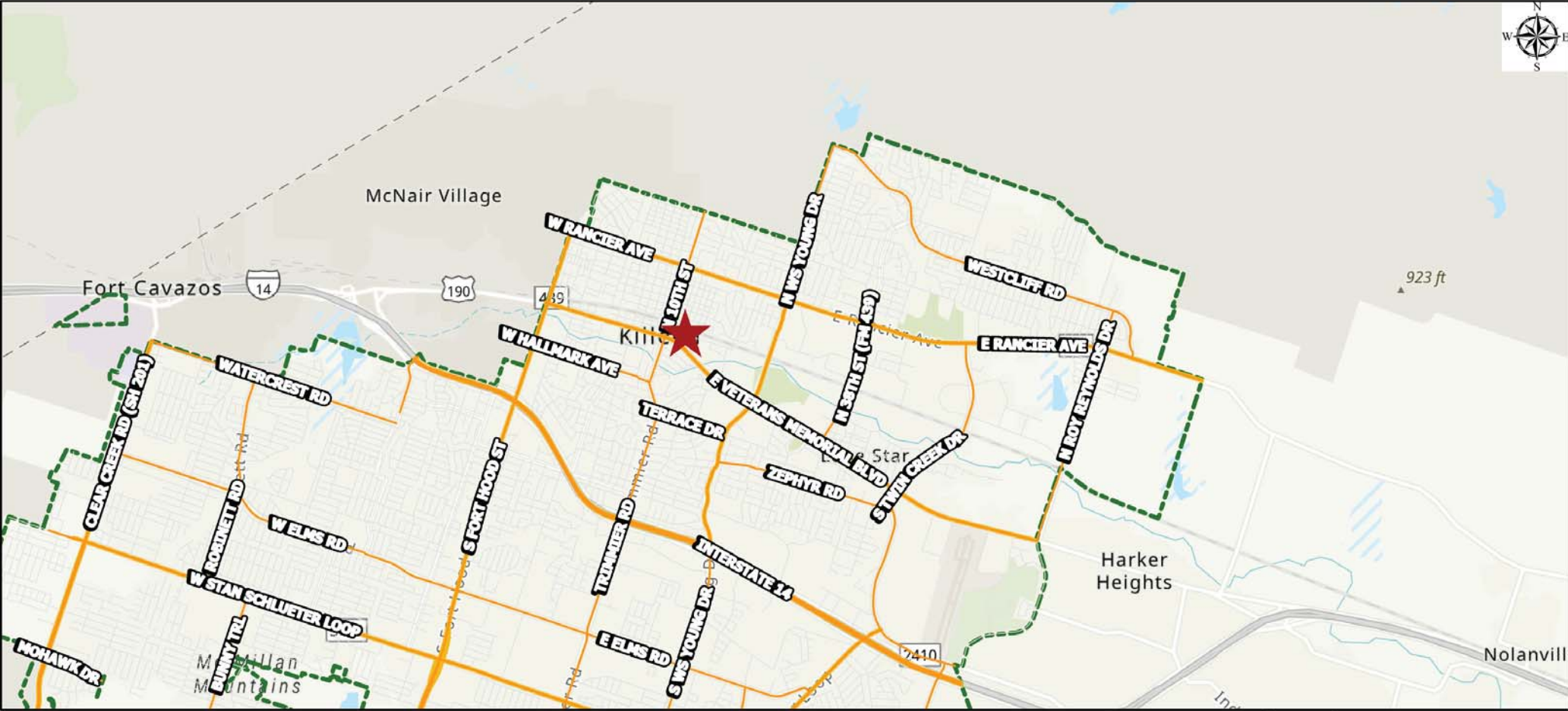
At their regular meeting on August 21, 2023, the Planning and Zoning Commission recommended approval of the applicant's request to rezone the subject property from "B-5" (Business District) to "R-1" (Single-Family Residential District) by a vote of 7 to 0.

DEPARTMENTAL CLEARANCES:

This item has been reviewed by the Planning and Legal staff.

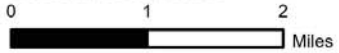
ATTACHED SUPPORTING DOCUMENTS:

- Maps
- Site Photos
- Letter of Request
- Minutes
- Ordinance
- Considerations



LOCATION MAP

Council District: 1



Subject Property Legal Description: MORRIS & GOODE, BLOCK 002, LOT 0001

Zoning Case 2023-19

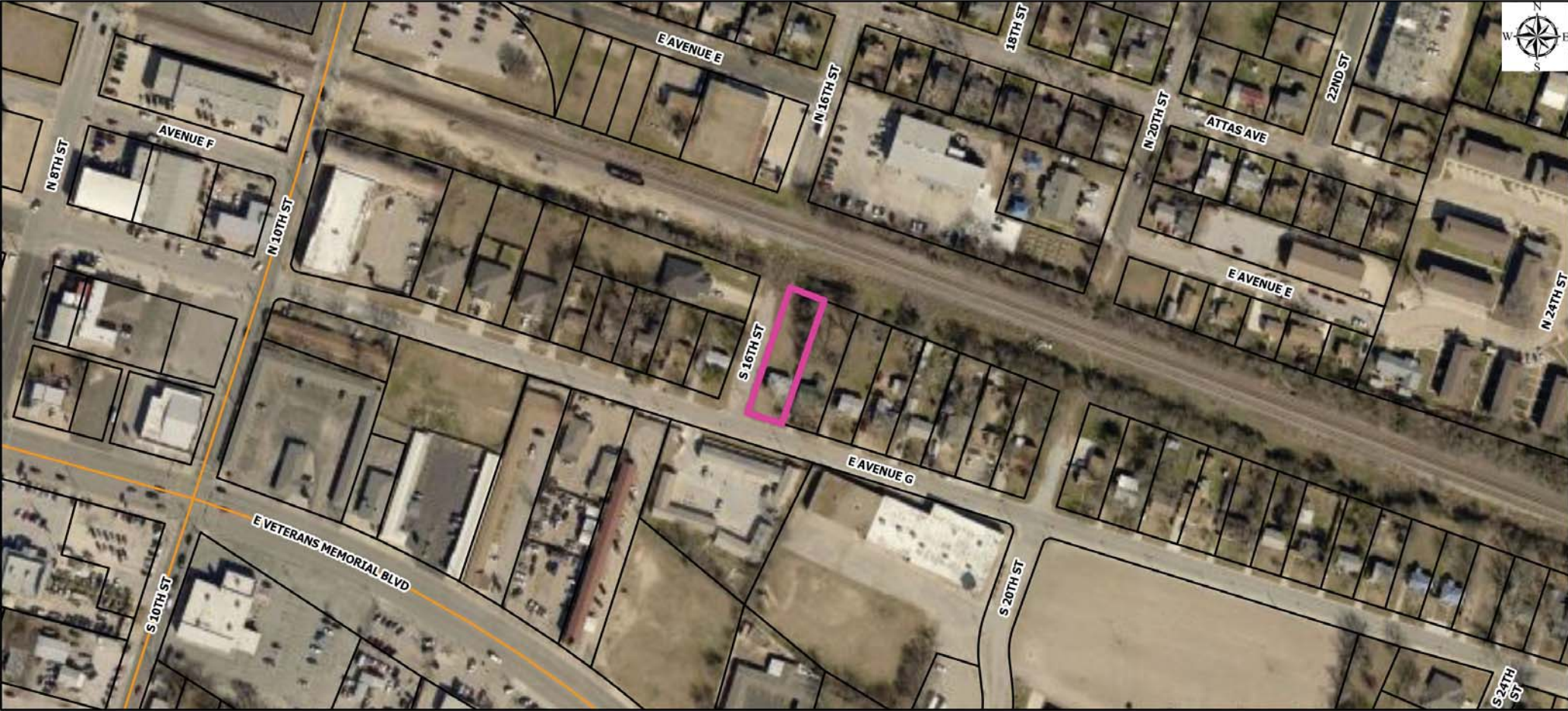
B-5 TO R-1

Legend

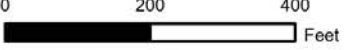
Major Roads

City Limits

Zoning Case Location



AERIAL MAP
Council District: 1



Zoning Case 2023-19

B-5 TO R-1

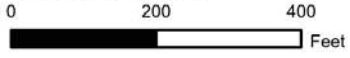
Legend
 Citylimits

Subject Property Legal Description: MORRIS & GOODE, BLOCK 002, LOT 0001



NOTIFICATION MAP

Council District: 1



Subject Property Legal Description: MORRIS & GOODE, BLOCK 002, LOT 0001

Zoning Case 2023-19
B-5 TO R-1

Legend		Current Zoning	
	B-4		R-3
	B-5		R-1
	R-2		RC-1

SITE PHOTOS

Case #Z23-19: "B-5" to "R-1"



View of the subject property looking north:



View of the surrounding property looking south:



SITE PHOTOS

Case #Z23-19: "B-5" to "R-1"



View of the surrounding property to the east:



View of the surrounding property looking west:



19 July 2023

To Whom it May Concern,

801 East Ave G has always been utilized as a residential property. It is categorized as residential, and the property tax is paid as a residential property. The concern is the zoning of the property reflects B-5 instead of residential. I have been informed that the B-5 zoning verbiage has changed over the years to currently reflect that if the home were to be destroyed in any way the residence could not be rebuilt on the property, because it would be considered commercial. My concern is if something were to happen to the home I have been paying home insurance on, the property will not covered. I was due to sell the home on 13 July 2023, however the closing was unable to come to fruition because the mortgage company and insurance company could not in good faith allow the borrower to purchase a property that would not be covered if something were to happen to it. I am now stuck with a property that can't be sold and that I would not have coverage on if it were to be destroyed. The proposed use of the property would remain as it has always been used for as a residential property since it was built in 1950.

The proposed change would not affect the surrounding properties because all the properties in the neighborhood are residential and facing the same dilemma. This is a concern that the city has identified as an issue and some homeowners in the area have gone through this process to be zoned as residential because their homes have always been used as such. From my understanding this is consistent with the future land use map as the senior planners have identified this is a concern within the city that needs to be remedied.

Very Respectfully,

A handwritten signature in black ink that reads "Dr. Bianca Hall". The signature is written in a cursive, flowing style.

Dr. Bianca Hall

254-462-6158

Biancanhall@gmail.com

**MINUTES
PLANNING AND ZONING COMMISSION MEETING
AUGUST 21, 2023**

**CASE #Z23-19
“B-5” to “R-1”**

HOLD a public hearing and consider a request submitted by Bianca Hall, on behalf of Rebecca Tinkshell, who is deceased, (Case #Z23-19) to rezone Lot 1, Block 2, out of the Morris & Goode Survey, from “B-5” (Business District) to “R-1” (Single-Family Residential District). The property is locally addressed as 801 East Avenue G, Killeen, Texas.

Mr. Hermosillo presented the staff report for this item. He stated that, if approved, the applicant intends to bring the existing structure into conformance with the zoning ordinance.

The request for “R-1” (Single-Family Residential District) is consistent with the recommendations ‘Residential Mix’ land use designation. Staff finds that the lot matches the existing character of the neighboring lot.

Mr. Hermosillo stated that staff finds the request is consistent with the 2022 Comprehensive Plan and with the character of the surrounding area. Therefore, staff recommends approval of the request as presented.

Mr. Hermosillo stated that the agent, Bianca Hall, was unable to attend the meeting due to a family emergency.

Chairman Minor opened the public hearing at 5:09 p.m.

With no one wishing to speak, public hearing was closed at 5:09 p.m.

Commissioner Jones moved to approve the request as presented. Commissioner Gukeisen seconded, and the motion passed by a vote of 7 to 0.

ORDINANCE _____

AN ORDINANCE AMENDING THE CITY OF KILLEEN ZONING ORDINANCE BY CHANGING THE ZONING OF LOT 1, BLOCK 2, OUT OF THE MORRIS & GOODE ADDITION, FROM “B-5” (BUSINESS DISTRICT) TO “R-1” (SINGLE-FAMILY RESIDENTIAL DISTRICT.); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 211 of the Texas Local Government Code and Section 31-39 of the City of Killeen Code of Ordinances, the City Council, upon application, may amend the City of Killeen Zoning Ordinance following a recommendation by the Planning and Zoning Commission and a public hearing;

WHEREAS, Bianca Hall, on behalf of Rebecca Tinkshell (Deceased), presented to the City of Killeen, a request for an amendment to the City of Killeen Zoning Ordinance by changing the classification of Lot 1, Block 2, out of the Morris & Goode Addition, from “B-5” (Business District) to “R-1” (Single-Family Residential District);

WHEREAS, the Planning and Zoning Commission of the City of Killeen, following a public hearing on the 21st day of August 2023, duly recommended approval of the application for amendment;

WHEREAS, due notice of the filing of said request and the date of hearing thereon was given as required by law, and hearing on said request was set for 5:00 P.M., on the 26th day of September 2023, at the City Hall, City of Killeen; and

WHEREAS, the City Council at said hearing duly considered said request, the action of the Planning and Zoning Commission, and the evidence in support thereof, and the City Council being of the majority opinion that the applicant’s zoning request should be approved as recommended by the Planning and Zoning Commission.

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

SECTION I. That the zoning classification of Lot 1, Block 2, out of the Morris & Goode Addition, from “B-5” (Business District) to “R-1” (Single-Family Residential District); said request being duly recommended for approval of “R-1” (Single-Family Residential District), for the property locally addressed as 801 E. Avenue G, Killeen, Texas.

SECTION II. That should any section or part of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the validity, force, or effect of any other section or parts of this ordinance.

SECTION III. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION IV. That this ordinance shall take effect immediately upon passage of the ordinance.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 26th day of September 2023, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:

Debbie Nash-King, MAYOR

ATTEST:

Laura J. Calcote, CITY SECRETARY

APPROVED AS TO FORM

Holli C. Clements, CITY ATTORNEY
Case #Z23-19
Ord. #23-____

CONSIDERATIONS

Texas Supreme Court in Pharr v. Tippitt, 616 S. W 2nd 173 (Tex 1981) established general guidelines which the Planning and Zoning Commission and City Council should take into consideration when making their respective recommendation and decision on a zoning request.

A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

Is the request designed to lessen congestion in the streets; secure safety from fire, panic or other dangers; promote health and the general welfare; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population; or facilitate the adequate provision of transportation, water, sewers, schools, parks and other public requirements?

What if any, is the nature and degree of an adverse impact upon neighboring lands?

The suitability or unsuitability of the tract for use as presently zoned.

Whether the amendment bears a substantial relationship to the public health, safety, morals or general welfare or protects and preserves historical and cultural places and areas.

Whether there is a substantial public need or purpose for the new zoning.

Whether there have been substantially changed conditions in the neighborhood.

Is the new zoning substantially inconsistent with the zoning of neighboring lands? (Whether the new zoning is more or less restrictive.)

The size of the tract in relation to the affected neighboring lands – is the tract a small tract or isolated tract asking for preferential treatment that differs from that accorded similar surrounding land without first proving changes in conditions?

Any other factors which will substantially affect the health, safety, morals or general welfare.

B. Conditional Use Permit (if applicable)

Whether the use is in harmonious with and adaptable to buildings, structures and use of abutting property and other property in the vicinity of the premises under construction.

C. Conditions to Consider

1. Occupation shall be conducted only by members of family living in home.
2. No outside storage or display
3. Cannot change the outside appearance of the dwelling so that it is altered from its residential character.
4. Cannot allow the performance of the business activity to be visible from the street.
5. Cannot use any window display to advertise or call attention to the business.
6. Cannot have any signs
7. No off-street parking or on-street parking of more than two (2) vehicles at any one time for business related customer parking.
8. No retail sales.
9. Length of Permit.



CASE #Z23-19
“B-5” TO “R-1”

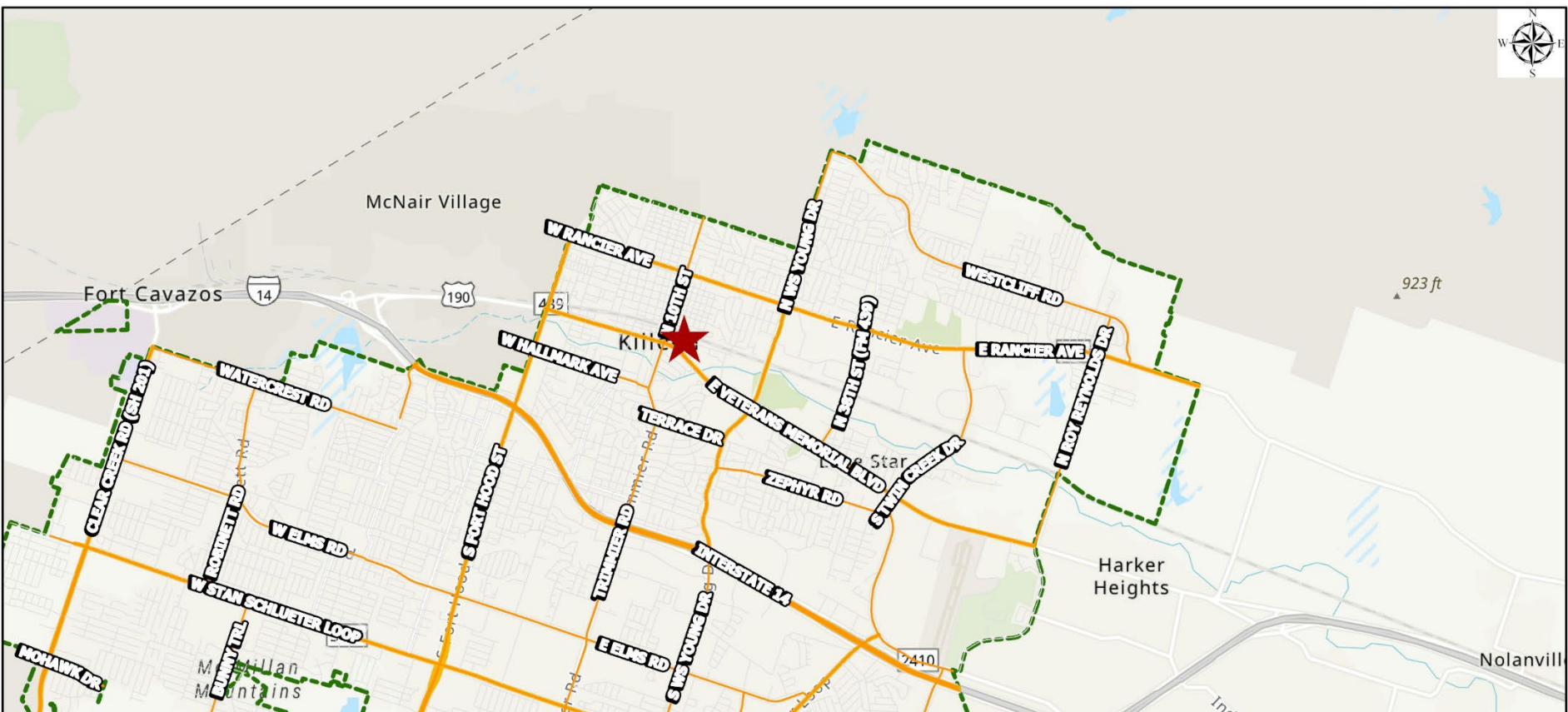
PH-23-053

September 19, 2023

505

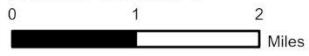
Case #Z23-19: “B-5” to “R-1”

- ❑ **HOLD** a public hearing and consider a request submitted by Bianca Hall, on behalf of Rebecca Tinkshell, who is deceased, (**Case #Z23-19**), to rezone approximately 0.2241 acres, being Lot 1, Block 2, out of Morris & Goode Survey, from “B-5” (Business District) to “R-1” (Single-Family Residential District). The property is locally addressed as 801 E. Avenue G, Killeen, Texas.



LOCATION MAP

Council District: 1



Subject Property Legal Description: MORRIS & GOODE, BLOCK 002, LOT 0001

Zoning Case 2023-19

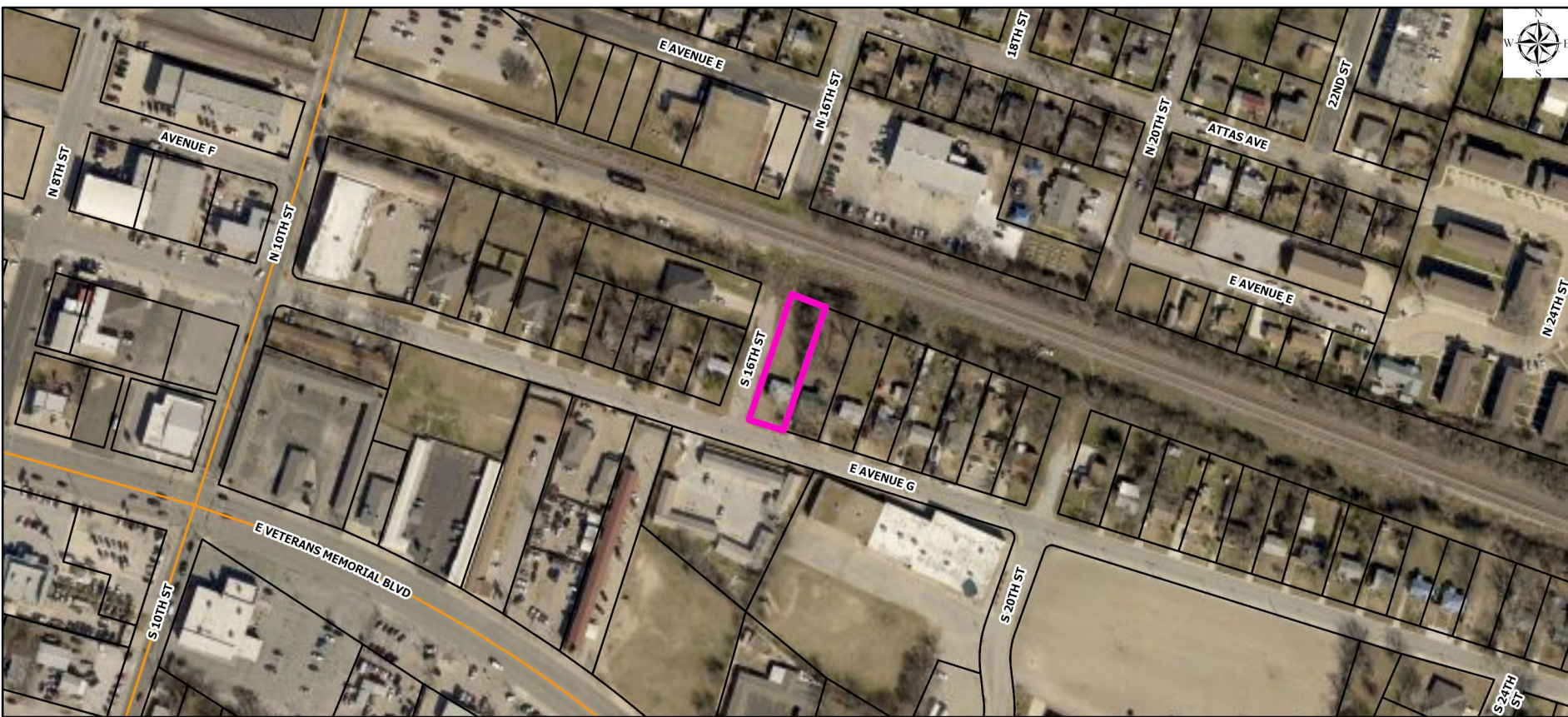
B-5 TO R-1

Legend

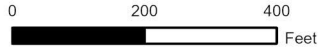
Major Roads

City Limits

Zoning Case Location



AERIAL MAP
Council District: 1



Subject Property Legal Description: MORRIS & GOODE, BLOCK 002, LOT 0001

Zoning Case 2023-19

B-5 TO R-1

Legend
 Citylimits

Case #Z23-19: “B-5” to “R-1”

5

- If approved, the applicant intends to retain the existing single-family residence on the property.
- The purpose of this request is to obtain insurance for the sale of the property, and to ensure that the existing structure may be rebuilt in the event of a disaster.

Case #Z23-19: “B-5” to “R-1”

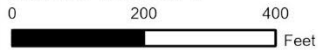
6

- In accordance with Killeen Code of Ordinances Sec. 31-168(1), one-family dwellings, including site-built and modular construction are allowed by right in the “R-1” (Single-Family Residential) zoning district.
- The current structure is currently considered a legal non-conforming use, which is subject to Killeen Code of Ordinances Sec. 31-51. The intent of this request is to bring the existing structure into conformance.



ZONING MAP

Council District: 1



Zoning Case 2023-19

B-5 TO R-1

Subject Property Legal Description: MORRIS & GOODE, BLOCK 002, LOT 0001

Comprehensive Plan Analysis

8

- *Growth Sector: 'Neighborhood Infill'*
- *Development Zone: #1*
- *Land Use Mix:*
 - 16% non-residential
 - 84% residential
- *Zoning District Mix:*
 - 33% non-residential
 - 66% residential
 - 1% Special Districts



Comprehensive Plan Analysis

9

- ❑ The 'Residential Mix' place type promotes a use mix of up to 25% non-residential and 95% residential uses.
- ❑ The Parks Master Plan calls for a future trail along the front of the property. The proposed trail (Segment D) extends from S. 28th Street to N. 10th Street.



Comprehensive Plan Analysis

- The request is consistent with the ‘Residential Mix’ designation of the Future Land Use Map (FLUM).
- **LU3** – Encourage incremental evolution of neighborhoods
- **LU3.2** Recommends rezoning properties in areas which need revitalization in Traditional Neighborhoods.
- **LU4** – Prioritize infill and revitalization in north Killeen
- **NH6**– Shift the market to include existing housing

Environmental Assessment

- The property is not within any FEMA regulatory Special Flood Hazard Area (SFHA). There are no other known wetland areas on or adjacent to the property as identified on the National Wetlands Inventory.

Case #Z23-19: “B-5” to “R-1”

12

View of the subject property looking north:



Case #Z23-19: “B-5” to “R-1”

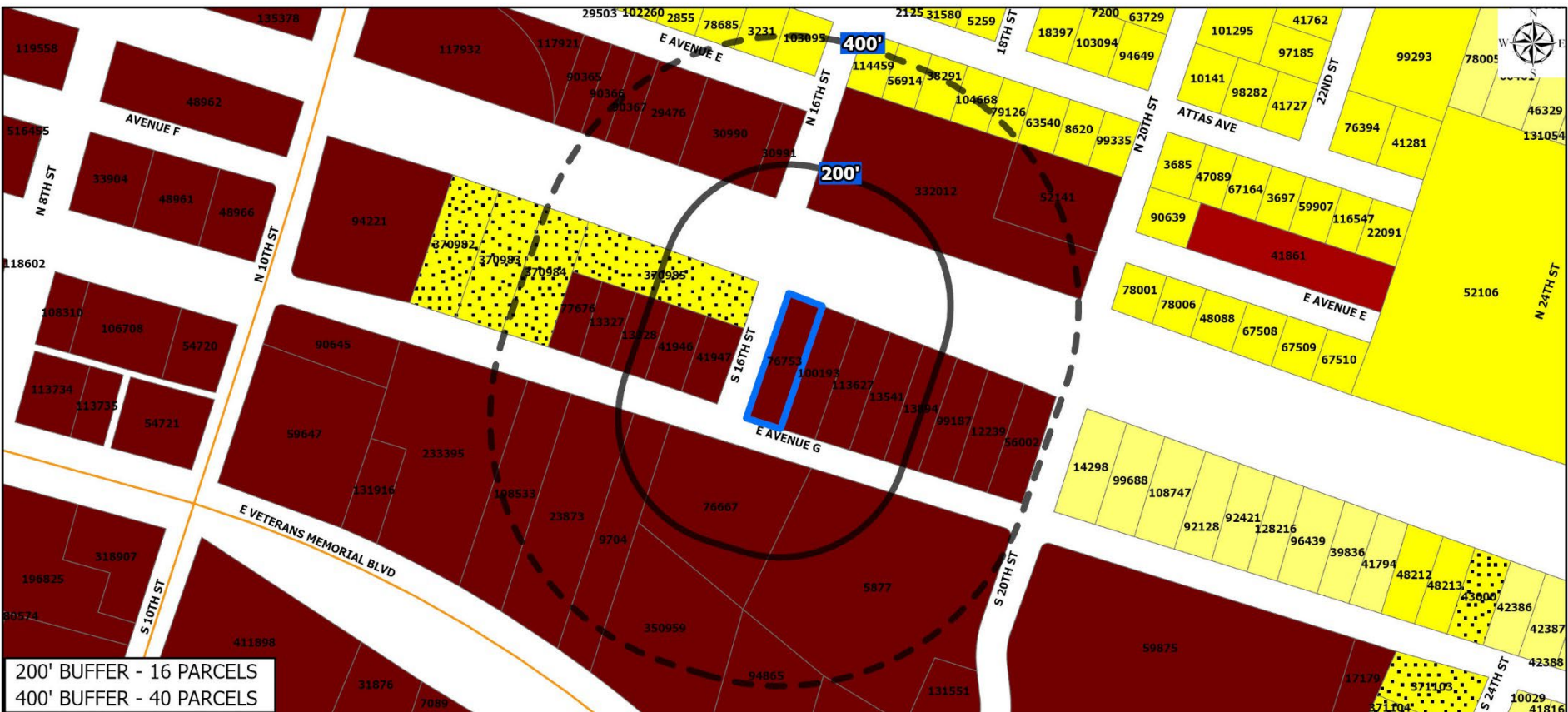
13

View of the surrounding property to the east:



Public Notification

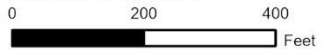
- Staff notified thirty-nine (39) surrounding property owners regarding this request.
- Of those notified, twenty-three (23) reside outside of the 200-foot notification boundary required by the State, and within the 400-foot notification boundary required by Council; and nine (9) property owners reside outside of Killeen.
- To date, staff has received no written responses regarding this request.



200' BUFFER - 16 PARCELS
 400' BUFFER - 40 PARCELS

PROPERTY ID MAP

Council District: 1



Subject Property Legal Description: MORRIS & GOODE, BLOCK 002, LOT 0001

Zoning Case 2023-19

B-5 TO R-1

Legend	
	R-1
	R-2
	R-3
	B-4
	B-5

Alternatives

16

- ❑ The City Council has two (2) alternatives. The Council may:
 - ❑ Disapprove the applicant's request; or
 - ❑ Approve the applicant's request as presented.

Staff Recommendation

- Staff finds that the applicant's request is consistent with the policies and principles of the 2022 Comprehensive Plan, as indicated in the Comprehensive Plan Analysis.
- Therefore, staff recommends approval of the applicant's request to rezone the subject property from "B-5" (Business District) to "R-1" (Single-Family Residential District).

Commission Recommendation

18

- At their regular meeting on August 21, 2023, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 7 to 0.