THERE EXISTS A PUBLIC HEALTH EMERGENCY RELATED TO THE COVID-19 VIRUS THAT NECESSITATES A MEETING OF THE CITY COUNCIL TO TAKE PLACE VIA VIDEO CONFERENCE PURSUANT TO GOVERNMENT CODE CHAPTERS 551.127, AS MODIFIED BY EXECUTIVE ORDER OF THE GOVERNOR

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If you wish to address the City Council via telephone, please select *9 on your phone, this will place you in a queue for speaking. At the appropriate time, the City Secretary will call upon each individual separately. *6 will unmute your phone to allow you to speak

I. OPEN MEETING
   A. Roll Call – Declaration of a Quorum.

II. CITIZENS and GUEST FORUM / PRESENTATIONS
   If you wish to address the City Council, select *9 on your phone; this will place you in a queue for speaking. At the appropriate time the City Secretary will call upon each individual separately. Select *6 to unmute your phone to speak. In accordance with the Open Meetings Act, Council may not discuss or take action on any item which has not been posted on the agenda.
   A. Citizens to be heard.

III. CONSENT AGENDA
   All of the following items are considered to be routine by the City Council, there will be no separate discussion on these items and will be enacted with one motion. Items may be removed by any Council Member by making such request prior to a motion and vote.
   A. Approval of the January 7, 2021 Regular City Council meeting minutes. Pgs. 4-7

   B. Approval of a final plat that establishes the Arbors at Fair Oaks Ranch Unit 2 proposing 47 single-family residential lots, generally located on the east side of Ralph Fair Road and north of Dietz-Elkhorn Road, City of Fair Oaks Ranch, Texas Final Plat that establishes the Arbors at Fair Oaks Ranch Unit 2
      Katherine Schweitzer, P.E., Manager of Engineering Services
      Lata Krishnarao, AICP, LEED ND, Consultant, Gunda Corporation, Pgs. 8-29
IV. CONSIDERATION/DISCUSSION ITEMS

A. Consideration and possible action authorizing the City Manager to sign a Professional Services Agreement for a Water/Wastewater/Reuse Rate Update to the Fair Oaks Ranch Utility. Ron Emmons, P.E., Public Works Director Sarah Buckelew, CPA, Finance Director Pgs. 30-86

B. Consideration and possible action authorizing the City Manager to enter into and manage an agreement between the City of Fair Oaks Ranch and Waterman Construction, LLC as Construction Manager at Risk for a Civic Center and City Hall Renovation. Clayton Hoelscher, Procurement Manager Pgs. 87-175

C. Consideration and possible action approving a Resolution to approve the 2020 Property Tax Levy. Sarah Buckelew, CPA, Finance Director Pgs. 176-180

D. Consideration and possible action approving the first reading of an Ordinance adopting Fiscal Year 2020-21 Budget Amendments. Sarah Buckelew, CPA, Finance Director Pgs. 181-188

E. Consideration and possible action on appointing a Council Member to the Citizens Code of Conduct Advisory Committee as the Committee Project Sponsor. Snehal R. Patel, J.D., M.P.Aff., Council Member, Place 5 Pg. 189

F. Discussion on necessary and potential amendments to the City's Code of Ordinances Chapter 6 Article 6.02 Weeds, High Grass, and Debris on Lots. Amber Little, Code Compliance Officer Pgs. 190-200

V. REPORTS FROM STAFF/COMMITTEES/COUNCIL

A. Update on City Election. Christina Picioccio, City Secretary Pg. 201

VI. CONVENE INTO EXECUTIVE SESSION

Pursuant to Section 551.101 of the Open Meetings Act, Texas Gov't Code, a quorum of the governing body hereby convenes into closed session:

A. Sec. 551.071 (Consultation with Attorney) the City Council will meet in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:

1. To receive legal advice and to receive and deliberate an offer of settlement for claims made on behalf of a real property owner against the City's operation of well K-2.

3. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.

VII. RECONVENE INTO OPEN SESSION
Discussion and possible action on items discussed in Executive Session.

VIII. ADJOURNMENT
Requests for City topic needing additional information/research; or, potential consideration for a future agenda.

Signature of Agenda Approval: [Signature]

I, Christina Picciocchio, City Secretary, certify that the above Notice of Meeting was posted on the outside bulletin board at the Fair Oaks Ranch City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas, and on the city's website www.fairoaksranchtx.org, both places being convenient and readily accessible to the general public at all times. As per Texas Government Code 551.045, said Notice was posted by 6:30 PM, January 18, 2021 and remained so posted continuously for at least 72 hours before said meeting was convened.
CITY OF FAIR OAKS RANCH
CITY COUNCIL REGULAR MEETING MINUTES
January 7, 2021
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015

I. OPEN MEETING
Council Present: Mayor Manitzas and Mayor Pro Tem Elizondo
Council Members: Hartpence, Havard, Koerner, Patel, and Maxton.

With a quorum present, the meeting was called to order at 9:30 AM.

Before the meeting began Mayor Manitzas called for a moment of silent reflection on the need to stand together to heal our nation after the attempted overrun of the nation's capital.

II. CITIZENS and GUEST FORUM/PRESENTATIONS
A. Citizens to be heard.

The City Secretary read a letter into the record from each of the following residents (1-6):

3. Camille Yanowski, in support of forming a committee of citizens to develop a Code of Conduct for Council Members.
4. Pretap Khanwilkar, in support of the two motions related to the Citizens Code of Conduct Committee Charter.
5. Christina Guerra, in support of the motions proposed related to the Citizens Code of Conduct Committee Charter.
7. Aimee Draughn spoke in support of the adoption of the Citizens Code of Conduct Committee charter.
8. Debra Doyle spoke regarding the incident from November 18, 2020 and the ongoing effect it has on our community. She asked for Council Member Havard's resignation or for the Mayor to ask her to do so.
9. Wes Pieper spoke about citizen engagement with local government and asked for questions regarding presentations on the agenda that he had previously emailed to the City Manager be addressed during today's meeting.

B. Joanna Merrill, Director of Human Resources & Communications, introduced Daniel Fate, Network Specialist after which Brian LeJeune, IT Director gave a brief history of his experience and gratitude for his great work thus far.

C. Joanna Merrill, Director of Human Resources & Communications, recognized Maintenance Worker Jarrett Lee for his promotion to Utility Technician.
D. Joanna Merrill, Director of Human Resources & Communications, recognized Melissa Castro, Environmental Compliance Manager, for her designation of Employee of the Quarter.

E. Joanna Merrill, Director of Human Resources & Communications, presented to City Council, personalized padfolios as a token of appreciation from City Staff for their hard work.

*Council Member Hartpence left the meeting at 9:51 AM.*

**III. CONSENT AGENDA**

A. Approval of the December 10, 2020 City Council and P&Z Joint Public Hearing meeting minutes.

B. Approval of the December 16, 2020 Water, Wastewater, and Reuse System Workshop meeting minutes.

C. Approval of the December 17, 2020 Regular City Council meeting minutes.

D. Approval of a Resolution amending the Planning and Zoning Commission Rules of Procedure.

**MOTION:** Made by Mayor Pro Tem Elizondo, seconded by Council Member Patel to approve the Consent Agenda.

**VOTE:** 6-0; Motion Passed.

**IV. CONSIDERATION/DISCUSSION ITEMS**

A. Consideration and possible action regarding stormwater utilities incentives & exemptions.

Kate Ploetzner, P.E., CFM of Kimley Horn and Matthew Garrett & Karim Virani of NewGen Strategies & Solutions, provided to Council a presentation regarding stormwater utilities incentives and exemptions. Following an in-depth discussion with Council and staff the Council was able to provide feedback regarding discretionary exemptions and incentives.

*Council Member Hartpence rejoined the meeting (time unknown). He spoke at 11:02 AM.*

Mayor Manitzas called for a five-minute break at 12:14 PM

A roll call reestablishing quorum was taken at 12:20 PM:

Council Present: Mayor Manitzas and Mayor Pro Tem Elizondo
Council Members: Hartpence, Havard, Koerner, Patel, and Maxton.

B. Consideration and possible action on adopting the Citizens Code of Conduct Advisory Committee Charter and providing direction to staff on procedural schedule for selection of committee members.

**MOTION 1:** Made by Mayor Pro Tem Elizondo, seconded by Council Member Koerner to adopt the City of Fair Oaks Ranch Citizens Code of Conduct Advisory Committee Charter.
AMENDED MOTION:
Made by Council Member Patel, seconded by Mayor Pro Tem Elizondo, to amend the motion to adopt the City of Fair Oaks Ranch Citizens Code of Conduct Advisory Committee Charter with the following amendment to Section VIII Item 4 “Council will appoint a member to appoint a member to serve as the Committee sponsor. The sponsor’s role will be to enable Council to ensure resources and consideration of recommendations”.

VOTE ON AMENDMENT:
7-0; Amendment Approved.

VOTE ON MOTION 1:
7-0; Motion Passed.

MOTION 2: Made by Council Member Patel, seconded by Council Member Maxton, to direct staff to proceed with the procedural schedule for the selection of the members for the Citizens Code of Conduct Advisory Committee Charter as provided in the agenda item.

VOTE ON MOTION 2:
7-0; Motion Passed.

Council Member Koerner left the meeting at 1:00 PM.

C. Consideration and possible action approving a Resolution allocating the Fiscal Year 2019-20 Governmental Fund Balances.

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Patel, to approve a Resolution allocating portions of the Governmental Fund Balance.

VOTE: 6-0; Motion Passed.

D. Discussion regarding Request for Proposals (RFP) for a Standards of Cover and Utilization Study.

Clayton Hoelscher, Procurement Manager provided an overview of the plan to hire consultants that will conduct the studies on the city’s behalf.

E. Discussion regarding potential amendments to the Water Conservation Ordinance.

Melissa Castro, Environmental Compliance Manager, led a discussion regarding possible amendments to the current Water Conservation Ordinance and answered questions.

V. REPORTS FROM STAFF/COMMITTEES/COUNCIL

A. Christina Picociotto, City Secretary, provided to Council a brief summary of upcoming dates and deadlines as they relate to the May 1, 2021 City Election and informed Council and all present of the resources available on our website.
VI. CONVENE INTO EXECUTIVE SESSION

City Council did not convene into Executive Session regarding:

A. Sec. 551.071 (Consultation with Attorney) the City Council will meet in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:

1. To receive legal advice and to receive and deliberate an offer of settlement for claims made on behalf of a real property owner against the City’s operation of well K-2.


VII. RECONVENE INTO OPEN SESSION

N/A

VIII. ADJOURNMENT

Mayor Manitzas adjourned the meeting at 2:24 PM.

________________________________________
Garry Manitzas, Mayor

ATTEST:

________________________________________
Christina Picioccio, City Secretary
AGENDA TOPIC: Approval of a final plat that establishes the Arbors at Fair Oaks Ranch Unit 2 proposing 47 single-family residential lots, generally located on the east side of Ralph Fair Road and north of Dietz-Elkhorn Road, City of Fair Oaks Ranch, Texas.

DATE: January 21, 2021
DEPARTMENT: Public Works and Engineering Services
PRESENTED BY: Katherine Schweitzer, P.E., Manager, Engineering Services
Lata Krishnarao, AICP, LEED ND, Community Planning Manager, Gunda Corporation

INTRODUCTION/BACKGROUND:

In June 2020, a Preliminary Plat, establishing the Preserve at Fair Oaks, was approved by the City.

At this time, the applicant is seeking approval of a Final Plat that includes 47 single-family residential lots, generally located on the east side of Ralph Fair Road and north of Dietz-Elkhorn Road, City of Fair Oaks Ranch, Texas. The proposed lots conform to the lot sizes outlined in the Concept Plan and range from 0.26 acres to 1.68 acres, with almost half of the lots being less than 0.3 acres.

The stipulations in the approved Development Agreement have been undertaken. Please see the attached staff report for more information.

During their January 14, 2021 meeting the Planning & Zoning commission recommended approval of the final plat that establishes the Arbors at Fair Oaks Ranch Unit 2 proposing 47 single-family residential lots with the following conditions:

1. Applicant to revise the final plat showing the original corner tie-in of the original survey of which said land is a part of.
2. Applicant to provide tax certificates showing all taxes owed to the state, county, School District, City, and/or any other political subdivisions have been paid in full to the date.
3. Applicant to deliver title report upon receipt.
4. Prior to recordation, the applicant will provide a letter of acceptance of public improvement by the City or fiscal surety for public improvement with detailed cost estimates of all subdivision improvements.
5. Applicant to correct 72.37 Acre Preserve Area Documentation Number to read "201803048606" on all sheets.

The motion passed with a vote of 5 for, 1 against, and 1 abstention.
LONGTERM FINANCIAL & BUDGETARY IMPACT:
N/A

LEGAL ANALYSIS:
Sec. 212.006 (a) of the Texas Local Government Code titled, Authority Responsible for Approval Generally, states the following:

“The municipal authority responsible for approving plats under this subchapter is the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality. The governing body by ordinance may require the approval of the governing body in addition to that of the municipal planning commission.”

The City of Fair Oaks Ranch’s current process requires the Planning and Zoning Commission to consider the plat application and make a recommendation to the City Council. The City Council has the final authority to act on the plat.

PROPOSED MOTION:
Staff has reviewed the revised plans and recommends approval of the plat with conditions.

Proposed Motion: I move to approve the final plat request from S.F. Fair Oaks Development, LLC for the Arbors at Fair Oaks Ranch Unit 2 proposing 47 single-family residential lots with the following conditions:

1. Applicant to revise the final plat showing the original corner tie-in of the original survey of which said land is a part of.

2. Applicant to provide tax certificates showing all taxes owed to the state, county, School District, City, and/or any other political subdivisions have been paid in full to the date.

3. Applicant to deliver title report upon receipt.

4. Prior to recordation, the applicant will provide a letter of acceptance of public improvement by the City or fiscal surety for public improvement with detailed cost estimates of all subdivision improvements.

5. Applicant to correct 72.37 Acre Preserve Area Documentation Number to read "201803048606" on all sheets.
STAFF REPORT

To: City Council
From: Public Works and Engineering Department
Date: January 21, 2021
Re: Final plat request from S.F. Fair Oaks Development, LLC for the Arbors at Fair Oaks Ranch Unit 2 proposing 47 single-family residential lots, generally located on the east side of Ralph Fair Road and north of Dietz-Elkhorn Road, City of Fair Oaks Ranch, Texas

INTRODUCTION/BACKGROUND:
In June 2020, a Preliminary Plat, establishing the Preserve at Fair Oaks, was approved by the City. At this time, the applicant is seeking approval of the Final Plat.

This tract of land is contained in the approximately 145 acres generally referred to as the “Owen’s Tract”. In February 2016, a development agreement was signed by the City of Fair Oaks Ranch, David and Dianne Owens, and Scott Felder Homes for the approximately 145-acre tract. This subdivision was renamed as Arbors at Fair Oaks Ranch and more information on the proposed units can be found in the Summary Table below.

The development agreement contained a maximum of 91 residential lots and referred to the Concept Plan, shown below, for the location of lots and rights of way. The development agreement did not specify minimum lot sizes, but the Concept Plan showed lots that were generally 80’ wide and 140’ deep. The proposed lots conform to the size in the Concept Plan and range from 0.26 acres to 1.68 acres, with almost half of the lots being less than 0.3 acres.

The development agreement included stipulations regarding a 19-acre green buffer area for the residential lots, a 75-acre natural Preserve Area to be maintained by the Fair Oaks Ranch Homeowners Association (FORHA) with city access, 4,100 liner feet of 10-foot wide nature trails, roadway access to the nature trail with parking and related improvement. Most of these improvements have been undertaken.

Staff had reviewed the plat and relayed review comments to the applicant. Staff is working with the applicant to address outstanding comments and will provide an update at the meeting.
Summary Table

<table>
<thead>
<tr>
<th>Arbors</th>
<th>Unit</th>
<th>Phase in Concept Plan (shown below)</th>
<th>Approval Date</th>
<th>Total Area* (ac)</th>
<th>Residential Lots</th>
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<tbody>
<tr>
<td>1</td>
<td>Phase 1</td>
<td>12/15/2016</td>
<td></td>
<td>24.20</td>
<td>44</td>
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<tr>
<td>2</td>
<td>Phase 2 &amp; Phase 3 &amp; Portions of Development Buffer</td>
<td>Preliminary Plat Approved in 2020</td>
<td></td>
<td>43.56</td>
<td>47</td>
</tr>
<tr>
<td>3</td>
<td>Preserve Area</td>
<td>Deeded to Fair Oaks Ranch Homeowners Association in 2018 through Doc #201806048606</td>
<td></td>
<td>72.37</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>140.13</strong></td>
<td><strong>91</strong></td>
</tr>
</tbody>
</table>

*There may be minor discrepancy in total areas due to surveys prepared during platting, conveyance and dedication.

Updated Original Concept Plan with Unit Status and Progress
POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Article II, Section 5 of the City Subdivision Ordinance titled, Processing of Final Plat contains the following:

A. Staff Review.
City Staff will inspect the final Plat and the Plans and Specifications to verify that the submittal conforms to all of the requirements of this Ordinance. The Subdivider will be informed in writing by the City Administrator of any deficiencies. Prior to final plat approval, City staff shall furnish the Fair Oaks Ranch Public Works Department a report concerning utility and street construction plans, bonding requirements and filing fees. When the Public Works Department is satisfied that all conditions and requirements have been met, the Public Works Department shall recommend approval of the plat at their next scheduled meeting.

B. Recommendation by the Fair Oaks Ranch Public Works Department.
The Fair Oaks Ranch Public Works Department shall recommend that City Council approve or disapprove the final plat, plans and specifications within 30 days of the date on which a complete final plat submission is received by the City Administrator. The Public Works Department’s recommendation of the final plat, plans and specifications shall not constitute final plat approval, but is the authorization to present the plat, plans and specifications to the City Council for final approval. If any major changes are required by the Public Works Department, the Public Works Department may require submission of another final plat.

C. Approval by the Fair Oaks Ranch City Council.
The Fair Oaks Ranch Public Works Department shall forward its recommendation for approval or disapproval to the City Council for action at its next scheduled meeting. Final plats shall be considered filed with the City Council (The Municipal Approving Authority) on the date that the agenda is posted for the meeting that City Council shall initially consider approval of the final plat.

D. Disapproved Plat.
Should the final plat as submitted fail to meet the conditions of this ordinance, the City Council shall disapprove the plat and note its disapproval in the minutes of the City Council meeting.

E. Plat Filing.
The Subdivider shall file/record with the appropriate County the approved final plat and provide the City with two reproducible, recorded tracings of the recorded plat within 10 days of the City Council meeting at which the final plat is approved.

Financial Guarantees:
Article II, Section 4 of the City Subdivision Ordinance titled, Processing of Final Plat requires financial guarantees “to insure that all of the required improvements in the subdivision are constructed in accordance with the approved Plans and Specifications, and to guarantee that the improvements are maintained to the satisfaction of the City in a good state of repair for the period of one year after approval and acceptance”. These guarantees include:

a. Construction Bond in an amount equal to the estimated cost of the utility, drainage, street improvements and erosion control by the subdivider. The subdivider is required to file this bond at least five working days prior to the consideration of the final plat by the City Council.

b. Maintenance Bond in an amount equal to ten percent (10%) of the amount of the Construction Bond. This bond is due prior to final acceptance of the subdivision
improvements by the City to ensure that the owner will maintain, to the satisfaction of the City, all of the constructed improvements in a good state of repair for the period of one year from the date of acceptance by the city.

For subdivisions approved prior to the adoption of the Unified Development Code, City’s current platting procedures permit the applicant to obtain a final plat approval without submittal of a construction bond. However, the plat can be recorded only after the public improvements are constructed and accepted by the city.

LEGAL ANALYSIS:

Sec. 212.006 (a) of the Texas Local Government Code titled, Authority Responsible for Approval Generally, states the following:

“The municipal authority responsible for approving plats under this subchapter is the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality. The governing body by ordinance may require the approval of the governing body in addition to that of the municipal planning commission.”

The City of Fair Oaks Ranch’s current process requires the Planning and Zoning Commission to consider the plat application and make a recommendation to the City Council. The City Council has the final authority to act on the plat.
CITY COUNCIL MEETING

Arbors at Fair Oaks Ranch Unit 2 Final Plat

January 21, 2021 | 6:30 PM
Consideration and possible action recommending the approval of a final plat that establishes the Arbors at Fair Oaks Ranch Unit 2 proposing 47 single-family residential lots;

Generally located on the east side of Ralph Fair Road and north of Dietz-Elkhorn Road, City of Fair Oaks Ranch, Texas
• The applicant is requesting a final plat to establish:
  • 47 single-family residential lots.
  • a 19-acre green buffer area for the residential lots,
  • a 75-acre natural Preserve Area

• The proposed lots conform to the size in the approved Development Agreement Concept Plan and range from 0.26 acres to 1.68 acres, with almost half of the lots being less than 0.3 acres.
## Summary Table

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*There may be minor discrepancy in total areas due to surveys prepared during platting.
ARBORS AT FAIR OAKS RANCH UNIT 1 (VOL. 9725, PGS 1-3, O.P.R.)

PROPOSED WITHIN THE FINAL PLAT OF ARBORS AT FAIR OAKS RANCH UNIT 2

PROPOSED WITHIN THE FINAL PLAT OF ARBORS AT FAIR OAKS RANCH UNIT 2
Sec. 212.006 (a) of the Texas Local Government Code titled, Authority Responsible for Approval Generally, states the following:

“The municipal authority responsible for approving plats under this subchapter is the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality. The governing body by ordinance may require the approval of the governing body in addition to that of the municipal planning commission.”

As described above, the City of Fair Oaks Ranch’s current process requires the Planning and Zoning Commission to consider the plat application and make a recommendation to the City Council.

The City Council has the final authority to act on the plat.
Staff has reviewed the revised plans and recommends approval of the final plat that establishes the Arbors at Fair Oaks Ranch Unit 2 with the following conditions to be addressed prior to plat recordation:

- Applicant to revise the final plat showing the original corner tie-in of the original survey of which said land is a part of.

- Applicant to provide tax certificates showing all taxes owed to the state, county, School District, City, and/or any other political subdivisions have been paid in full to the date.

- Applicant to deliver title report upon receipt.

- Prior to recordation, the applicant will provide a letter of acceptance of public improvement by the City or fiscal surety for public improvement with detailed cost estimates of all subdivision improvements.

- Applicant to correct 72.37 Acre Preserve Area Documentation Number to read "201803048606" on all sheets.

**P&Z Motion:** Recommended approval of the final plat that establishes the Arbors at Fair Oaks Ranch Unit 2 with the aforementioned conditions. The motion passed with a vote of 5 for, 1 against and 1 abstention.
Motion: I move to approve the final plat of Arbors at Fair Oaks Ranch Unit 2 with the following conditions to be addressed prior to plat recordation:

- Applicant to revise the final plat showing the original corner tie-in of the original survey of which said land is a part of.

- Applicant to provide tax certificates showing all taxes owed to the state, county, School District, City, and/or any other political subdivisions have been paid in full to the date.

- Applicant to deliver title report upon receipt.

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- Applicant to correct 72.37 Acre Preserve Area Documentation Number to read "201803048606" on all sheets.
CONCLUSION

• Q&A
STATE OF TEXAS
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
REGISTERED PROFESSIONAL ENGINEER

1. THE PROPERTY OWNER RETAINS THE RIGHT TO USE ALL OR ANY PART OF THE EASEMENT TO THE PROPERTY, OR ANY OTHER PROPERTY OR PERSONS THAT MIGHT BE AFFECTED BY SAID EASEMENT FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, INSPECTING, PATROLLING, OPERATING, MAINTAINING, REPAIRING, AND REMOVING THE DRAINAGE SYSTEM; THE RIGHT TO REMOVE FROM THE EASEMENT ALL TREES AND LIMITATION, WALLS, BEDS, EMBANKMENTS, SPILLWAYS, APPURTENANCES, AND OTHER THERETO (THE "UTILITIES") TO THE PROPERTY IS MINIMIZED AND THE CITY WILL AT ALL TIMES, AFTER DOING ANY WORK CUSTOMARY PRACTICES. SUCH RESTORATION IS REASONABLE IN ACCORDANCE WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES.

5. RESERVE 906, 907, 908, & 909 ARE DESIGNATED AS A DRAINAGE EASEMENT. RESERVE 910 IS A WATERCOURSE REDEVELOPMENT AGREEMENT DATED 2/22/2016, DOC#201606008213 RECORDED ON 2/26/2016 IN THE RECORDS OF BEXAR COUNTY. ALL REQUIREMENTS IN THE DEVELOPER AGREEMENT WILL BE COMPLIED WITH IN ACCORDANCE WITH THE AMERICAN INSTITUTE OF STANDARDS (AASHTO) STANDARDS IN CONSTRUCTION OF THE EPW ROADWAY, AND IN ACCORDANCE WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES. A WARRANTEE RESTORATION IS REASONABLE IN ACCORDANCE WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES.

6. EACH BUILDER WILL BE REQUIRED TO PLANT TWO TREES PER LOT WITH A CALIPER AT LEAST TWO INCHES (2"") Girth AT CHEST HEIGHT. THE BUILDER WILL BE REQUIRED TO PLACE PERMANENTLY GROSSED AND LABELED SEEDLING WITHIN THE RIGHT-OF-WAY WITH THE PROPERTY OWNER BEING THE OWNER OF LAND SHOWN ON THIS PLAT, IN PERSON OR THROUGH A DULY AUTHORIZED AGENT. THE BUILDER WILL BE REQUIRED TO PLACE AN EASEMENT SIGN WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES. THE EASEMENT SHALL BE MARKED WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES.

7. THE NORTH 12°10'17" WEST 183.20' FROM THE CORNER OF THE PROPERTY LINE MATCH LINE "A" TO THE EAST SIDE OF THE ROADWAY, WHICH IS TO BE THE START OF THE CITY OF FAIR OAKS RANCH ROADWAY FOR THE PURPOSES OF THIS PLAT.

8. THE OWNER OF LAND SHOWN ON THIS PLAT, IN PERSON OR THROUGH A DULY AUTHORIZED AGENT, HAS EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN.

9. DEVELOPMENT AGREEMENT DATED 2/22/2016, DOC#201606008213 RECORDED ON 2/26/2016 IN THE RECORDS OF BEXAR COUNTY. ALL REQUIREMENTS IN THE DEVELOPER AGREEMENT WILL BE COMPLIED WITH IN ACCORDANCE WITH THE AMERICAN INSTITUTE OF STANDARDS (AASHTO) STANDARDS IN CONSTRUCTION OF THE EPW ROADWAY, AND IN ACCORDANCE WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES. A WARRANTEE RESTORATION IS REASONABLE IN ACCORDANCE WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES.

GENERAL NOTES:

5. ROOF OVERHANGS ARE ALLOWED WITHIN FIVE (5) FOOT WIDE ELECTRIC AND GAS EASEMENTS WHEN PERMITTED BY THE CITY. FOR SPECIFIC BUILDING SETBACKS REFER TO THE SUBDIVISION DEED RESTRICTIONS.

6. RESERVE 906, 907, 908, & 909 ARE DESIGNATED AS A DRAINAGE EASEMENT. RESERVE 910 IS A WATERCOURSE.

7. THE NORTH 12°10'17" WEST 183.20' FROM THE CORNER OF THE PROPERTY LINE MATCH LINE "A" TO THE EAST SIDE OF THE ROADWAY, WHICH IS TO BE THE START OF THE CITY OF FAIR OAKS RANCH ROADWAY FOR THE PURPOSES OF THIS PLAT.

8. THE OWNER OF LAND SHOWN ON THIS PLAT, IN PERSON OR THROUGH A DULY AUTHORIZED AGENT, HAS EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN.

9. DEVELOPMENT AGREEMENT DATED 2/22/2016, DOC#201606008213 RECORDED ON 2/26/2016 IN THE RECORDS OF BEXAR COUNTY. ALL REQUIREMENTS IN THE DEVELOPER AGREEMENT WILL BE COMPLIED WITH IN ACCORDANCE WITH THE AMERICAN INSTITUTE OF STANDARDS (AASHTO) STANDARDS IN CONSTRUCTION OF THE EPW ROADWAY, AND IN ACCORDANCE WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES. A WARRANTEE RESTORATION IS REASONABLE IN ACCORDANCE WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES.

9. DEVELOPMENT AGREEMENT DATED 2/22/2016, DOC#201606008213 RECORDED ON 2/26/2016 IN THE RECORDS OF BEXAR COUNTY. ALL REQUIREMENTS IN THE DEVELOPER AGREEMENT WILL BE COMPLIED WITH IN ACCORDANCE WITH THE AMERICAN INSTITUTE OF STANDARDS (AASHTO) STANDARDS IN CONSTRUCTION OF THE EPW ROADWAY, AND IN ACCORDANCE WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES. A WARRANTEE RESTORATION IS REASONABLE IN ACCORDANCE WITH THE CITY'S USUAL AND CUSTOMARY PRACTICES.
AGENDA TOPIC: Consideration and possible action authorizing the City Manager to sign a Professional Service Agreement for a Water/Wastewater/Reuse Rate Update to the Fair Oaks Ranch Utility

DATE: January 21, 2021

DEPARTMENT: Public Works Department

PRESENTED BY: Ron Emmons, P.E., Director of Public Works
Sarah Buckelew, CPA, Director of Finance

INTRODUCTION/BACKGROUND:

The City of Fair Oaks Ranch purchased the Fair Oaks Ranch Utility (FORU) in December 1997. When the initial operation began, base rates were established for customer water and wastewater use. The City authorized a couple of rate changes to the water system and made one adjustment on the wastewater rate within the first eight years of operating the utility.

In 2011, the City Council made a modification to the rate and structure of each bill that included service availability charges with various fees. The intent was to establish metered rates based on customer demands and implement fees that recover expenses from elements outside the utilities control. For the most part, the established structure enabled the utility to operate in a net positive each fiscal year. Unfortunately, the water revenues continue to subsidize the wastewater system. In addition, the current rates primarily address operational elements and do not adequately address any capital needs of the system.

The City issued a Request for Qualification (RFQ) from interested consultants to submit a Statement of Qualifications (SOQ) to work with the City on an update to the FORU rate system. All prior adjustments and modifications to the rate structure were accomplished internally, either with residential volunteers or staff and Council input. The City received three SOQ’s on November 12, 2020 from all very qualified consultants. Several City staff reviewed the SOQ’s and met to discuss individual ranking of the firms, taking into consideration each firm’s project team, relevant experience, project approach, quality assurance and control, and their technical project characteristics. The review committee agreed that Raftelis Financial Consultants, Inc. will best meet the objectives the City outlined in the RFQ.

Key personnel met with Raftelis to develop a comprehensive scope and to establish an agreeable fee. The proposed scope and fee are attached with the Professional Services Agreement that the City requires of all its consultants.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

- Meets Strategic Action Plan items 1.4.2 & 1.4.3 – Develop a sustainable and equitable Water, Wastewater, and Reuse Rates and Fees.
- Continue to produce a quality and exemplary water supply for consumer purposes and maintain an environmentally compliant wastewater/reuse component.
• Provides a reliable, affordable, and sustainable financial plan and ratemaking protocol.
• Meets procurement guidelines.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:
Funds were allocated in the FY2020/21 Budget in the amount of $150,000 to accomplish this Strategic Action Plan item.

LEGAL ANALYSIS:
Consultant will be required to sign and adhere to the City’s Standard Professional Service Agreement prior to the commencement of work.

RECOMMENDATION/PROPOSED MOTION:
I move to authorize the City Manager to sign a Professional Services Agreement for the Water/Wastewater/Reuse Rate Update with Raftelis Financial Consultants, Inc. at a not to exceed cost of $144,158.00.
This Professional Services Agreement ("Agreement") is made and entered by and between the City of Fair Oaks Ranch, Texas, (the "City") a Texas municipality, and Raftelis Financial Consultants, Inc. ("Professional").

Section 1. Duration. This Agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

Section 2. Scope of Work.

(A) Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as Exhibit “A”. The work as described in the Scope of Work constitutes the “Project”. Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.

(B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent Professionals practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional holding the same professional license.

(C) The Professional shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Professional may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

(A) The Professional shall be paid in the manner as provided herein.
(B) Billing Period: The Professional may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Professional’s invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) Reimbursable Expenses: Any and all reimbursable expenses related to the Project shall be included in the scope of services (Exhibit A). If these items are not specifically accounted for in Exhibit A they shall be considered subsidiary to the total contract amount.

Section 4. Changes to the Project Work; Additional Work.

(A) Changes to Work: Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the City finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by the City and such services will be considered as additional work and paid for as specified under following paragraph.

(B) Additional Work: The City retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Professional shall execute a supplemental agreement for the additional work and the City shall compensate the Professional for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

Section 5. Time of Completion.

The prompt completion of the services under the Scope of Work is critical to the City. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by
Professional prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks and services described in the Scope of Work.

Section 6. Insurance.

Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance provided for in attached Exhibit B throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in Exhibit B, Professional shall maintain the following limits and types of insurance:

Professional Liability Insurance: professional errors and omissions liability insurance with limits of liability not less than $1,000,000 per occurrence covering all work performed by the Professional, its employees, sub-contractors, or independent contractors. If this coverage can only be obtained on a “claims made” basis, the certificate of insurance must clearly state coverage is on a “claims made” basis and coverage must remain in effect for at least two years after final payment with the Professional continuing to furnish the City certificates of insurance.

Workers Compensation Insurance: The Professional shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Professional’s employees carrying out the work involved in this contract.

General Liability Insurance: The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than $1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than $1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be $2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than $2,000,000.

Automobile Liability Insurance: Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least $1,000,000 per occurrence for bodily injury and property damage or split limits of at least $1,000,000 for bodily injury per person per occurrence and $1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.
Subcontractor: In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a “per occurrence basis” and not a “claims made” form.

Evidence of such insurance shall be attached as Exhibit “B”.


(A) Subletting. The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.

(B) Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY’S SOLE RISK AND WITHOUT LIABILITY TO THE PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional’s expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement.

(C) Professional’s Seal. To the extent that the Professional has a professional seal it shall placed on all documents and data furnished by the Professional to the City. All work and services provided under this Agreement will be performed in a good and workmanlike fashion
and shall conform to the accepted standards and practices of the Professional’s industry. The plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the City and Professional. The City acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.

(D) **Compliance with Laws.** The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker’s compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the City with satisfactory proof of compliance.

(E) **Independent Contractor.** Professional acknowledges that Professional is an independent contractor of the City and is not an employee, agent, official or representative of the City. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

(F) **Non-Collusion.** Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.

(G) **Force Majeure.** If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar
acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(H) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

Section 8. Termination.

(A) This Agreement may be terminated:

(1) By the mutual agreement and consent of both Professional and City;

(2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;

(3) By the City, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this Agreement in a timely or satisfactory manner;

(4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Professional.

(B) If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Professional to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination that is not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually
performed prior to termination, together with any reimbursable expenses then due.

Section 9. **Indemnification.** Professional shall indemnify, defend and hold harmless the City of Fair Oaks Ranch, Texas and its officials, employees and agents (collectively referred to as “Indemnitees”) and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney’s fees) or liabilities (collectively referred to as “Liabilities”) by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by Professional or Professional’s agent, consultant under contract, or another entity over which Professional exercises control (whether active or passive) of Professional or its employees, agents or sub-contractors (collectively referred to as “Professional”) (ii) the failure of Professional to comply with any of the paragraphs herein or the failure of Professional to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Professional expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of Professional, or any of its sub-contractors, as provided above, for which Professional’s liability to such employee or former employee would otherwise be limited to payments under State Workers’ Compensation or similar laws. Nothing herein shall require Professional to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee’s own negligence or willful misconduct. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of Professional in performing Services under this Agreement.

For Professional Liability Claims, Professional shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that Professional or Professional’s agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.

**Section 10. Notices.** Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the
address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 11. **No Assignment.** Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 12. **Severability.** If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 13. **Waiver.** Either City or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 14. **Governing Law; Venue.** This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Kendall County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Kendall County, Texas.

Section 15. **Paragraph Headings; Construction.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 16. **Binding Effect.** Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their
respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 17. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 19. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 20. Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Section 21. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 22. Right To Audit. City shall have the right to examine and audit the books and records of Professional with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

23. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV’T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the
dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

24. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

25. Boycott Israel. The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas government code chapter 2270) by entering this agreement, Professional verifies that it does not Boycott Israel, and agrees that during the term of the agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.
EXECUTED, by the City on this the _____ day of ________________, 2021.

CITY:
By:_________________________
Name: Tobin Maples, AICP
Title: City Manager

PROFESSIONAL:
By:_________________________
Name:
Title:________________________

ADDRESS FOR NOTICE:

CITY
City of Fair Oaks Ranch
Attn: City Secretary
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015

PROFESSIONAL
Raftelis Financial Consultants, Inc.
Harold Smith
3755 S. Capital of Texas Highway, Suite 155
Austin, Tx 78704
EXHIBIT A
SCOPE OF SERVICES
ATTACHMENT A
SCOPE OF WORK

Raftelis has developed a project approach for the City’s water, wastewater and reuse rate study. We have tailored this approach based on the City’s utility. In the approach we have provided the tasks needed to complete a Water/Wastewater/Reuse Rate Update study, which will include completing a cost-of-service study, developing a financial planning model and developing a communication plan.

The approach described in this section highlights the steps Raftelis will take to exceed the City’s expectations on these items. Our approach relies on our team’s experience, industry standard rate-setting principles and practices, and our team’s and City staff’s institutional knowledge.

The scope below was developed based on the City's initial Request for Qualifications and various discussions with City Staff. The following table provides a matrix showing how the tasks in the Scope of Work tie to the RFQ:

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<th>RFQ Item</th>
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<td></td>
<td>Section C</td>
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<td>2) Public Outreach</td>
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<td>7) Rate Structure Model</td>
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<td>8) Pricing Objectives</td>
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<td>10) Communications Outreach Program</td>
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<td>11) Stakeholders Engagement Effort</td>
<td>Section B</td>
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<tr>
<td>12) Key Performance Metrics</td>
<td>Section A, Task 1 &amp; Section E</td>
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</tbody>
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In Section C below, Raftelis has identified key points in the scope where Raftelis will present to the City Council and gain input/approval for that aspect of the study.

A. Cost of Service and Financial Planning Model

Task 1: Project Initiation and Management

We believe that the execution of a productive kickoff meeting is the most effective way to begin a project of this nature. The goals for this meeting include:

- Providing a forum to finalize the scope of the project, work plan, and schedule with City staff,
- Discussing the City’s preliminary pricing objectives,
- Ensuring that we understand the overall goals of the study,
- Providing an opportunity for City staff to meet and become comfortable with the project staff from Raftelis, and
- Reviewing the data needs for the project.
Accomplishing these objectives will help to ensure that the project progresses as smoothly as possible. We currently propose that this meeting be held virtually. We have also included a kickoff meeting for the communications scope below.

**Data Collection and Review**

Prior to the kickoff meeting, we will prepare a detailed data request list that will identify the information needed to complete the various analyses. Information that is typically required to perform a comprehensive cost of service study includes a recent Comprehensive Annual Financial Reports (CAFR), recent and current utility budgets, a description of service areas, current and historical billing data, utility plant in service records, debt service schedules, water and wastewater master plans, and a long-term capital improvement plan. Some of this information will be readily available, whereas other components may require more detailed analyses of operational data, customer billing information, and costs.

As part of the data review, we will work with City staff to obtain a thorough understanding of the financial, operational, regulatory, master planning, and political environments. Existing rate policies and ordinances will be reviewed for consistency with current and possible future fees. Key issues and areas of concern will be reviewed and discussed. Historical information will be reviewed related to costs, customers, usage, demand patterns, capital spending, plant in service, and revenues generated to provide a better understanding of recent changes in operating characteristics and to develop appropriate trends and growth factors for creating financial forecasts. Other information reviewed will include regulatory requirements, bond covenants, contractual requirements, and capital plans for each utility. For reuse, the contract with the Country Club will be reviewed so that the study appropriately considers the arrangement with the City. During the data collection and review, we will begin to identify assumptions used to allocate and forecast costs that will be integrated into our model. As these assumptions are identified, City staff will have an opportunity to review our findings to ensure that the assumptions make sense with regard to each of the City’s utility systems.

**Pricing Objectives Workshop**

Raftelis recommends hosting a Pricing Objectives Workshop for the City Council to evaluate and identify the City’s goals and objectives for its various existing and proposed pricing approaches. The purpose of the workshop will be to determine the types of modifications that should be considered for the City’s rate structures. The outcome of the workshop will be considered when developing rate design alternatives. As part of the model developed for the City, Raftelis will include a rate design module that will allow the City to see the impacts of the various rate design alternatives that help meet the priorities identified in the Pricing Objectives Workshop. Rate design alternatives will be developed based on the goals and objectives that are identified during this workshop. Raftelis will provide a summary analysis for each alternative measuring how each alternative addresses each objective.

**Quality Assurance and Control**

Raftelis’ quality program consists of two major components – quality assurance (QA) and quality control (QC). While these titles are often used interchangeably, there are some inherent differences. From Raftelis’ perspective, QA is the process used to ensure high-quality products and services. Raftelis uses SharePoint for all projects; relying on it to work from the same set of files, thereby increasing transparency and
maintaining “one version of the truth.” Raftelis can also create a SharePoint site for the City to upload its data and access model files.

For this project, our communication process ensures a common understanding from the lowest to highest level of the project organization chart. All technical work starts with the analysts, which rolls up to the quality reviewers. Finally, our Project Manager will present results in a format that will allow City staff to review options and make decisions.

The second part of our quality program is Quality Control – the activities we perform to find errors or defects in the work. An example of this is data verification, a process where we test for reasonableness using at least one other unrelated data source. For example, when reconciling detailed billing data, we may reconcile the revenues generated from that source to the City’s budget or annual report. We may compare the total billed volume against water production to test whether there is a reasonable relationship between consumption and production. We will employ that approach across all technical analyses during the City's project.

**Project Management**

In order to successfully complete the project, Raftelis will be in communication with City staff regarding data requests, data validation, data decisions and review of preliminary and final results. Much of this can be accomplished through conference calls, emails, and demonstrations using tools such as Microsoft Teams or Zoom. These efforts provide for consistent and competent project management to ensure that all deadlines and objectives are met in a timely and efficient manner. We believe in a no-surprises approach so that the City is always aware of the project status.

The primary deliverables for the study include the financial policies, the financial planning model, the cost-of-service allocations, rate alternatives, final rates and the final report. The completion of these deliverables will measure the performance of the study. The financial policies, financial planning model and cost-of-service will be complete by April with a preliminary review to occur with staff in March. The final rate design will be complete by May with a preliminary review in April. The final report will be completed after all communication is completed. The schedule estimates this to occur in August 2021. The completion of these milestones is identified in the timeline in Section E.

**Deliverables:**
- Data List for the Study
- Meeting Agenda for Kickoff Meeting
- Kick-off Meeting Summary
- Presentation for Pricing Objective Workshop
- Pricing Objective Memo

**Task 2: Consumption and Current Revenue Analysis**

Comprehensive operation and customer billing information will be collected to classify customers and project user demand over the planning period. We will study available historical consumption of the City’s different customer types in order to arrive at a corresponding usage and growth rate for each type. With assistance from Pape-Dawson, Raftelis will analyze the City’s most recent Master Plan to determine the appropriate growth factor for the City’s customer classes. As a result of these analyses, Raftelis will be able to develop projections of consumption for the forecast period. Raftelis will also examine the City’s current customer classifications and identify any changes that may be necessary to make them more consistent.
with current industry practices and standards. Raftelis will then calculate the revenues under current rates at projected consumption levels to understand the potential revenues realizable. We will then compare these revenues to the revenue requirements forecast in the financial plan developed in Task 3 to understand the magnitude of the potential shortfall under the current rates.

**Deliverables:**
- Consumption Forecast
- Results of Revenue Analysis

**Task 3: Comprehensive Financial Planning and Revenue Requirement Development**

This task is a major component of the rate study. In this task, Raftelis will begin to build the model that will be used for financial planning and for completing the cost-of-service analysis. The data collected in Task 1 will be used to begin to determine the overall revenue requirement of the system for the multi-year period. These costs will include operations and maintenance costs, capital expenditures, debt service and reserve requirements. Raftelis will work with City Staff to develop an outlook that considers contractual obligations and ordinances. This revenue requirement will determine the level of required rate revenue to fund utility operations, meet target reserve balances, comply with debt service coverage ratios and ensure overall long-term financial sustainability of the utility.

**Financial Policy Review and Recommendations**

As part of this task, Raftelis will review the City’s existing financial policies and make recommendations about any additional policies that the City might consider for ensuring the financial sustainability of the utility. In making recommendations, Raftelis will consider industry practices for other cities and consider recommendations by rating agencies and agencies such as the Government Finance Officers Association (GFOA). Raftelis will consider the following types of financial policies:

- **Debt financing policies** – Raftelis will review and evaluate the City’s current method(s) and practices for financing the City’s long-term debt. Policies related to funding sources, bond issuance timing and terms, interest rates, debt service structuring, debt service reserve funding practices (cash, bonds, etc.), debt service coverage requirements and other issues will be reviewed with recommendations provided to enhance these practices, as deemed appropriate.

- **Operating, emergency and capital reserves** – Raftelis will review and evaluate all current reserve policies for funding operating (working capital), emergency (contingency) and future capital improvements (major infrastructure repair and replacement) needs. Provide recommendation to the City regarding changes to reserve target levels and annual contributions that better meet the needs of the City. Also identify and evaluate the potential for establishment of a reserve for the acquisition of future additional water supplies.

- **Rates and charges** – Raftelis will review the City’s rates and charges policies. Provide recommendations for rate stability, revenue stability, affordability, equitability and water conservation incentives.

Any changes to the City’s existing financial policies will be considered as part of the financial planning forecast to determine the potential impact to rates. The financial planning policies will be presented to Council for approval.
**Financial Planning Model**

The revenue requirements of the utility will become the basis for the financial plan and the cost of service. The financial planning model will include the revenue forecast required to fund the revenue requirement for the multi-year period. During this phase of the project, Raftelis will analyze the City’s revenue requirement and provide feedback about debt issuances and operations and maintenance expenses. While a cost-of-service analysis is important for determining the impact that each class puts on the assets of the utility, the financial planning model provides the City a tool that allows for “what-if” scenarios and for projecting future costs. For the City of Fair Oaks Ranch, this is important for evaluating the internal needs of the utility, such as beginning to address capital needs while maintaining the financial sustainability of the utility. Raftelis will develop a user-friendly, flexible model that the City can use in the future for financial planning and developing rates.

Operations and Maintenance (O&M) expenses will include all costs included in the City’s budget, including all transfers from the utility to other City funds, such as the general fund. The O&M expenses will also include maintenance costs and equipment replacement costs. The forecast of the O&M expenses will be based on various inflationary factors based on historical expenses. Raftelis can forecast expenses based on the billing methodology for the cost. For example, purchased water expenses can be forecasted based on the amount of water projected to be purchased in the future times forecasted rates for the water.

During the project, City staff will be provided with working copies of the then-current model such that they will be able to provide continual input into the development of the model. Once we have developed a working model to calculate preliminary rate recommendations, Raftelis will conduct a work session with the City to review and discuss the rate model and preliminary results. We will walk through the model to ensure appropriate model functions are included. Any necessary modifications will be incorporated into the final rate model. Once the project is complete, the City will be provided with fully functioning copies of the model with written operating instruction. In addition, Raftelis will train members of the City staff in its use.

The financial planning model will include the following features:

- Developed in Microsoft Excel (compatible with earlier versions if necessary)
- Ability to model multiple rate structures simultaneously
- Ability to model changes in usage
- Incorporation of financial planning over a multi-year planning horizon with ability to change certain standard assumptions by year
- Ability to calculate rates for multiple years and update rates annually with ease
- Ability to flag errors and problematic results such as failure to meet debt coverage, reserve below target levels, etc.
- Ease of input, updating, and rate schedule/graphics printing

During the initial Kickoff Meeting, Raftelis will request a “wish-list” from the City of what features are most important for the model.

**Deliverables:**
• Initial Financial Planning Model
• Presentation to Council about Financial Planning forecast (to be done concurrently with Cost-of-Service presentation)

Task 4: Water and Wastewater Utility Cost of Service

In this task, Raftelis will evaluate the City’s current customer classes and discuss the potential impacts of the cost of service. The demands of each of the classes will be analyzed and presented to the City. After forecasting the utility revenue requirements, a cost-of-service study must be conducted to determine the amount of revenue that should be recovered from each customer class. The cost-of-service analysis will be part of the financial planning model. To accomplish this objective, Raftelis uses a multi-step cost allocation process based on the industry standard methodologies published by the AWWA in Manual of Water Supply Practices M1, Principles of Water Rates, Fees, Charges (Manual M1). The use of AWWA standard processes ensures that costs will be allocated to each water customer class based on the proportionate demands they impose on the water utility system.

For wastewater, Raftelis uses a multi-step cost allocation process based on the industry standard methodologies published by WEF in Manual of Practice No. 27, Financing and Charges for Wastewater Systems. The use of WEF stand processes ensures that costs will be allocated to each wastewater customer class based on the proportionate demands they impose on the wastewater utility system.

For reuse, Raftelis will consider the uniqueness of the golf course and the City’s arrangement for the wastewater discharge to the golf course.

For this task, Pape-Dawson will provide system characteristics and parameters necessary to conduct the cost-of-service analysis.

Cost Functionalization

As a first step in the cost-of-service process, the revenue requirement must be allocated to the appropriate functional cost categories. These functional cost categories are based on utility engineering design and/or operational characteristics, coupled with our experience performing cost allocations for other utilities throughout the United States and Texas. Depending on the characteristics of the City, for water, they generally include:

• Source of supply costs
• Water treatment costs
• Reuse
• Pumping costs associated with each elevation level
• Transmission costs
• Fire Protection costs
• Distribution costs
• Meter, billing and collection, and customer service costs
• Administrative costs.

The wastewater functional cost categories may include:

• Service laterals
• Collection lines
Interceptor/conveyance systems  
Lift and pumping stations  
Treatment plant – preliminary, secondary and tertiary treatment  
Treatment plant – disinfection  
Sludge processing/biosolids handling  
Industrial Pre-Treatment  
Meters  
Customer service/Billing  
Administration.

Note, that as part of the process of assigning costs to functional categories, Raftelis will identify those costs that are common to all customers (for example, operations and maintenance costs that benefit the entire system) and those costs that are unique to a single or limited number of customers (for example, a transmission line required to serve a single non-contiguous customer).

Cost Allocation
After assigning the utility revenue requirement to functional categories, Raftelis will allocate the costs according to the type of service they are incurred to provide. Under the base-extra capacity method of cost allocation described in the AWWA’s Manual M1, these cost classification parameters generally include:

- Base demand
- Maximum day demand
- Maximum hour demand
- Meters and Service
- Billing and Collection.

For wastewater, these cost allocation factors may include:

- Average Day Volume
- Biochemical Oxygen Demand (BOD)
- Suspended Solids (TSS)
- Nutrients such a Nitrogen (TKN) or Phosphorous (P), if applicable
- Customer Billing, Service and Metering

Determine Customer Class Maximum Day and Maximum Hour Capacity Factors for Water
Based on the analysis of customer water consumption characteristics and the preparation of a demand forecast, Raftelis will estimate the annual demands and the unique non-coincident maximum day and maximum hour capacity factors for each water customer class. In general, customer classes with higher maximum hour and maximum day capacity factors have larger per unit revenue requirements than those with lower capacity factors.

Estimate of Total System Units of Service and Unit Costs of Service
Based on the capacity factor analysis, Raftelis will estimate the total system units of service associated with each cost classification parameter referenced above. At a minimum, these units of service will include base demand units (i.e., annual demand units); maximum day and maximum hour peak load demand units; equivalent customer meters based on AWWA flow rate equivalencies; and actual connections on the water utility system.
Raftelis will then estimate the total system unit cost of service for each cost classification parameter. Raftelis anticipates the development of a total system unit cost of service, expressed in dollars per gallon basis for the base, maximum day and maximum hour volumetric cost parameters. In addition, we anticipate the development of a unit cost of service for water meters expressed in dollars per equivalent meter basis.

Distribute Cost to Customer Classes
The final step in the cost-of-service process is the determination of the specific revenue requirement for each water service and wastewater customer class. This is achieved by multiplying the total system unit cost of service for each customer parameter by the unique units of service estimated for each customer class.

Deliverables:
- Results of Cost-of-Service Analysis
- Presentation to Council about Cost-of-Service Analysis (to be done concurrently with the Financial Planning Forecast presentation)

Task 5: Rate Design
Raftelis will review the existing rate structures for consistency with industry-accepted approaches. Raftelis will discuss the advantages and disadvantages of the existing rate structures with City Staff. Raftelis will also consider the results of the Pricing Objectives Workshop in developing the alternative rate structures. Based on our discussion, Raftelis will model up to three alternatives for each customer class and utility, if needed. Rate structure alternatives may include revising cost recovery from fixed and variable charges or evaluating the appropriateness of the volumetric thresholds of the tiered rate structures. Specifically, Raftelis will evaluate the City’s current rate structure and fixed charge methodology for collecting debt service. In considering intra-class equity, Raftelis will evaluate other methodologies that may consider affordability or low-user impacts of a higher fixed charge.

For wastewater, the use of winter average as an appropriate billing determinant will be discussed. This evaluation will consider historical consumption of the City’s wastewater customers to determine how revenue stability may be achieved for the City.

Coupled with the results of the cost allocation analysis, the existing and alternative rate structure will be examined and evaluated using the model. Customer impact analyses will be performed for comparison and a proposed rate structure and schedule will be recommended. The implementation of the recommended rates or potential phasing to lessen impacts will be discussed with City Staff. In addition, Raftelis will consider the use of annual inflationary rate adjustments and discuss the practice with City Staff.

After the development of the new rate structures, Raftelis will analyze the rate structures to ensure that they achieve the goals and objectives identified during the Pricing Objectives Workshop.
Rate Comparison
Raftelis will complete a benchmarking analysis to compare and benchmark the proposed rate structure and rates developed for the City with relevant neighboring communities and utilities of comparable size and service characteristics. Raftelis will work the City staff to develop and appropriate group of survey communities and we anticipate that the final comparison group will be six to ten peer communities.

Deliverables:
- Rate Design Alternatives
- Presentation to Council about Rate Design alternatives

Task 6: Reports and Presentations

Draft Letter Report
The draft letter report will document the rate development process, describe any recommended changes to the existing rate structures and the reason for such changes, and present the results of the cost of service and rate study. An electronic copy of the draft letter report will be presented to City staff for their review and comment.

Final Letter Report
Raftelis will incorporate the City staff’s comments of the draft letter report into a final letter report. Upon finalization of the report, the City will be provided an electronic copy of the report. In addition to the final report, the City will also be provided with electronic copies of the final rate model in Microsoft Excel. Raftelis will also deliver a model training workshop for City staff.

Staff Training and Training Manual
Raftelis will develop and provide a Training Manual for the model that will describe the following:
   a) The model’s features, structure and links;
   b) A description of each worksheet and table discussing inputs to the table, key calculations, outputs of the table and their use by other portions of the model; and
   c) Various issues related to running scenarios, interpreting results, archiving model versions, and updating the model.

Raftelis will also schedule a model training with users.

Presentations
We will prepare a PowerPoint presentation summarizing the rate study process, findings, and recommendations in a clear and concise manner. We will provide a draft of this presentation to City staff for their review and comment prior to delivering the final version. Raftelis will also present our findings using this presentation and other outreach materials at a council meeting. Any presentations will be developed to meet the goals and timing of the communication plan. The scope of the communication plan is presented in Section B below.

Deliverables:
- Draft Letter Report
- Final Letter Report
- Training Manual
B. Communication/Public Engagement

The City is conducting a rate study for the first time to help it develop defensible and equitable rates for water, wastewater, and reuse services. Rates have not changed in four years and the City recognizes that a cost-of-service rate study is needed for these services to help ensure that rates cover the costs of providing those services and enable smart and sustainable investments in the City’s water infrastructure for years to come.

As this is a new process for the City and will impact residents financially, it is important to not just communicate to residents what the City is doing, but to also engage them in the process. By engaging some key stakeholders in the process, the City will fortify its reputation as a thoughtful, forward-looking entity and it will enhance public trust in City leadership.

The following approach and scope support the City’s desire to have a transparent and meaningful process for two-way communication and engagement throughout the rate study period and after.

Task 1: Kickoff and Wrap Up Meetings

To kick off the communications and engagement tasks, the Raftelis team will host a virtual workshop (2-3 hours) with key leaders from the City to conduct a situational analysis. Through a facilitated discussion and group exercises, together we will identify:

- key issues to be aware of through the study period,
- important and effective outreach channels the City routinely uses,
- the major segments of the customer base that may be impacted by rate changes, and
- key individuals to involve in the process.

Once the study is completed and after the final meeting of the advisory committee (see task 4), Raftelis will host a one-hour study “wrap-up meeting” with the same attendees as the kickoff meeting, to review outcomes of the engagement and the Council vote and to review remaining outreach tasks to be completed over a specific time frame. This wrap up meeting helps ensure there are no unresolved issues with communication and engagement and the City is clear about any remaining steps to take.

**Deliverables:**
- Meeting agenda/slide deck (2)
- Meeting summary (2)

Task 2: Conduct 8-10 Individual Conversations

A very important initial step in the outreach process is to gather information. One of the most efficient and effective ways to do this is to have one-on-one conversations with a handful of key leaders in the City. Our initial suggestion is to talk with the six city council members, the mayor, a country club representative, and the city manager. Through this series of approximately one-hour conversations, it is our intention to:

- Develop a deeper understanding of key issues facing the City, which may impact our success; perceptions and beliefs about water, wastewater and reuse rates and the infrastructure itself
- Obtain advice on community communication preferences
- Identify key groups impacted

It is assumed that the City’s Finance Director and Director of Public Works will attend the kickoff meeting, and their input will be gathered there, though additional conversations with them can also be conducted.
Deliverables:
- Discussion guide (questions to ask)
- Summary of responses

Task 3: Communication Plan
Upon completion of the kickoff meeting and our 8 to 10 one-on-one conversations with community leaders, we will develop a communications plan, which will feature our key messages to relay during and after the study, the key stakeholders to reach through the study and after, what channels the City should use to reach each stakeholder group, and the materials to be used. The plan will include a schedule that lays out when each activity should take place, by whom, and using which channels and materials.

Deliverables:
- Communication Plan
  - Message Platform
  - Channels to reach community
  - Social media content calendar
- Materials to help the City communicate
  - Bill insert or postcard – delivered as a PDF or set up for a printer
  - Video (why we need rate changes; how rates are calculated; where money goes)
  - Rate calculator tool, to help residents calculate their bill with the new rates
  - Website info (FAQs and imagery) – delivered as a Word doc with jpeg files
  - Social media images (8) – to be used on Facebook, NextDoor and Twitter, delivered as jpeg files

Task 4: Advisory Panel
Raftelis will help the City go beyond communicating with its stakeholders to ensure it also engages with them, meaningfully, through the study period. We are recommending this be done by convening an advisory panel specific to the rate study, comprising 9 to 15 of the most representative members of the community. The purpose of the panel will be to share with them key factors of the study and obtain their feedback on various study elements, as well as have them make recommendations for rate implementation and communication. We estimate this engagement process will require up to five monthly meetings.

Using an advisory panel early in the process provides more understanding of the need and process for developing a rate study, helps the City understand community needs and concerns, and surfaces issues and opportunities that should be addressed in the early stages of the rate study. We have found that using a stakeholder process like this can:

1. **Manage single-issue viewpoints**: This interactive process with other stakeholders that have a broad range of perspectives will raise awareness and create group understanding for the multiple demands and expectations of the water, wastewater and reuse services for Fair Oaks Ranch.

2. **Build relationships**: Cultivate relationships with key stakeholders in the community selected to participate as members of the panel.

3. **Increase the value of the process**: The panel can serve as an early warning system for issues, options or opportunities that can be addressed early and thoughtfully in the process as the rate study is developed.

We recommend that a charter be in place before recruiting members of the advisory panel. The charter should address:
• The panel’s purpose and relationship to the City Council
• Composition and size of the group
• How members will be recruited
• Decision-making processes, and the role of the facilitator
• Meeting frequency and duration
• Roles and responsibilities of panel members
• The panel’s relationship to the broader public

This charter should be used in the recruitment of members so that expectations for participation are set out in advance. Two sample charters are provided in Attachments B and C. These charters will be modified to fit the needs for the City.

A sample schedule and potential agenda topics that have been used with other panels is provided below:

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Agenda</th>
</tr>
</thead>
<tbody>
<tr>
<td>Month 1</td>
<td>Introductions, orientation, panel mission statement and charter, water, wastewater, and reuse overview, overview of current rate structures, and the City’s rate history</td>
</tr>
<tr>
<td>Month 2</td>
<td>Rate-making 101, customer information, pricing objectives ranking</td>
</tr>
<tr>
<td>Month 3</td>
<td>Cost of service information, future capital needs projections, preliminary revenue adjustments and rate structure options for wet weather rates</td>
</tr>
<tr>
<td>Month 4</td>
<td>Review and evaluate rate structures and select preferred alternatives. Review and draft final panel report to City Council</td>
</tr>
<tr>
<td>Month 5</td>
<td>Advise City on communication needs for the community as the City Council considers recommendations.</td>
</tr>
</tbody>
</table>

**Deliverables:**
- Advisory panel charter that describes the role of the committee, how meetings will be conducted and structured
- Meeting agendas, scripts for invitations, slide decks, discussion guide, and summary (post meeting) (5)
- Meeting rehearsal with staff (one hours each) (5)
- Meeting preparation and facilitation (two hours each) (5)

C. **City Council Meeting**

The table below shows the presentations and topics to be considered by the City Council. These topics are based on the scope above and are subject to change based on the ongoing study. The dates in table are also estimated. If approval is not achieved in the month information if presented, the schedule will be adjusted.
<table>
<thead>
<tr>
<th>Month</th>
<th>Topic</th>
<th>Approval (Y/N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mid-February</td>
<td>Rates 101/Pricing Objectives Workshop</td>
<td>N</td>
</tr>
<tr>
<td>April</td>
<td>Financial Policies, Financial Planning Model and Cost of Service Allocation Results</td>
<td>Y</td>
</tr>
<tr>
<td>May</td>
<td>Rate Design Alternatives</td>
<td>Y</td>
</tr>
<tr>
<td>June</td>
<td>Preliminary Rate Design</td>
<td>N</td>
</tr>
<tr>
<td>September</td>
<td>Rate Approval</td>
<td>Y</td>
</tr>
</tbody>
</table>

D. **Budget**

Below are the budgets for the Study and the Communication/Public Engagement Tasks. In total, the budget is $144,158. The scope anticipates that the team will attend five City Council meetings, but we have included six City Council meetings in the budget. The budget includes $808 in travel expenses that will likely not be incurred if all meetings are kept virtual. In the Communication/Public Engagement budget, we have included the cost of one video. Any additional videos would be an added cost of $5,000 each. The budget detail is provided in Attachments D and E.

E. **Timeline**

The timeline is in Attachment F. In the timeline, we have assumed that the Cost-of-Service and Financial Planning Model will be completed by May 2021, but the final reports and presentations will not be completed until the completion of the Communication and Public Engagement process. The schedule has the full study being completed by August 2021.
Introduction and Background
The Town of XXXX (Town) has hired a financial consultant specializing in water and wastewater pricing and finance, to:

- Complete a comprehensive water and wastewater financial plan
- Perform evaluation of the cost for the Town to provide water and wastewater service to its customers
- Study the current rates charged to customers and recommend changes, if necessary

Rate studies are conducted as a best practice to ensure that the Town utilities’ financial health is maintained, and that the Town is setting a course toward meeting future financial obligations. The Town last completed a similar comprehensive study in 2000, which was subsequently updated in 2002. Following the 2002 study, the Town has maintained and updated the financial planning and rate models developed during the 2000 and 2002 studies, periodically updating water and wastewater rates.

Rate Study Objectives
The Town has specified the following project objectives:

1. The resultant rates recommended by the study must be lawful.
2. The level of service to the mandated service area (i.e., those within Town limits) must remain high, while simultaneously fully recovering costs.
3. Competing needs, including state of good repair investments, climate resiliency, maintaining or enhancing the Town’s level of service, promoting efficient resource use, and reinforcing potential future conservation programming, all must be balanced.
4. There must be equity among all customer classes, including those that exist both outside and inside the Town’s limits, based on reasonably determined respective characteristics of service.
5. The recommended rate result must ensure rate stability and ease of interpretation for the customers and ease of applicability for the Town.
6. The recommended rates must provide revenue stability and predictability for the Town.
7. Dynamism in the rate structure to ensure responsiveness to changing supply and demand patterns.
8. The recommended rates must be affordable, which will be determined utilizing economic and demographic data (e.g., household income, housing cost burden, local employment trends) and US EPA affordability information for guidance.
9. There must be a reasonable correlation between the cost of service and a parcel’s draw from the water system and its respective usage characteristics.
10. There must be a reasonable correlation between the cost of service and a parcel’s contribution to the sewer system and its respective usage characteristics.
11. There must be a reasonable correlation between the cost of services and a parcel’s “share” of the assets and O&M required to provide those services.
12. There must be compatibility with the Town’s billing system and ease of implementation from a billing and customer service perspective.
13. The study must include requirements for maintenance services, ongoing implementation needs, resources, and flexibility.

**Water and Wastewater Rates Citizen Review Committee – Charge and Charter**

The Town believes strongly that our community should have a voice in decisions that affect them. Therefore, as part of the rate study process, the Town will form a volunteer Water and Wastewater Rates Citizen Review Committee (CRC) made up of a diverse group of volunteers that represent water and wastewater customers and stakeholders. The CRC will work together during the rate study to provide their input and community perspective.

**CRC Purpose and Relationship to the XXXX Town Council**

The mission of the CRC is to assemble as diverse perspectives that represent our community to evaluate and advise on the Town’s water and wastewater rates and rate structure(s). The CRC has three overarching purposes:

- a. Provide views that are representative of respective stakeholder groups
- b. Provide input on rate structure options and associated customer impacts
- c. Formulate a recommendation to the Town Council

The CRC is an advisory group, meaning that its purpose is to review, examine and recommend rate and rate structure changes that meet the rate study objectives that have been defined by the Town and are stated in this charter.

The XXXX Town Council is the policy-maker, meaning that Town Council will consider the CRC’s recommendations thoroughly, but ultimately the Town will implement what the Town Council decides.

**Composition and Size of the CRC**

The CRC will be made up of 9-15 members to allow for enough diversity of thought to have engaging discussions and ensure that there are enough members that represent different interests or perspectives within the population the Town serves.

**Meeting frequency and duration**

There will be up to six (6) scheduled CRC meetings from January to May 2020. These meetings will be scheduled during the week in the evenings to enable broad participation. The tentative meeting schedule is shown below. Meetings will last up to three hours. The CRC will cease meeting once the Town Council has received its recommendations.

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Tentative Date</th>
<th>Agenda</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Week of 1/20/20</td>
<td>Introductions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Orientation</td>
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<tr>
<td></td>
<td></td>
<td>Charter/Mission Statement</td>
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<tr>
<td></td>
<td></td>
<td>Water and wastewater system overview</td>
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<tr>
<td></td>
<td></td>
<td>Current rate structure review</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Town’s rate history</td>
</tr>
<tr>
<td>Week</td>
<td>Event Description</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>2 Week of 2/10/20</td>
<td>Tour of selected components of the water and wastewater system (conducted by the Town of XXXX Public Works)</td>
<td></td>
</tr>
<tr>
<td>3 Week of 3/2/20</td>
<td>Rate making 101&lt;br&gt;Customer information&lt;br&gt;Pricing objectives ranking</td>
<td></td>
</tr>
<tr>
<td>4 Week of 3/23/20</td>
<td>Customer class usage information&lt;br&gt;Future usage projections&lt;br&gt;Preliminary revenue adjustments and rate structure options for water and wastewater rates</td>
<td></td>
</tr>
<tr>
<td>5 Week of 4/13/20</td>
<td>Review and evaluate rate structures and select preferred alternatives</td>
<td></td>
</tr>
<tr>
<td>6 Week of 5/4/20</td>
<td>Review draft and final CRC report to Town Council</td>
<td></td>
</tr>
<tr>
<td>Week of 5/18/20</td>
<td>CRC Report to Town Council</td>
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</tr>
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**Recruitment of members and CRC spokesperson**

The volunteer members of the CRC will be selected by Town staff to represent a broad range of stakeholder perspectives.

During the course of the CRC’s meetings, the CRC will determine a spokesperson for the CRC. The member selected will represent the CRC at a future Town Council meeting to present the CRC’s recommendations and answer any questions from the Town Council at that time.

**Process used to provide recommendations**

The CRC will use a consensus based decision-making process to reach agreement recommendations for rate and rate structure(s) changes. In a consensus process, the group members work together to find a mutually acceptable solution.

The CRC guiding principles for consensus include:

- **Consensus Decision-Making** – Members make decisions by agreement rather than by majority vote.
- **Accountability** – Members represent stakeholder groups or interests and are accountable to the process.
- **Facilitation** – An impartial facilitator accountable to all members manages the process, ensures the ground rules are followed, and helps to maintain a productive climate for communication and problem solving.
- **Commitment to Implementation** – All members commit to carrying out their agreement to the objectives outlined in this charter.

Elements of a Consensus-Based Decision:

- All parties agree with the proposed decision
- No one will block or obstruct the decision or its implementation
- Everyone will support the decision and implement it
- Neutrality by any member does not constitute a lack of consensus

CRC members may have various levels of consensus:

- I can say an unqualified “yes!”
I can accept the decision.
I can live with the decision.
I do not fully agree with the decision; however, I will not block it and will support it.

Although members will strive for consensus, if agreement by all members on an issue is not possible, members will seek to develop a clear and balanced statement of the areas of disagreement that can be included in a minority report along with the CRC’s recommendations to Town Council.

Role of the CRC facilitator

The CRC will work with a facilitator throughout its time together. The facilitator will set the agenda with the group’s consensus, establish clear context for all deliberations, create an environment where all parties are comfortable, listen actively, evoke the creativity of the group, ask appropriate questions, and assess progress. The facilitator will work to ensure that CRC members’ time is maximized and that all CRC members have an opportunity to participate fully and express their point of view.

The facilitator will ensure decisions are made when necessary to keep the process moving and ensure meeting outcomes.

The facilitator will be responsible for record keeping and documentation of the meetings. After each meeting, the facilitator will prepare a meeting summary that captures the discussion, the outcomes and next steps. The CRC will be asked to review each summary for inclusion in the final report.

Responsibilities of CRC Members:
CRC members will be expected to:
- Attend all meetings
- Review agenda and informational material between meetings
- Be respectful of others’ views and input
- Understand the time constraints of the rate study and respect the meeting times
- Provide thoughtful input on study proposals
- Agree that the rule of decision is consensus, as described in this charter
- Remain accessible to the study team for follow-up as needed

CRC members will participate in up to six (6) meetings. CRC members will not send substitutes or proxies.

Responsibilities of Town staff and rate consultant

Presentations, project reports and feedback opportunities will be provided by the Town and the rate consultant at each meeting. Materials will be provided to CRC members four (4) days in advance of a meeting.

The Town and rate consultant will ensure no relevant topics are excluded from consideration within the rate study objectives provided for this in this document. If questions arise during a
CRC meeting, Town staff will do their best to answer those questions with available data at the next meeting.

Susan Scarlata, Public Engagement Manager, will be the point of contact for the CRC members. The Town will summarize the salient information gained during the CRC meetings and include it in Town Council updates as appropriate.

The Town will develop a written draft recommendation and a presentation to Town Council for the CRC to review and approve at the end of their sessions.

**CRC relationship to the broader public**

Meetings are open to the public so that the public can observe the CRC’s work. Public comment will not be taken during the meetings.

Opportunities for additional public input into the rate study process will be provided through the following methods:

- During community outreach event(s) that will occur during the course of the study.
- During the public hearing that will be held at the end of the rate study.
ATTACHMENT C
SAMPLE CHARTER #2

City of XXXX
Water Rates Stakeholder Group Charter

Introduction and Background

The City has contracted with a rate consultant to conduct a rate study for the water utility. There are many issues that will be integrated into the study and resulting recommendations.

Rate Structure Study Principles

The City has developed the following principles to guide the rate structure study:

- Create a pricing structure that is fair, equitable and easily understood.
- Create a pricing structure that is based on the cost to provide service for the water and recycled water used.
- Support a financially strong and stable water utility to ensure our customers and all residents have reliable, high-quality water and recycled water services now and in the future.
- Recognize that affordability will be a key factor in developing a pricing structure that aligns with our community needs.
- Promote opportunities for our customers to benefit in the wise use of water through continued conservation and efficiencies.

Rates, and how they impact each customer in the bill that arrives monthly, are a top of mind issue with customers both in XXXX and throughout California. As such, customer awareness and understanding will be a priority for the City in developing the rate study. The following two concepts will guide the City’s efforts to engage and communicate with customers:

1. Rate structures affect every resident, business and customer account. It is critical that we research the issues and receive input from a diverse set of customers and stakeholders to ensure that the rate changes we recommend are the right thing for both the City and its customers.

2. Following adopted changes to the rate structure(s), we need to be effective in communicating these changes to customers. To do that successfully, we need to first research and test both the structure(s) and how we talk about them to customers. This will ensure that customers have the best information they need to make informed decisions about their water and/or recycled water use after rate increases and adjustments are implemented.

Water Rates Stakeholder Group – Charge and Charter

The City believes strongly that our community should have a voice in decisions that affect them. Therefore, as part of the rate study process, the City Council will form a volunteer Water Rates Stakeholder Group (WRSG) made up of a diverse group of volunteers that represent water and recycled water customers and stakeholders. The WRSG will work together during the rate study to provide their input and community perspective.

WRSG Purpose and Relationship to the XXXX City Council
The mission of the WRSG is to assemble diverse perspectives that represent our community to evaluate and advise on the City’s water and recycled water rates and rate structure(s). The WRSG has three overarching purposes:

1. To represent and communicate the views of customers and/or stakeholders that members are selected to represent.

2. To provide input on rate changes and rate structure options and associated customer impacts.

3. To formulate a recommendation for XXXX City Council for rates and rate structure changes that meets the City’s rate study principles as presented in this charter.

The WRSG is an advisory group, meaning that its purpose is to review, examine and recommend rate and rate structure changes that meet the rate structure study principles that have been defined by the City and are stated in this charter.

The XXXX City Council is the policy-maker, meaning that City Council will consider the WRSG’s recommendations thoroughly, but ultimately the City will implement what the City Council decides.

**Composition and Size of the WRSG**

The WRSG will be made up of 15 members to allow for enough diversity of thought to have engaging discussions and ensure that there are enough members that represent different interests or perspectives within the population the City serves.

**Meeting frequency and duration**

The rate study has time constraints and members of the WRSG agree to respect those constraints. There will be up to seven (7) scheduled WRSG meetings from October 2019 to April 2020. The meeting schedule is included on the member application so that applicants can confirm they are available on these dates. Meetings will last up to three hours. The WRSG will cease meeting once City Council has received its recommendations.

**Recruitment of members and WRSG spokesperson**

The volunteer members of the Water Rates Stakeholder Group (WRSG) will be selected by Council members through an application process. Completed applications are due by October 1, 2019 at 5 p.m. in the City Clerk’s office.

The volunteer member selection process is as follows:

1. The City will promote the application process through the media, website and community outreach methods to ensure a wide variety of customer and stakeholder interests and perspectives are available in the applicant pool.

2. Applications will be available beginning September 4, 2019.

3. City Council will review applications to ensure the make-up of the WRSG is balanced by level of impact, level of interest, geography, demographics, water customer type and other factors:
   - Each Council member will appoint two representatives, for a total of twelve (12) members.
• The Mayor will select an additional three (3) at-large members representing the greater XXXX business water customer community.
• Due to the size of the 15-member group, no alternates will be selected.

4. The City Council will announce and finalize the membership list at its October 15, 2019 meeting.

During the course of the WRSG’s meetings, the WRSG will determine a spokesperson for the WRSG. The member selected will represent the WRSG at a future City Council meeting to present the WRSG’s recommendations and answer any questions from the City Council at that time.

**Process used to provide recommendations**

The WRSG will use a consensus based decision-making process to reach agreement recommendations for rate and rate structure(s) changes. In a consensus process, the group members work together to find a mutually acceptable solution.

The WRSG guiding principles for consensus include:

• **Consensus Decision-Making** – Members make decisions by agreement rather than by majority vote.
• **Inclusiveness** – To the extent possible, all necessary interests are represented or, at a minimum, approve of the decision.
• **Accountability** – Members represent stakeholder groups or interests. They are accountable both to their constituents and to the process.
• **Facilitation** – An impartial facilitator accountable to all members manages the process, ensures the ground rules are followed, and helps to maintain a productive climate for communication and problem solving.
• **Commitment to Implementation** – All members commit to carrying out their agreement to the principles outlined in this charter.

Elements of a Consensus-Based Decision:

• All parties agree with the proposed recommendation,
• No one will block or obstruct the decision or its implementation, and
• Everyone will support the decision and implement it.

WRSG members may have various levels of consensus:

• I can say an unqualified “yes!”
• I can accept the decision.
• I can live with the decision.
• I do not fully agree with the decision, however, I will not block it and will support it.

**Role of the WRSG facilitator**

The WRSG will work with a facilitator throughout its time together. The facilitator will set the agenda with the group’s consensus, establish clear context for all deliberations, create an environment where all parties are comfortable, listen actively, evoke the creativity of the group, ask appropriate questions, and assess progress.
The facilitator will ensure decisions are made when necessary to keep the process moving and ensure meeting process and outcomes.

The facilitator will be responsible for record keeping and documentation of the meetings. After each meeting, the facilitator will prepare a meeting summary that captures the discussion, the outcomes and next steps. The WRSG will be asked to review each summary for inclusion in the final report.

**Responsibilities of WRSG Members:**

WRSG members will be expected to:

- Attend all meetings.
- Review agenda and informational material between meetings.
- Be respectful of others’ views and input.
- Understand the time constraints of the rate study and respect the meeting times.
- Provide thoughtful input on study proposals.
- Act as a representative for the study to fellow community members.
- Agree that the rule of decision is consensus, a described above. Members will strive for consensus. If agreement by all members on an issue is not possible, members will seek to develop a clear and balanced statement of the areas of disagreement. Neutrality by any member does not constitute a lack of consensus.
- Remain accessible to the study team for follow-up as needed.

WRSG members will participate in up to seven (7) meetings. WRSG members will not send substitutes or proxies.

Meetings will be facilitated to ensure that WRSG members’ time is maximized and that all WRSG members have an opportunity to participate fully and express their point of view.

**Responsibilities of City staff and rate consultant**

Presentations, project reports and feedback opportunities will be provided by the City and the rate design consultant at each meeting. Materials will be provided to WRSG members five (5) days in advance of a meeting.

City staff will inform WRSG of community outreach activities related to the rate study that they may wish to participate in or observe.

The City and rate consultant will ensure no relevant topics are excluded from consideration within the rate study principles provided for this in this document. If questions arise during a WRSG meeting, City staff will do their best to answer those questions with available data at the next meeting.

Nancy Broschart, Water Resources Manager, will be the point of contact for the WRSG members. The City will summarize the salient information gained during the WRSG meetings and include it in City Council updates as appropriate.

The City will develop a written draft recommendation and a presentation to City Council for the WRSG to review and approve at the end of their sessions.

**WRSG relationship to the broader public**
Meetings are open to the public and all materials will be available on the City’s website. As a working group with a specific purpose and time constraints, public comment will be limited to 30 minutes each meeting. The WRSG may adjust the number of minutes per speaker to accommodate as many speakers as possible within the allotted time.

Opportunities for additional public input into the rate study process will be provided through the following methods:

- During community outreach events that will occur during through course of the study.
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<tr>
<th>Tasks</th>
<th>Web Meetings</th>
<th>Number of Meetings</th>
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<th>Total Fees &amp; Expenses</th>
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*Names Abbreviations*

- HS - Harold Smith
- AF - Angie Flores
- JR - Justin Rasor
- TW - Tim Williams
- KK/SD - Kim Keefer/Steven Dean - PD
- JG - Jennifer Gleass - PD
- LN - Lee Niles - PD
- SC - Seth Cookey - PD
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Hourly Billing Rate

- Web Meetings: $310
- In-person Meetings: $245 $275 $215 $110

Total Professional Fees

- Web Meetings: $3,720
- In-person Meetings: $12,740 $11,825 $20,210 $5,060 $53,555

Total Fees & Expenses: $56,025

Total Fees: $53,555

Total Expenses: $2,470

Total Fees & Expenses: $56,025
A1. Project Initiation and Management
A2. Consumption and Current Revenue Analysis
A3. Comprehensive Financial Planning and Revenue Requirement Development
A4. Water and Wastewater Utility Cost of Service
A5. Rate Design
A6. Reports and Presentations

B1. Communication Kickoff
B2. In-depth Interviews
B3. Communication Plan/Materials
B4. Advisory Panel

In-Person Meetings / Workshops
Web Meetings
Deliverables
EXHIBIT B
CERTIFICATE OF INSURANCE
**Certificate of Liability Insurance**

**PRODUCER**
Cameron M Harris & Co, LLC
Div USI Ins
6100 Fairview Road Ste 1400
Charlotte, NC 28210

**INSURED**
Raftelis Financial Consultants, Inc.
227 West Trade Street, Ste. 1400
Charlotte, NC 28202

**CONTACTS**
Linda Rolfe
980-265-5804
linda.rolfe@usi.com

**INsurer(s) Affording Coverage**
- **Insurer A**: National Fire Insurance Co. of Hartford
  - **Name**: Continental Insurance Company
  - NAIC #: 20478
  - **Name**: Continental Casualty Company
  - NAIC #: 35289
  - **Name**: American Casualty Company of Reading PA
    - NAIC #: 20427
  - **Name**: Continental Casualty Company
    - NAIC #: 20443

**Coverages**

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**CertificaTe Holder**
City of Fair Oaks Ranch
Attn: City Secretary
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015

**Cancellation**

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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City of Fair Oaks Ranch is included as an Additional Insured as respects to General Liability and Workers Compensation. City of Fair Oaks Ranch should be included as an Additional Insured as respects to General Liability as per written contract. Waiver of Subrogation applies in favor of the Holder with respects to General Liability and Workers Compensation. 30 day notice of cancellation will be given except for non-payment of premium will be 10 days if required by written contract. Per the attached forms - GL Form CNA74879XX; WC - WC000313.
This page has been left blank intentionally.
It is understood and agreed that this endorsement amends the COMMERCIAL GENERAL LIABILITY COVERAGE PART as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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4. Broad Knowledge of Occurrence/ Notice of Occurrence  
5. Broad Named Insured  
6. Estates, Legal Representatives and Spouses  
7. Expected Or Intended Injury – Exception for Reasonable Force  
8. In Rem Actions  
9. Incidental Health Care Malpractice Coverage  
10. Joint Ventures/Partnership/Limited Liability Companies  
11. Legal Liability – Damage To Premises  
12. Medical Payments  
13. Non-owned Aircraft Coverage  
14. Non-owned Watercraft  
15. Personal And Advertising Injury – Discrimination or Humiliation  
16. Personal And Advertising Injury - Contractual Liability  
17. Property Damage - Elevators  
18. Supplementary Payments  
19. Unintentional Failure To Disclose Hazards  
20. Waiver of Subrogation – Blanket
1. ADDITIONAL INSUREDS

a. WHO IS AN INSURED is amended to include as an Insured any person or organization described in paragraphs A. through K. below whom a Named Insured is required to add as an additional insured on this Coverage Part under a written contract or written agreement, provided such contract or agreement:

   (1) is currently in effect or becomes effective during the term of this Coverage Part; and
   
   (2) was executed prior to:

      (a) the bodily injury or property damage; or

      (b) the offense that caused the personal and advertising injury,

   for which such additional insured seeks coverage.

b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

   (1) a higher limit of insurance than required by such contract or agreement; or
   
   (2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through K. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a Named Insured, but only with respect to such person or organization’s liability for bodily injury, property damage or personal and advertising injury arising out of:

1. such person or organization’s financial control of a Named Insured; or

2. premises such person or organization owns, maintains or controls while a Named Insured leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a Named Insured and covered under this insurance but only with respect to such co-owner’s liability for bodily injury, property damage or personal and advertising injury as co-owner of such premises.

C. Grantor of Franchise

Any person or organization that has granted a franchise to a Named Insured, but only with respect to such person or organization’s liability for bodily injury, property damage or personal and advertising injury as grantor of a franchise to the Named Insured.

D. Lessor of Equipment

Any person or organization from whom a Named Insured leases equipment, but only with respect to liability for bodily injury, property damage or personal and advertising injury caused, in whole or in part, by the Named Insured’s maintenance, operation or use of such equipment, provided that the occurrence giving rise to such bodily injury, property damage or the offense giving rise to such personal and advertising injury takes place prior to the termination of such lease.
E. Lessor of Land

Any person or organization from whom a Named Insured leases land but only with respect to liability for bodily injury, property damage or personal and advertising injury arising out of the ownership, maintenance or use of such land, provided that the occurrence giving rise to such bodily injury or property damage, or the offense giving rise to such personal and advertising injury, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Lessor of Premises

An owner or lessor of premises leased to the Named Insured, or such owner or lessor’s real estate manager, but only with respect to liability for bodily injury, property damage or personal and advertising injury arising out of the ownership, maintenance or use of such part of the premises leased to the Named Insured, and provided that the occurrence giving rise to such bodily injury, property damage or the offense giving rise to such personal and advertising injury takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver’s liability for bodily injury, property damage or personal and advertising injury arising out of the Named Insured’s ownership, maintenance, or use of a premises by a Named Insured.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

H. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization, but only with respect to such state or governmental agency or subdivision or political subdivision’s liability for bodily injury, property damage or personal and advertising injury arising out of:

1. the following hazards in connection with premises a Named Insured owns, rents, or controls and to which this insurance applies:
   a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
   b. the construction, erection, or removal of elevators; or
   c. the ownership, maintenance or use of any elevators covered by this insurance; or

2. the permitted or authorized operations performed by a Named Insured or on a Named Insured’s behalf.

The coverage granted by this paragraph does not apply to:

a. Bodily injury, property damage or personal and advertising injury arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or

b. Bodily injury or property damage included within the products-completed operations hazard.

With respect to this provision’s requirement that additional insured status must be requested under a written contract or agreement, the insurer will treat as a written contract any governmental permit that requires the Named Insured to add the governmental entity as an additional insured.
I. Trade Show Event Lessor

1. With respect to a Named Insured’s participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the Named Insured is required to include as an additional insured, but only with respect to such person or organization’s liability for bodily injury, property damage or personal and advertising injury caused by:
   a. the Named Insured’s acts or omissions; or
   b. the acts or omissions of those acting on the Named Insured’s behalf,
   in the performance of the Named Insured’s ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to bodily injury or property damage included within the products-completed operations hazard.

J. Vendor

Any person or organization but only with respect to such person or organization’s liability for bodily injury or property damage arising out of your products which are distributed or sold in the regular course of such person or organization's business, provided that:

1. The coverage granted by this paragraph does not apply to:
   a. bodily injury or property damage for which such person or organization is obligated to pay damages by reason of the assumption of liability in a contract or agreement unless such liability exists in the absence of the contract or agreement;
   b. any express warranty unauthorized by the Named Insured;
   c. any physical or chemical change in any product made intentionally by such person or organization;
   d. repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
   e. any failure to make any inspections, adjustments, tests or servicing that such person or organization has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
   f. demonstration, installation, servicing or repair operations, except such operations performed at the such person or organization’s premises in connection with the sale of a product;
   g. products which, after distribution or sale by the Named Insured, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for such person or organization; or
   h. bodily injury or property damage arising out of the sole negligence of such person or organization for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
      (1) the exceptions contained in Subparagraphs d. or f. above; or
      (2) such inspections, adjustments, tests or servicing as such person or organization has agreed with the Named Insured to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

2. This Paragraph J. does not apply to any insured person or organization, from whom the Named Insured has acquired such products, nor to any ingredient, part or container, entering into, accompanying or containing such products.
3. This Paragraph J. also does not apply:
   a. to any vendor specifically scheduled as an additional insured by endorsement to this Coverage Part;
   b. to any of your products for which coverage is excluded by endorsement to this Coverage Part; nor
   c. if bodily injury or property damage included within the products-completed operations hazard is excluded by endorsement to this Coverage Part.

K. Other Person Or Organization

Any person or organization who is not an additional insured under Paragraphs A. through J. above. Such additional insured is an Insured solely for bodily injury, property damage or personal and advertising injury for which such additional insured is liable because of the Named Insured’s acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

1. for bodily injury, property damage, or personal and advertising injury arising out of the rendering or failure to render any professional service;
2. for bodily injury or property damage included within the products-completed operations hazard; nor
3. who is specifically scheduled as an additional insured on another endorsement to this Coverage Part.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED’S INSURANCE

A. The Other Insurance Condition in the COMMERCIAL GENERAL LIABILITY CONDITIONS Section is amended to add the following paragraph:

If the Named Insured has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured.

B. With respect to persons or organizations that qualify as additional insureds pursuant to paragraph 1.K. of this endorsement, the following sentence is added to the paragraph above:

Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under DEFINITIONS the definition of bodily injury is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under CONDITIONS, the condition entitled Duties in The Event of Occurrence, Offense, Claim or Suit is amended to add the following:

A. BROAD KNOWLEDGE OF OCCURRENCE

The Named Insured must give the Insurer or the Insurer’s authorized representative notice of an occurrence, offense or claim only when the occurrence, offense or claim is known to a natural person Named Insured, to a partner, executive officer, manager or member of a Named Insured, or to an employee designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

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The Named Insured's rights under this Coverage Part will not be prejudiced if the Named Insured fails to give the Insurer notice of an occurrence, offense or claim and that failure is solely due to the Named Insured's reasonable belief that the bodily injury or property damage is not covered under this Coverage Part. However, the Named Insured shall give written notice of such occurrence, offense or claim to the Insurer as soon as the Named Insured is aware that this insurance may apply to such occurrence, offense or claim.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a Named Insured has management control:
   a. on the effective date of this Coverage Part; or
   b. by reason of a Named Insured creating or acquiring the organization during the policy period, qualifies as a Named Insured, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this BROAD NAMED INSURED provision does not apply to:

(a) any partnership, limited liability company or joint venture; or
(b) any organization for which coverage is excluded by another endorsement attached to this Coverage Part.

For the purpose of this provision, management control means:

A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or

B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.

4. With respect to organizations which qualify as Named Insureds by virtue of Paragraph 3. above, this insurance does not apply to:
   a. bodily injury or property damage that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
   b. personal or advertising injury caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.

5. The insurance provided by this Coverage Part applies to Named Insureds when trading under their own names or under such other trading names or doing-business-as names (dba) as any Named Insured should choose to employ.

6. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and spouses of any natural person Insured shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and spouses only for claims arising solely out of their capacity or status as such and, in the case of a spouse, where such claim seeks damages from marital community property, jointly held property or property transferred from such natural person Insured to such spouse. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or spouse outside the scope of such person's capacity or status as such, provided however that the spouse of a natural person Named Insured and the spouses of members or partners of joint venture or partnership Named Insureds are Insureds with respect to such spouses' acts, errors or omissions in the conduct of the Named Insured's business.
7. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under COVERAGES, Coverage A – Bodily Injury And Property Damage Liability, the paragraph entitled Exclusions is amended to delete the exclusion entitled Expected or Intended Injury and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or property damage expected or intended from the standpoint of the Insured. This exclusion does not apply to bodily injury or property damage resulting from the use of reasonable force to protect persons or property.

8. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the Named Insured, or chartered by or for the Named Insured, will be treated in the same manner as though the action were in personam against the Named Insured.

9. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to bodily injury that arises out of a health care incident:

A. Under COVERAGES, Coverage A – Bodily Injury And Property Damage Liability, the Insuring Agreement is amended to replace Paragraphs 1.b.(1) and 1.b.(2) with the following:

b. This insurance applies to bodily injury provided that the professional health care services are incidental to the Named Insured’s primary business purpose, and only if:

(1) such bodily injury is caused by an occurrence that takes place in the coverage territory.

(2) the bodily injury first occurs during the policy period. All bodily injury arising from an occurrence will be deemed to have occurred at the time of the first act, error, or omission that is part of the occurrence; and

B. Under COVERAGES, Coverage A – Bodily Injury And Property Damage Liability, the paragraph entitled Exclusions is amended to:

i. add the following to the Employers Liability exclusion:

This exclusion applies only if the bodily injury arising from a health care incident is covered by other liability insurance available to the Insured (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled Contractual Liability and replace it with the following:

This insurance does not apply to:

Contractual Liability

the Insured’s actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. add the following additional exclusions.

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, including but not limited to claims based on an individual’s race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.
Dishonesty or Crime
Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud
Any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement
Any health care incident for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the Named Insured’s employees or volunteer workers in the rendering of:

a. professional health care services on behalf of the Named Insured or
b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

a. Physician;
b. Nurse;
c. Nurse practitioner;
d. Emergency medical technician;
e. Paramedic;
f. Dentist;
g. Physical therapist;
h. Psychologist;
i. Speech therapist;
j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

ii. delete the definition of occurrence and replace it with the following:

Occurrence means a health care incident. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single occurrence;

iii. amend the definition of Insured to:

a. add the following:

• the Named Insured’s employees are Insureds with respect to:
(1) bodily injury to a co-employee while in the course of the co-employee’s employment by the Named Insured or while performing duties related to the conduct of the Named Insured’s business; and

(2) bodily injury to a volunteer worker while performing duties related to the conduct of the Named Insured’s business;

when such bodily injury arises out of a health care incident.

• the Named Insured’s volunteer workers are Insureds with respect to:
  
  (1) bodily injury to a co-volunteer worker while performing duties related to the conduct of the Named Insured’s business; and

  (2) bodily injury to an employee while in the course of the employee’s employment by the Named Insured or while performing duties related to the conduct of the Named Insured’s business;

when such bodily injury arises out of a health care incident.

b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of WHO IS AN INSURED.

c. add the following:

Insured does not include any physician while acting in his or her capacity as such.

D. The Other Insurance condition is amended to delete Paragraph b.(1) in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

(1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the Named Insured to be excess of this coverage.

10. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an Insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations, except that if the Named Insured was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the policy period, such Named Insured is an Insured with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

a. any offense giving rise to personal and advertising injury occurred prior to such termination date, and the personal and advertising injury arising out of such offense first occurred after such termination date;

b. the bodily injury or property damage first occurred after such termination date; and

c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

11. LEGAL LIABILITY – DAMAGE TO PREMISES

A. Under COVERAGES, Coverage A – Bodily Injury and Property Damage Liability, the paragraph entitled Exclusions is amended to delete the first paragraph immediately following subparagraph (6) of the Damage to Property exclusion and replace it with the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to property damage (other than damage by fire) to premises rented to the Named Insured or temporarily occupied by the Named Insured with the permission of the
owner, nor to the contents of premises rented to the Named Insured for a period of 7 or fewer consecutive days.
A separate limit of insurance applies to Damage To Premises Rented To You as described in LIMITS OF INSURANCE.

B. Under COVERAGES, Coverage A – Bodily Injury and Property Damage Liability, the paragraph entitled Exclusions is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire to premises while rented to a Named Insured or temporarily occupied by a Named Insured with permission of the owner, nor to damage to the contents of premises rented to a Named Insured for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in the LIMITS OF INSURANCE Section.

C. LIMITS OF INSURANCE is amended to delete Paragraph 6. (the Damage To Premises Rented To You Limit) and replace it with the following:

6. Subject to Paragraph 5 above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under COVERAGE A for damages because of property damage to:

a. any one premises while rented to a Named Insured or temporarily occupied by a Named Insured with the permission of the owner; and

b. contents of such premises if the premises is rented to the Named Insured for a period of 7 or fewer consecutive days.

The Damage To Premises Rented To You Limit is $200,000. unless a higher Damage to Premises Rented to You Limit is shown in the Declarations.

D. The Other Insurance Condition is amended to delete Paragraph b.(1)(a)(ii), and replace it with the following:

(ii) That is property insurance for premises rented to a Named Insured, for premises temporarily occupied by the Named Insured with the permission of the owner; or for personal property of others in the Named Insured’s care, custody or control;

E. This Provision 11. does not apply if liability for damage to premises rented to a Named Insured is excluded by another endorsement attached to this Coverage Part.

12. MEDICAL PAYMENTS

A. LIMITS OF INSURANCE is amended to delete Paragraph 7. (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph 5 above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under Coverage C - Medical Payments for all medical expenses because of bodily injury sustained by any one person. The Medical Expense Limit is the greater of:

(1) $15,000 unless a different amount is shown here: ; or

(2) the amount shown in the Declarations for Medical Expense Limit.

B. Under COVERAGES, Coverage C – Medical Payments, the Insuring Agreement is amended to replace Paragraph 1.a.(3)(b) with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

13. NON-OWNED AIRCRAFT

Under COVERAGES, Coverage A – Bodily Injury and Property Damage Liability, the paragraph entitled Exclusions is amended as follows:
The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. the aircraft is not being used to carry persons or property for a charge.

14. NON-OWNED WATERCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

(2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

(a) less than 75 feet long; and
(b) not being used to carry persons or property for a charge.

15. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

   Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

   **Knowing Violation of Rights of Another**

   **Personal and advertising injury** caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

   (a) the **Named Insured**; or
   (b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

   **Employment Related Discrimination**

   discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

   **Premises Related Discrimination**

   discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.
Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this PERSONAL AND ADVERTISING INJURY – DISCRIMINATION OR HUMILIATION Provision does not apply to any person or organization whose status as an Insured derives solely from

- Provision 1. ADDITIONAL INSUREDS of this endorsement; or
- attachment of an additional insured endorsement to this Coverage Part.

16. PERSONAL AND ADVERTISING INJURY – CONTRACTUAL LIABILITY

A. Under COVERAGES, Coverage B – Personal and Advertising Injury Liability, the paragraph entitled Exclusions is amended to delete the exclusion entitled Contractual Liability and replace it with the following:

This insurance does not apply to:

Contractual Liability

Personal and advertising injury for which the Insured has assumed liability in a contract or agreement.

This exclusion does not apply to liability for damages:

(1) that the Insured would have in the absence of the contract or agreement; or

(2) assumed in a contract or agreement that is an insured contract provided the offense that caused such personal or advertising injury first occurred subsequent to the execution of such insured contract. Solely for the purpose of liability assumed in an insured contract, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an Insured are deemed to be damages because of personal and advertising injury provided:

(a) liability to such party for, or for the cost of, that party's defense has also been assumed in such insured contract; and

(b) such attorney fees and litigation expenses are for defense of such party against a civil or alternative dispute resolution proceeding in which covered damages are alleged.

B. Solely for the purpose of the coverage provided by this paragraph, DEFINITIONS is amended to delete the definition of insured contract in its entirety, and replace it with the following:

Insured contract means that part of a written contract or written agreement pertaining to the Named Insured's business under which the Named Insured assumes the tort liability of another party to pay for personal or advertising injury arising out of the offense of false arrest, detention or imprisonment. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

C. Solely for the purpose of the coverage provided by this paragraph, the following changes are made to the Section entitled SUPPLEMENTARY PAYMENTS – COVERAGES A AND B:

1. Paragraph 2.d. is replaced by the following:

   d. The allegations in the suit and the information the Insurer knows about the offense alleged in such suit are such that no conflict appears to exist between the interests of the Insured and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as defense costs. Notwithstanding the provisions of Paragraph e.(2) of the Contractual Liability exclusion (as amended by this Endorsement), such payments will
not be deemed to be damages for personal and advertising injury and will not reduce the limits of insurance.

D. This PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY Provision does not apply if Coverage B –Personal and Advertising Injury Liability is excluded by another endorsement attached to this Coverage Part.

17. PROPERTY DAMAGE – ELEVATORS

A. Under COVERAGES, Coverage A – Bodily Injury and Property Damage Liability, the paragraph entitled Exclusions is amended such that the Damage to Your Product Exclusion and subparagraphs (3), (4) and (6) of the Damage to Property Exclusion do not apply to property damage that results from the use of elevators.

B. Solely for the purpose of the coverage provided by this PROPERTY DAMAGE – ELEVATORS Provision, the Other Insurance conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

18. SUPPLEMENTARY PAYMENTS

The section entitled SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended as follows:

A. Paragraph 1.b. is amended to delete the $250 limit shown for the cost of bail bonds and replace it with a $5,000 limit; and

B. Paragraph 1.d. is amended to delete the limit of $250 shown for daily loss of earnings and replace it with a $1,000 limit.

19. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the Named Insured unintentionally fails to disclose all existing hazards at the inception date of the Named Insured's Coverage Part, the Insurer will not deny coverage under this Coverage Part because of such failure.

20. WAIVER OF SUBROGATION - BLANKET

Under CONDITIONS, the Transfer Of Rights Of Recovery Against Others To Us Condition is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the Named Insured’s ongoing operations; or

2. your work included in the products-completed operations hazard.

However, this waiver applies only when the Named Insured has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this Coverage Part; and

2. was executed prior to the bodily injury, property damage or personal and advertising injury giving rise to the claim.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.
WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.

Schedule

Any Person or Organization on whose behalf you are required to obtain this waiver of our right to recover from under a written contract or agreement.

The premium charge for the endorsement is reflected in the Schedule of Operations.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.
AGENDA TOPIC: Consideration and possible action authorizing the City Manager to enter into and manage an agreement between the City of Fair Oaks Ranch and Waterman Construction, LLC as Construction Manager at Risk for a Civic Center and City Hall Renovation.

DATE: January 21, 2021

DEPARTMENT: Finance

PRESENTED BY: Clayton Hoelscher, Procurement Manager

INTRODUCTION/BACKGROUND:
In February of 2020, City Council agreed to advance the Civic Center and Renovation of City Hall Project utilizing the Construction Manager at Risk method. On April 16, 2020, a Professional Services Agreement was entered into between the City and Studio S Architekts to provide design services for this project. The intent of this project is to maximize space for City employees, as well as provide a space for citizens to utilize.

On October 9, 2020, a Request for Proposals was issued to solicit proposals from qualified firms to provide Construction Manager at Risk Services. Firms submitted proposals based on an estimated maximum budget of $1,200,000. 3 proposals were received, and all 3 firms were invited to interview on October 20, 2020. After reviewing the proposals and attending the interviews, the City elected to enter into negotiations with Waterman Construction, LLC.

The Construction Manager at Risk Agreement has multiple price components that make up the entire contract amount. These are:

- Pre-construction services: Cost for Construction Manager to collaborate with the Architect on the design process, provide cost estimates, and work through any challenges that may arise. ($2,500)
- General Conditions: Cost for the Construction Manager to provide on-site staffing to oversee the project and provide services such as project management, scheduling, estimating, safety inspections and quality control reviews. ($131,733.00)
- Construction Manager Fee: Cost for the Construction Manager to provide office support personnel, overhead, and profit. ($19,560.00)
- Cost of Work: Cost for the project to be constructed. (To be determined upon execution of Guaranteed Maximum Price)

Tonight's agenda item authorizes Waterman Construction, LLC. to begin work on this project and incur pre-construction fees of $2,500.00 and General Conditions fees up to $131,733.00. Once the project is at 100% design, a Guaranteed Maximum Price Amendment will be determined and brought to Council for consideration and approval. This Guaranteed Maximum Price Amendment will set the amount the entire contract amount cannot exceed. After execution of this Amendment, the Construction Manager will be responsible for costs exceeding this amount.
POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:
1.) Will achieve Strategic Objective 3.5 under Reliable and Sustainable Infrastructure to Enhance & Ensure Continuity of Reliable City facilities.
2.) Meets Procurement guidelines

LONG-TERM FINANCIAL & BUDGETARY IMPACT:
Under the Reliable and Sustainable Infrastructure Pillar of the Strategic Action Plan, Council authorized $1,297,729 in the current year’s budget to repurpose City Hall, renovate the old Police Building to a Civic Center, and for equipment and furniture for the City campus.

LEGAL ANALYSIS:
Modifications were made to the agreement by our City Attorney, and have been accepted by Waterman Construction, LLC.

RECOMMENDATION/PROPOSED MOTION:
I move to authorize the City Manager to sign an Agreement with Waterman Construction, LLC to provide Construction Manager at Risk Services for Construction of a Civic Center and City Hall Renovation at an amount not to exceed $134,233.00.
Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 22nd day of January in the year 2021
(In words, indicate day, month, and year.)

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

City of Fair Oaks Ranch, Municipality
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015
Telephone Number: 210-698-0900
Fax Number: 210-698-3565

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

Waterman Construction, LLC
Limited Liability Company
4204 Gardendale Street, Suite 209
San Antonio, TX 78229

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

Construction Manager at Risk Services for Construction of a Civic Center and City Hall Renovation
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015
Renovation of existing City Hall and construction of a new Civic Center

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

Studio S ArchiTekts, Limited Liability Company
8000 Fair Oaks Pkwy
Building 3, Suite 3206
Fair Oaks Ranch, TX 78015
Telephone Number: 830-333-1443

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™—2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION
§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner’s program for the Project, as described in Section 4.1.1:
(Insert the Owner’s program, identify documentation that establishes the Owner’s program, or state the manner in which the program will be developed.)

Unknown at time of execution. To be determined during preconstruction phase

§ 1.1.2 The Project’s physical characteristics:
(Identify or describe pertinent information about the Project’s physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Renovation of existing City Hall and construction of a New Civic Center.

§ 1.1.3 The Owner’s budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)
§ 1.200,000

§ 1.1.4 The Owner’s anticipated design and construction milestone dates (to be finalized in Guaranteed Maximum Price Amendment):

.1 Design phase milestone dates, if any:

.2 Construction commencement date:
   February 26, 2021

.3 Substantial Completion date or dates:
   September 30, 2021

.4 Other milestone dates:
   not applicable

§ 1.1.5 The Owner’s requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

not applicable

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

not applicable

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

not applicable

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Tobin Maples, AICP, City Manager, City of Fair Oaks Ranch
7286 Dietz Elkhorn, Fair Oaks Ranch, Tx 78015
Telephone Number: 210-698-0900
Fax Number: 210-698-35657
Email Address: tmaples@fairoaksranchtx.org

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:

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User Notes:

(3B6ADA37)
§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

1. Geotechnical Engineer:
   To be determined - as needed

2. Civil Engineer:
   To be determined - as needed

3. Other, if any:
   (List any other consultants retained by the Owner, such as a Project or Program Manager.)
   not applicable

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

Hollie Scott Sanchez, LEED AP, NCARB
8000 Fair Oaks Pkwy
Building 3, Suite 3206
Fair Oaks Ranch, TX 78015
Telephone Number: 830-333-1443

Email Address: hollie@studioarchitekts.com

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

Andrew Waterman
4204 Gardendale Street, Suite 209
San Antonio, TX 78229
Telephone Number: 210-762-5600
Fax Number: 210-762-6737
Mobile Number: 210-373-0871
Email Address: andrew@watermange.com

§ 1.1.13 The Owner’s requirements for the Construction Manager’s staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

not applicable
§ 1.1.14 The Owner’s requirements for subcontractor procurement for the performance of the Work:
(_List any Owner-specific requirements for subcontractor procurement._)

Bids will be publicly advertised by the Construction Manager for the major elements of the work, with the exception of minor items included as General Conditions and Preconstruction Phase Service items. The Construction Manager will provide recommendations as outlined in Section 2269.251 of the Texas Local Government Code.

§ 1.1.15 Other Initial Information on which this Agreement is based:

not applicable

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager’s skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.
ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase
§ 3.1.1 Extent of Responsibility
The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

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

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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

§ 3.1.5 Phased Construction
The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.
§ 3.1.6 Cost Estimates
§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect’s review and the Owner’s approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

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

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

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

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

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

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

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

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

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

§ 3.1.12 Procurement
The Construction Manager shall prepare, for the Architect’s review and the Owner’s acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.
§ 3.1.13 Compliance with Laws
The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services
Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document. (Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

As outlined in Pre-Construction Development Process in submitted proposal

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

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

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

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

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

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.
§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

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

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase
§ 3.3.1 General
§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

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

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

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

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

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

ARTICLE 4 OWNER'S RESPONSIBILITIES
§ 4.1 Information and Services Required of the Owner
§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria,
including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

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

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

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

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

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

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

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

§ 4.2 Owner’s Designated Representative
The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner’s representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.
§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests.

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
§ 5.1 Compensation
§ 5.1.1 For the Construction Manager’s Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

$2,500.00

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager’s Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

<table>
<thead>
<tr>
<th>Individual or Position</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lump Sum: Amount for Preconstruction Services</td>
<td>$2,500.00</td>
</tr>
</tbody>
</table>

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

(Paragraph Deleted)

§ 5.2 Payments
§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid
Thirty (30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

1.00%

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
§ 6.1 Contract Sum
§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager’s Fee.

§ 6.1.2 The Construction Manager’s Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

$19,560.00

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Section 6.1.3: The method of adjustment of the Construction Manager’s Fee for changes in the Work:

- not applicable

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

- Any change order must be reviewed and approved by Owner

Section 6.1.5: Rental rates for Construction Manager-owned equipment shall not exceed Zero percent (0.00%) of the standard rental rate paid at the place of the Project.

Section 6.1.6: Liquidated damages, if any:

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

- $350 per Day first 30 days; $400 per Day 31-60 days; $500 per Day 90 days and beyond

Section 6.1.7: Other:

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

- not applicable

Section 6.2: Guaranteed Maximum Price

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

Section 6.3: Changes in the Work

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

Section 6.3.1.1: The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

Section 6.3.4: In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

Section 6.3.5: If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.
ARTICLE 7  COST OF THE WORK FOR CONSTRUCTION PHASE
§ 7.1 Costs to Be Reimbursed
§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7, and items listed in Bid Solicitation Response attached as Exhibit C.

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

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

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

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:  
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

included in Construction Manager's general conditions fee of $131,733.00

§ 7.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

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

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

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

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

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

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are

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(3B8ADA37)
provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools no customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner’s prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Construction Manager’s site office, including general office equipment and supplies.

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner’s prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner’s prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

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

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

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

(Paragraph Deleted)

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

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager’s negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which shall not be unreasonably withheld.
§ 7.6.10 Expenses incurred in accordance with the Construction Manager’s standard written personnel policy for relocation and temporary living allowances of the Construction Manager’s personnel required for the Work, with the Owner’s prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager’s supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies
§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner’s prior approval.

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

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

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

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

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

§ 7.9 Costs Not To Be Reimbursed
§ 7.9.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
.3 Expenses of the Construction Manager’s principal office and offices other than the site office;
.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
.5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and
suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

7 Any cost not specifically and expressly described in Sections 7.1 to 7.7 and items listed in Bid Solicitation Response attached as Exhibit C;

8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS
§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS
§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager’s list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

ARTICLE 10 ACCOUNTING RECORDS
The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, Subcontractor’s invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.
ARTICLE 11   PAYMENTS FOR CONSTRUCTION PHASE SERVICES

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

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

not applicable

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

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

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

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

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

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

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

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

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

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

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

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:
.1 The aggregate of any amounts previously paid by the Owner;
.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
.5 The shortfalls, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage
§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5%

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

not applicable

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

not applicable

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)

not applicable

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.
§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

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

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

§ 11.2 Final Payment

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

1. the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

2. the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

3. a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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

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

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

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

§ 11.3 Interest
Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%  

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

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

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

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

(Check the appropriate box.)

[ ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[ X ] Litigation in a court of competent jurisdiction in Kendall County

[ ] Other: (Specify)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13  TERMINATION OR SUSPENSION
§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment
§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager,
and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

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

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

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

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

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

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment
§ 13.2.1 Termination
The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

---

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User Notes:

(388DA3A37)
§ 13.2.2 Termination by the Owner for Cause
§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
.2 Add the Construction Manager’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
.3 Subtract the aggregate of previous payments made by the Owner; and
.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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

§ 13.2.3 Termination by the Owner for Convenience
If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Inset the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner’s convenience.)

not applicable

§ 13.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS
§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns
§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 14.3 Insurance and Bonds
§ 14.3.1 Preconstruction Phase
The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the
Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars and Zero Cents for each occurrence and 4000000.00 ($ Four Million Dollars and Zero Cents ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than Two Million Dollars and Zero Cents ($ 2000000.00 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than One Million Dollars and Zero Cents ($ 1000000.00 ) each accident, One Million Dollars and Zero Cents ($ 1000000.00 ) each employee, and One Million Dollars and Zero Cents ($ 1000000.00 ) policy limit.

(Paragraph Deleted)

§ 14.3.1.6 Other Insurance
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Builders' Risk Insurance</td>
<td>Equal to the completed value of the structures</td>
</tr>
<tr>
<td>Umbrella Liability</td>
<td>$5,000,000 Limit that follows form over underlying Automobile Liability, General Liability, and Employers Liability coverages.</td>
</tr>
</tbody>
</table>

(Table Deleted)

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner’s insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

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

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.
§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

(Paragraphs Deleted)

.5 Other Exhibits:

(Check all boxes that apply.)

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

(Insert the date of the E234-2019 incorporated into this Agreement.)

[ ] Supplementary and other Conditions of the Contract:

<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit C</td>
<td>Price Proposal Form</td>
<td>November 10, 2020</td>
<td>1</td>
</tr>
</tbody>
</table>

.7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)
This Agreement is entered into as of the day and year first written above.

**OWNER (Signature)**
Tobin Maples, AICP, City Manager

**CONSTRUCTION MANAGER (Signature)**
Andrew Waterman, LEED AP, President

(Printed name and title)
Additions and Deletions Report for
AIA® Document A133™ – 2019

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:54:24 ET on 01/14/2021.

PAGE 1

AGREEMENT made as of the 22nd day of January in the year 2021

...  

City of Fair Oaks Ranch, Municipality  
7286 Dietz Elkhorn  
Fair Oaks Ranch, Tx 78015  
Telephone Number: 210-698-0900  
Fax Number: 210-698-3565

...

Waterman Construction, LLC Limited Liability Company  
4204 Gardendale Street, Suite 209  
San Antonio, Tx 78229

...

Construction Manager at Risk Services for Construction of a Civic Center and City Hall Renovation  
7286 Dietz Elkhorn  
Fair Oaks Ranch, Tx 78015  
Renovation of existing City Hall and construction of a new Civic Center

...

Studio S ArchiTekts, Limited Liability Company  
8000 Fair Oaks Pkwy  
Building 3, Suite 3206  
Fair Oaks Ranch, Tx 78015  
Telephone Number: 830-333-1443

PAGE 2

TABLE OF ARTICLES

...
EXHIBIT C PRICE PROPOSAL FORM

...

EXHIBIT D AIA GENERAL CONDITIONS

...

Unknown at time of execution. To be determined during preconstruction phase

...

Renovation of existing City Hall and construction of a New Civic Center.

PAGE 3

$1,200,000

...

§ 1.1.4 The Owner's anticipated design and construction milestone dates are (to be finalized in Guaranteed Maximum Price Amendment):

...

February 26, 2021

...

September 30, 2021

...

not applicable

not applicable

not applicable

not applicable

...

Tobin Maples, AICP, City Manager, City of Fair Oaks Ranch
7286 Dietz Elkhorn, Fair Oaks Ranch, TX 78015
Telephone Number: 210-698-0900
Fax Number: 210-698-35657
Email Address: tmaples@fairoaksranchtx.org
Studio S Architekts

To be determined - as needed

To be determined - as needed

not applicable

Hollie Scott Sanchez, LEED AP, NCARB
8000 Fair Oaks Pkwy
Building 3, Suite 3206
Fair Oaks Ranch, TX 78015
Telephone Number: 830-333-1443
Email Address: hollie@studioarchitekts.com

Andrew Waterman
4204 Gardendale Street, Suite 209
San Antonio, TX 78229
Telephone Number: 210-762-5600
Fax Number: 210-762-6737
Mobile Number: 210-373-0871
Email Address: andrew@watermanc.com

not applicable

PAGE 5

Bids will be publicly advertised by the Construction Manager for the major elements of the work, with the exception of minor items includes as General Conditions and Preconstruction Phase Service items. The Construction Manager will provide recommendations as outlined in Section 2269.251 of the Texas Local Government Code.

not applicable

PAGE 8

As outlined in Pre-Construction Development Process in submitted proposal
§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within (-) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Zero percent (0.00%) of the standard rental rate paid at the place of the Project.

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7, and items listed in Bid Solicitation Response attached as Exhibit C.

any change order must be reviewed and approved by Owner.

$2,500.00

Lump Sum Amount for Preconstruction Services

$19,560.00

PAGE 12

not applicable

PAGE 13

not applicable

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7, and items listed in Bid Solicitation Response attached as Exhibit C.
§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

PAGE 16

.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7-7.7 and items listed in Bid Solicitation Response attached as Exhibit C;

PAGE 17

not applicable

...

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

PAGE 18

50%

...

not applicable

...

not applicable

...

not applicable

PAGE 20

[X] Litigation in a court of competent jurisdiction in Kendall County

PAGE 22

not applicable

PAGE 23
§ 14.3.1.1 Commercial General Liability with policy limits of not less than $(\rightarrow)$ One Million Dollars and Zero Cents for each occurrence and 4,000,000.00 $(\rightarrow)$ Four Million Dollars and Zero Cents) in the aggregate for bodily injury and property damage.

...  

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than Two Million Dollars and Zero Cents $(\rightarrow)$ 20,000,000.00 $(\rightarrow)$ per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...  

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than One Million Dollars and Zero Cents $(\rightarrow)$ 1,000,000.00 $(\rightarrow)$ each accident, One Million Dollars and Zero Cents $(\rightarrow)$ 1,000,000.00 $(\rightarrow)$ each employee, and One Million Dollars and Zero Cents $(\rightarrow)$ 1,000,000.00 $(\rightarrow)$ policy limit.

...  

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than $(\rightarrow)$ per claim and $(\rightarrow)$ in the aggregate.

...  

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Builders’ Risk Insurance</td>
<td>Equal to the completed value of the structures</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Builders’ Risk Insurance</td>
<td>Equal to the completed value of the structures</td>
</tr>
<tr>
<td>Umbrella Liability</td>
<td>$5,000,000 Limit that follows form over underlying Automobile Liability, General Liability, and Employers Liability coverages.</td>
</tr>
</tbody>
</table>

PAGE 24

.5—AIA Document E203™—2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

...  

(Insert the date of the E203—2013 incorporated into this Agreement)

...  

.6—.5 Other Exhibits:

...  

Exhibit C | Price Proposal Form | November 10, 2020 | 1

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User Notes:
Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 22nd day of January in the year 2021 (In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

Construction Manager at Risk Services for Construction of a Civic Center and City Hall Renovation
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015

THE OWNER:
(Name, legal status, and address)

City of Fair Oaks Ranch
Municipality
7286 Dietz Elkhorn Fair Oaks Ranch, TX 78015

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Waterman Construction, LLC Limited Liability Company
4204 Gardendale Street, Suite 209
San Antonio, TX 78229

TABLE OF ARTICLES

B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL
The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE
§ B.2.1 General
Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.
§ B.2.2.2 Liability Insurance
The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ B.2.3 Required Property Insurance
§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Subsubcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensurin loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

<table>
<thead>
<tr>
<th>Cause of Loss</th>
<th>Sub-Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Sub-Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures
If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions, “all-risks” property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.
§ B.2.4 Optional Extended Property Insurance.
The Owner shall purchase and maintain the insurance selected and described below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to
the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or
other conditions in the fill point below the selected item.)

[ ] § B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the Owner
for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered
cause of loss.

[ ] § B.2.4.2 Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum
requirements of the enforcement of any law or ordinance regulating the demolition, construction,
repair, replacement or use of the Project.

[ ] § B.2.4.3 Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of
damage to insured property, and to expedite the permanent repair or replacement of the damaged
property.

[ ] § B.2.4.4 Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess
costs incurred during the period of restoration or repair of the damaged property that are over and
above the total costs that would normally have been incurred during the same period of time had no
loss or damage occurred.

[ ] § B.2.4.5 Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting
access to the Project, provided such order is the direct result of physical damage covered under the
required property insurance.

[ ] § B.2.4.6 Ingress/Egress Insurance, for loss due to the necessary interruption of the insured’s business
due to physical prevention of ingress to, or egress from, the Project as a direct result of physical
damage.

[ ] § B.2.4.7 Soft Costs Insurance, to reimburse the Owner for costs due to the delay of completion of the
Work, arising out of physical loss or damage covered by the required property insurance: including
construction loan fees; leasing and marketing expenses; additional fees, including those of architects,
engineers, consultants, attorneys and accountants, needed for the completion of the construction,
repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional
interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.
The Owner shall purchase and maintain the insurance selected below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to
the description(s) of selected insurance.)

[ ] § B.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach,
including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

[ ] § B.2.5.2 Other Insurance
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)
ARTICLE B.3 CONSTRUCTION MANAGER’S INSURANCE AND BONDS

§ B.3.1 General
§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner’s written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager’s Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect’s consultants as additional insureds for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions during the Construction Manager’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner’s general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect’s consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager’s Required Insurance Coverage
§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.2.2 Commercial General Liability
§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars and Zero Cents ($1,000,000) each occurrence, Four Million Dollars and Zero Cents ($4,000,000) general aggregate, and Four Million Dollars and Zero Cents ($4,000,000) aggregate for products-completed operations hazard, providing coverage for claims including:

1. damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
2. personal injury and advertising injury;
3. damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
4. bodily injury or property damage arising out of completed operations; and
5. the Construction Manager’s indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager’s Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:
Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact
that the claimant is an insured, and there would otherwise be coverage for the claim.
2. Claims for property damage to the Construction Manager's Work arising out of the products-completed
operations hazard where the damaged Work or the Work out of which the damage arises was
performed by a Subcontractor.
3. Claims for bodily injury other than to employees of the insured.
4. Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees
of the insured.
5. Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
6. Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary
language.
7. Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed
on such a project.
8. Claims related to roofing, if the Work involves roofing.
9. Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings
or surfaces, if the Work involves such coatings or surfaces.
10. Claims related to earth subsidence or movement, where the Work involves such hazards.
11. Claims related to explosion, collapse and underground hazards, where the Work involves such
hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction
Manager, with policy limits of not less than Two Million Dollars and Zero Cents ($ 2,000,000 ) per accident, for
bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those
motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability
and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided
such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages
required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide
narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying
limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents ($ 1000000.00 )
each accident, One Million Dollars and Zero Cents ($ 1000000.00 ) each employee, and One Million Dollars and
Zero Cents ($ 1000000.00 ) policy limit.

(Paragraphs Deleted)

§ B.3.3 Construction Manager's Other Insurance Coverage
§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or
insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The
Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work
as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration
other than the expiration of the period for correction of Work, state the duration.)

Builders' Risk Insurance: Completed value form, insurance carried must be equal to the completed value of the
structures. City shall be listed as Loss Payee

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in
accordance with Section B.3.3.1.
§ B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager’s obligation to provide property insurance differs from the Owner’s obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

§ B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than ($   ) per claim and ($   ) in the aggregate, for Work within fifty (50) feet of railroad property.

§ B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than ($   ) per claim and ($   ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

§ B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

§ B.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

§ B.3.3.2.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage Limits

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

<table>
<thead>
<tr>
<th>Type</th>
<th>Penal Sum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment Bond</td>
<td>equal to 100% of the not to exceed contract amount of $1,200,000 to be submitted within ten (10) days after contract execution</td>
</tr>
<tr>
<td>Performance Bond</td>
<td>equal to 100% of the not to exceed contract amount of $1,200,000 to be submitted within ten (10) days after contract execution</td>
</tr>
</tbody>
</table>

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.
ARTICLE B.4 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Construction Manager shall furnish a Maintenance/Warranty Bond in the amount of 100% of the contract sum covering defect of material and workmanship for two (2) calendar years following the City's approval and acceptance of the construction.
Additions and Deletions Report for
AIA® Document A133™ – 2019 Exhibit B

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:07:34 ET on 01/08/2021.

PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 22nd day of January in the year 2021.

... Construction Manager at Risk Services for Construction of a Civic Center and City Hall Renovation 7286 Dietz Elkhorn Fair Oaks Ranch, TX 78015 ...

... City of Fair Oaks Ranch Municipality 7286 Dietz Elkhorn Fair Oaks Ranch, Tx 78015 ...

... Waterman Construction, LLC Limited Liability Company 4204 Gardendale Street, Suite 209 San Antonio, TX 78229 ...

PAGE 2

...

PAGE 3

[±] § B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss.

...

[±] § B.2.4.2 Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
§ B.2.4.3 Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

§ B.2.4.4 Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

§ B.2.4.5 Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

§ B.2.4.6 Ingress/Egress Insurance, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

§ B.2.4.7 Soft Costs Insurance, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.

§ B.2.5.2 Other Insurance

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars and Zero Cents ($1,000,000) each occurrence, Four Million Dollars and Zero Cents ($4,000,000) general aggregate, and Four Million Dollars and Zero Cents ($4,000,000) aggregate for products-completed operations hazard, providing coverage for claims including
§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than Two Million Dollars and Zero Cents ($ 2,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

... 

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents ($ 1,000,000.00) each accident, One Million Dollars and Zero Cents ($ 1,000,000.00) each employee, and One Million Dollars and Zero Cents ($ 1,000,000.00) policy limit.

... 

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

... 

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.

... 

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.

... 

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.

... 

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.

... 

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.

... 

Builders' Risk Insurance: Completed value form, insurance carried must be equal to the completed value of the structures. City shall be listed as Loss Payee.

PAGE 6

[ ] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section
B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

[ ] § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than ($-) per claim and ($-) in the aggregate, for Work within fifty (50) feet of railroad property.

[ ] § B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than ($-) per claim and ($-) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ ] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

[ ] § B.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[ ] § B.3.3.2.6 Other Insurance

<table>
<thead>
<tr>
<th>Type</th>
<th>Penal Sum($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment Bond</td>
<td>equal to 100% of the not to exceed contract amount of $1,200,000 to be submitted within ten (10) days after contract execution</td>
</tr>
<tr>
<td>Performance Bond</td>
<td>equal to 100% of the not to exceed contract amount of $1,200,000 to be submitted within ten (10) days after contract execution</td>
</tr>
</tbody>
</table>

Construction Manager shall furnish a Maintenance/Warranty Bond in the amount of 100% of the contract sum covering defect of material and workmanship for two (2) calendar years following the City’s approval and acceptance of the construction.
PRICE PROPOSAL FORM

The proposed fees should be calculated based on the maximum estimated budget of specified in the RFP. The total amount of the fees will be adjusted when a Guaranteed Maximum Price (GMP) is negotiated and finalized. The CMAR will be responsible for ensuring the GMP does not exceed the not to exceed amount originally included in the contract. The GMP will be calculated as follows:

<table>
<thead>
<tr>
<th>Cost of Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>+</td>
</tr>
<tr>
<td>Preconstruction Fee (% x Cost of Work)</td>
</tr>
<tr>
<td>+</td>
</tr>
<tr>
<td>General Conditions Fee (% x Cost of Work)</td>
</tr>
<tr>
<td>+</td>
</tr>
<tr>
<td>CMAR Fee (% x Cost of Work)</td>
</tr>
<tr>
<td>=</td>
</tr>
<tr>
<td>Guaranteed Maximum Price (Estimated Budget is between $1,000,000 - $1,200,000)</td>
</tr>
</tbody>
</table>

1. COST OF WORK
The cost for constructing the project, excluding preconstruction fees, general condition fees, and Construction Manager at Risk fees

$ 1,046,207.00  * This is based on a total budget of $1.2M per Addendum #02

2. PRECONSTRUCTION FEE
For all preconstruction services as outlined, the fee or lump sum amount of:

<table>
<thead>
<tr>
<th>0.21 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 2,500.00</td>
</tr>
</tbody>
</table>

3. GENERAL CONDITIONS FEE
For General Conditions as outlined in the RFP, list your GC fee as a percentage of the Cost of Work. The General Conditions fee will be calculated on the estimated budget. This % or lump sum amount should include staff and equipment/material costs.

GC FEE: ________________________________ 10.98 %

$ 131,733.00

4. CMAR FEE
For CMAR Fee, list your proposed fee as a percentage of the Cost of Work, which shall not include the General Conditions. The CM fee will be calculated on the estimated budget.

CM FEE: ________________________________ 1.63 %

$ 19,560.00

The Guaranteed Maximum Price will be finalized after contract execution.

Request for Proposals – CMAR Services for Construction of a Civic Center and City Hall Renovation
Respondent’s Proposed General Conditions

Client: City of Fair Oaks Ranch
Project: New Civic Center & City Hall Renovation
Proposed Timeframe: Eight months, Starting 1st Qtr 2021
General Scope: New Construction of City Civic Center, Interior renovations to existing City Hall (Phased), Please note: GCs based on one general superintendent.

Maximum Project Budget $1,200,000
CMAR Preconstruction Services Fee $2,500
CMAR Fixed Fee See Proposal
General Conditions Fixed Fee See Proposal
Architectural/Engineering Services By Others

<table>
<thead>
<tr>
<th>COST ITEM</th>
<th>Included in Fee &amp; Overhead</th>
<th>General Conditions</th>
<th>Cost of the work</th>
<th>Paid by FOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>OVERHEAD &amp; PROFIT</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Pre-Construction Services</td>
<td></td>
<td>See Proposal</td>
<td></td>
<td></td>
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<tr>
<td>All other office support personnel</td>
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<td></td>
<td></td>
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<td>Overhead &amp; general expenses at contractor's principal office</td>
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<tr>
<td>Contractor's capital expense</td>
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<tr>
<td>Profit</td>
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<td>SUPERVISION/ADMINISTRATION</td>
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<td>Supervision / Project Management</td>
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<tr>
<td>Superintendent, adequate coverage</td>
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<tr>
<td>Project Manager, adequate coverage</td>
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<tr>
<td>Administration</td>
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<tr>
<td>Project Executive (Andrew Waterman)</td>
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<td>Shop Drawings and Contract Admin.</td>
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<tr>
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<tr>
<td>Drawing Reproduction</td>
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<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Computer (on-site only)</td>
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<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>PlanGrid / Submittal Exchange</td>
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<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Postage</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>COST ITEM</td>
<td>Included in Fee &amp; Overhead</td>
<td>General Conditions</td>
<td>Cost of the work</td>
<td>Paid by FOR</td>
</tr>
<tr>
<td>----------------------------------</td>
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</tr>
<tr>
<td>Field Office</td>
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<tr>
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<td>Safety</td>
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<tr>
<td>Safety Inspections</td>
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General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

Construction Manager at Risk Services for Construction of a Civic Center and City Hall Renovation
7286 Dietz Elkhorn
Fair Oaks Ranch, Tx 78015

THE OWNER:
(Name, legal status and address)

City of Fair Oaks Ranch, Municipality
7286 Dietz Elkhorn
Fair Oaks Ranch, Tx 78015

THE ARCHITECT:
(Name, legal status and address)

Studio S ArchiTekts, Limited Liability Company
8000 Fair Oaks Pkwy
Building 3, Suite 3206
Fair Oaks Ranch, Tx 78015

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

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

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

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

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

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

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

§ 1.1.8 Initial Decision Maker
The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Contract.

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

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

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

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

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or on additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect’s consultants.

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

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

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

§ 1.8 Building Information Models Use and Reliance
Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set
forth in AIA Document E203™-2013, Building Information Modeling and Digital Date Exhibit, and the requisite
AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or
relaying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or
contributors to, the building information model, and each of their agents and employees.

ARTICLE 2  OWNER

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

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

§ 2.2 Evidence of the Owner’s Financial Arrangements
§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to
the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s
obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner
provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall
be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish
to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s
obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract
Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to
make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to
provide such evidence, as required, within fourteen days of the Contractor’s request, the Contractor may
immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the
request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor
may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided.
If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract
Sum shall be increased by the amount of the Contractor’s reasonable costs of shutdown, delay and start-up, plus
interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not
materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as “confidential,” the
Contractor shall keep the information confidential and shall not disclose it to any other person. However, the
Contractor may disclose “confidential” information, after seven (7) days’ notice to the Owner, where disclosure is
required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental
entity, or by court or arbitrator(s) order. The Contractor may also disclose “confidential” information to its
employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to
know the content of such information solely and exclusively for the Project and who agree to maintain the
confidentiality of such information.

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

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

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

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

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

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

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

§ 2.5 Owner’s Right to Carry Out the Work
If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner’s expenses and compensation for the Architect’s additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR
§ 3.1 General
§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor’s proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

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

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

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

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

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

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

§ 3.7.4 Concealed or Unknown Conditions
If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect’s determination or recommendation, that party may submit a Claim as provided in Article 15.

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

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

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

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

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect’s approval. The Architect’s approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor’s construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.
§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

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

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

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

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

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

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

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

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

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

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.
§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

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

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

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

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

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

§ 3.16 Access to Work
The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.
§ 3.17 Royalties, Patents and Copyrights
The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

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

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

ARTICLE 4 ARCHITECT
§ 4.1 General
§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not...
have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect’s responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

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

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

ARTICLE 5 SUBCONTRACTORS
§ 5.1 Definitions
§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work
§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
§ 6.1 Owner’s Right to Perform Construction and to Award Separate Contracts
§ 6.1.1 The term “Separate Contractor(s)” shall mean other contractors retained by the Owner under separate 
agreements. The Owner reserves the right to perform construction or operations related to the Project with the 
Owner’s own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar 
to those of this Contract, including those provisions of the Conditions of the Contract relative to insurance and 
waiver of subrogation.

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

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

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

§ 6.2 Mutual Responsibility
§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and 
storage of their materials and equipment and performance of their activities, and shall connect and coordinate the 
Contractor’s construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by 
the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, 
promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or 
Separate Contractor that would render it unsuitable for proper execution and results of the Contractor’s Work. 
Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the
Work shall constitute an acknowledgment that the Owner’s or Separate Contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

§ 6.3 Owner’s Right to Clean Up
If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

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

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

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

§ 7.2 Change Orders
§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:
.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:
.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

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

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

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

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

ARTICLE 8 TIME
§ 8.1 Definitions
§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

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

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

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time
§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION
§ 9.1 Contract Sum
§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable to the Owner by the Contractor for performance of the Work under the Contract Documents.

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

§ 9.2 Schedule of Values
Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s subsequent Applications for Payment.
§ 9.3 Applications for Payment
§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an Itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be substantiated, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment
§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

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

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

§ 9.5.2 When either party disputes the Architect’s decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payment are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents;
.3 terms of special warranties required by the Contract Documents; or
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

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

§ 10.2 Safety of Persons and Property
§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to
prevent damage, injury, or loss to
.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site,
under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways,
structures, and utilities not designated for removal, relocation, or replacement in the course of
construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

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

§ 11.2 Owner's Insurance
§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

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

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

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

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance
The Owner, at the Owner’s option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner’s property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner’s property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss
§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK
§ 12.1 Uncovering of Work
§ 12.1.1 If a portion of the Work is covered contrary to the Architect’s request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect’s examination and be replaced at the Contractor’s expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor’s expense.
§ 12.2 Correction of Work
§ 12.2.1 Before Substantial Completion
The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect’s services and expenses made necessary thereby, shall be at the Contractor’s expense.

§ 12.2.2 After Substantial Completion
§ 12.2.2.1 In addition to the Contractor’s obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

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

ARTICLE 13 MISCELLANEOUS PROVISIONS
§ 13.1 Governing Law
The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction’s choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

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

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

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

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

§ 13.4 Tests and Inspections
§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner’s expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect’s services and expenses, shall be at the Contractor’s expense.

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

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

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

§ 13.5 Interest
Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:
1. that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience
§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner’s convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner’s convenience, the Contractor shall
1. cease operations as directed by the Owner in the notice;
2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner’s convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES
§ 15.1 Claims
§ 15.1.1 Definition
A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims
The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims
§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.
§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance
§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

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

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

§ 15.1.6 Claims for Additional Time
§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision
§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

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

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

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

§ 15.3 Mediation
§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

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

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.
§ 15.3.4 The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.
Additions and Deletions Report for
AIA® Document A201® – 2017

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

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PAGE 1

Construction Manager at Risk Services for Construction of a Civic Center and City Hall Renovation
7286 Dietz Elkhorn
Fair Oaks Ranch, Tx 78015

... 

City of Fair Oaks Ranch, Municipality
7286 Dietz Elkhorn
Fair Oaks Ranch, Tx 78015

...

Studio S ArchiTekts, Limited Liability Company
8000 Fair Oaks Pkwy
Building 3, Suite 3206
Fair Oaks Ranch, Tx 78015

PAGE 10

ARTICLE 1 GENERAL PROVISIONS

PAGE 32

§ 11.2 Owner’s Insurance
AGENDA TOPIC: Consideration and possible action approving a Resolution to approve the 2020 Property Tax Levy

DATE: January 21, 2021

DEPARTMENT: Finance

PRESENTED BY: Sarah Buckelew, CPA, Finance Director

INTRODUCTION/BACKGROUND:

Pursuant to the Texas Property Tax Code, Chapter 26.09(e), after City Council sets the 2020 property tax rate, the levy roll is determined, by the property tax collector, based on said approved property tax rate, and presented to Council for approval: *The assessor shall enter the amount of tax determined as provided by this section in the appraisal roll and submit it to the governing body of the unit for approval.* The appraisal roll with amounts of tax entered as approved by the governing body constitutes the unit's tax roll.

City Council, on September 24, set the 2020 property tax rate at $.3735 on each $100 taxable valuation of property. See attached 2020 Levy Total report for calculation of Total Levy.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Compliance with state law.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

<table>
<thead>
<tr>
<th>Levy Type</th>
<th>Tax Rate</th>
<th>Levy Amount</th>
<th>Tax Revenue Budgeted</th>
</tr>
</thead>
<tbody>
<tr>
<td>M&amp;O</td>
<td>$.3395</td>
<td>$5,641,311.14*</td>
<td>$5,360,694**</td>
</tr>
<tr>
<td>I&amp;S</td>
<td>$.0340</td>
<td>539,328.39*</td>
<td>548,653</td>
</tr>
<tr>
<td><strong>Total Levy</strong></td>
<td></td>
<td>$6,180,639.53</td>
<td>$5,909,347</td>
</tr>
</tbody>
</table>

* Levy is calculated at 100% of Total Taxable value without consideration for properties still in dispute with the appraisal review board.

** Amounts are per the adopted FY 20-21 Budget, and are based on historical collection rates, the City budgets at 98.3% collection, and based on a taxable value that accounts for properties still in dispute with the appraisal review board. A budget amendment will be presented in a separate agenda item to recognize the additional property tax revenue as indicated in the budget levy plus additional property value adjustments made since the levy roll.

LEGAL ANALYSIS:

Approved as to form.

RECOMMENDATION/PROPOSED MOTION:

As approval of the levy roll is required by statute, “I move to approve a resolution approving the City of Fair Oaks Ranch 2020 property tax levy roll of $6,180,639.53.”
A RESOLUTION

APPROVAL OF THE 2020 PROPERTY TAX LEVY ROLL FOR THE CITY OF FAIR OAKS RANCH, TEXAS

WHEREAS, pursuant to Texas Property Tax Code, Vernon's Texas Codes Annotated, Section 26.09(e) the City Council of the City of Fair Oaks Ranch, Texas, must officially approve the tax levy roll of the City of Fair Oaks Ranch, Texas for the year 2020.

NOW, THEREFORE, be it resolved that:

1. The City Council of the City of Fair Oaks Ranch hereby officially approves the 2020 property tax levy roll as required by the Property Tax Code, Vernon's Texas Codes Annotated, Section 26.09(e) in the amount of $6,180,639.53 based on a tax rate of $0.3735 per $100 valuation of a total taxable value of $1,654,750,003.

2. A signed copy of this Resolution shall be submitted, by the City Secretary, to the city's property tax collector, Bexar County Tax Assessor Collector.

3. This Resolution shall be in full force and effect from and after its passage and approval.

PASSED, APPROVED, AND ADOPTED on this 21st day of January, 2021.

____________________________________________________
Garry Manitzas, Mayor

ATTEST: APPROVED AS TO FORM:

___________________________________________   ____________________________________________________
Christina Picioccio, City Secretary  Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney
October 21, 2020

Ms. Sarah Buckelew, Finance Officer
City of Fair Oaks Ranch
7286 Dietz Elkhorn Road
Fair Oaks Ranch, Texas 78015

RE: City of Fair Oaks Ranch – 2020 Tax Roll

Dear Ms. Buckelew:

Enclosed is a summary of values and levies taken from the initial Tax Roll for the City of Fair Oaks Ranch.

Section 26.09(e) of the State Property Tax Code requires the Tax Roll to be approved by the taxing units governing body. Please notify this office, at your earliest convenience, when the tax roll is approved by your governing body.

If you have any question, please contact Mr. Carlos Gutierrez at 210-335-6600.

Sincerely,

[Signature]

Albert Uresti, MPA, PCC
Tax Assessor-Collector
Bexar County

AU:SWP/ea [Signature]

Enclosure
## 2020 CERTIFIED TAX ROLL AS OF OCTOBER 1, 2020

TAX ASSESSMENT ROLLS OF FAIR OAKS RANCH FOR THE YEAR 2020 SHOW THE FOLLOWING SUMMARIES:

<table>
<thead>
<tr>
<th>ROLL</th>
<th>NUMBER ACCTS</th>
<th>MARKET VALUE</th>
<th>TAXABLE VALUE</th>
<th>FREEZE LOSS</th>
<th>TOTAL LEVY</th>
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<tr>
<td>REAL PROPERTY</td>
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<td>6,143,671.77</td>
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<td>PERSONAL PROPERTY</td>
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<td>9,858,273</td>
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<td>35,967.76</td>
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<td>.00</td>
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<td>MINERAL PROPERTY</td>
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<td>0</td>
<td>.00</td>
<td>.00</td>
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<tr>
<td>OTHER PROPERTY</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>.00</td>
<td>.00</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>4,314</strong></td>
<td><strong>1,835,470,620</strong></td>
<td><strong>1,654,750,003</strong></td>
<td><strong>.00</strong></td>
<td><strong>6,180,639.53</strong></td>
</tr>
</tbody>
</table>

RATE OF TAXATION ASSESSMENT RATIO 100%
TOTAL TAX RATE  00.373500

ALBERT URESTI, MPA, PCC
TAX ASSESSOR-COLLECTOR BEXAR COUNTY

BY:

[Signature]
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<tr>
<th>Jurisdiction:</th>
<th>45 FAIR OAKS RANCH</th>
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<tr>
<td>Market Value:</td>
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<td>Tax Rate:</td>
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<td>State Hom:</td>
<td>5,000</td>
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<td>State O65:</td>
<td>0</td>
</tr>
<tr>
<td>Disabled:</td>
<td>0</td>
</tr>
<tr>
<td>Opt Hom:</td>
<td>0.0000000</td>
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<tr>
<td>Opt O65:</td>
<td>20,000</td>
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<tr>
<td>Opt Disabled:</td>
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<td>HS Capped Count:</td>
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<td>HS Capped Amt:</td>
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<td>Assessed Value:</td>
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<td>Leased Vehicles Count/Amt:</td>
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<td>Local Homestead Amt:</td>
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<tr>
<td>State Over 65 Count:</td>
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<td>Local Disabled Amt:</td>
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<tr>
<td>Total VET Amt:</td>
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<td>*VET Surviving Spouse Count:</td>
<td>27</td>
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<td>*VET Surviving Spouse Amt:</td>
<td>270,500</td>
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<td>Partial Exempt Values:</td>
<td>40,650,600</td>
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<td>Taxable Values:</td>
<td>1,654,750,003</td>
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<td>Total Levy Amt:</td>
<td>6,130,639.53</td>
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<td>Late Rendition Penalty Count:</td>
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<tr>
<td>Late Rendition Penalty Amt:</td>
<td>147.11</td>
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</tbody>
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AGENDA TOPIC: Consideration and possible action approving the first reading of an Ordinance Adopting Fiscal Year 2020-21 Budget Amendments

DATE: January 21, 2021

DEPARTMENT: Finance

PRESENTED BY: Sarah Buckelew, CPA, Finance Director

INTRODUCTION/BACKGROUND:
The purpose of this agenda item is to bring forward for consideration and possible adoption ten budget amendments for Fiscal Year 2020-21. This represents the first reading of the proposed ordinance adopting the ten budget amendments as discussed further below.

Proposed Budget Adjustment #1 – Adjust Property Tax Revenue for Levy and subsequent property value adjustments

<table>
<thead>
<tr>
<th></th>
<th>M&amp;O</th>
<th>I&amp;S</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adopted Budget</td>
<td>5,360,694</td>
<td>548,653</td>
<td>5,909,347</td>
</tr>
<tr>
<td>Levy Roll</td>
<td>5,641,311</td>
<td>539,328</td>
<td>6,180,640</td>
</tr>
<tr>
<td>Post-Levy Adjustments</td>
<td>242,647</td>
<td>23,204</td>
<td>265,851</td>
</tr>
<tr>
<td>Projected Receivable</td>
<td>5,883,958</td>
<td>562,533</td>
<td>6,446,491</td>
</tr>
<tr>
<td>at 98.3% Collection Rate</td>
<td>5,783,931</td>
<td>552,969</td>
<td>6,336,900</td>
</tr>
<tr>
<td>Proposed Budget Amendment</td>
<td>423,237</td>
<td>4,316</td>
<td>427,553</td>
</tr>
</tbody>
</table>

Due to COVID-19 protocols, the Bexar County Appraisal District experienced significant delays in processing property value appeals. Therefore, the certified tax roll reported property values that Council and Staff recognized were likely materially undervalued. Additional property tax revenue is anticipated as the remaining appeals are processed. The Levy Roll, adopted by resolution, certified a total levy of $6,180,640. Since the date of the Levy Roll, an additional $265,851 of property tax revenue has been added to the certified reports. Adjustments to date total $427,553, of which $423,237 is M&O tax revenue and $4,316 is I&S tax revenue, that should be recognized for budget purposes.
Offsets to additional revenue
The anticipation of additional property tax revenue was known at the time of budget adoption, and budget adjustments were delayed until the amount of the additional property tax revenue was known.

<table>
<thead>
<tr>
<th>Proposed Amendment #</th>
<th>Amount</th>
<th>Increased Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>#2</td>
<td>$9,750</td>
<td>Increase in Internet Bandwidth to accommodate backup needs</td>
</tr>
<tr>
<td>#3</td>
<td>$110,372</td>
<td>Organizational Changes to hire Deputy City Manager</td>
</tr>
<tr>
<td>#4</td>
<td>$15,000</td>
<td>Increased scope by Kimley Horn for stormwater utility workshop</td>
</tr>
<tr>
<td>#5</td>
<td>$8,179</td>
<td>Emergency HVAC repair on City Hall AC unit</td>
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<tr>
<td></td>
<td></td>
<td>Increased budget for planning and General Engineering Consultant ($20k)</td>
</tr>
<tr>
<td>#6</td>
<td>$60,000</td>
<td>Corridor Study, $40k Planning)</td>
</tr>
<tr>
<td>#7</td>
<td>$20,000</td>
<td>Expense of keeping portable for remainder of the year</td>
</tr>
<tr>
<td>#8</td>
<td>$8,000</td>
<td>AED unit for portable building</td>
</tr>
<tr>
<td>#9</td>
<td>$5,000</td>
<td>Increase in budget for COVID personal protective equipment</td>
</tr>
<tr>
<td>#10</td>
<td>$16,000</td>
<td>Timeclocks needed for new timekeeping system within new HRIS system</td>
</tr>
<tr>
<td></td>
<td><strong>$252,301</strong></td>
<td></td>
</tr>
</tbody>
</table>

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**
Out of conservatism during the budget process, recognition of any additional property tax revenue was delayed until the tax levy and additional adjustments were posted by Bexar County Tax Assessor Collector. In an effort to maximize transparency to citizens, utilization of any additional property tax revenue is being processed through the budget amendment process.

**LONG-TERM FINANCIAL & BUDGETARY IMPACT:**
See attachments to the Budget Amendment Ordinance

**LEGAL ANALYSIS:**
Ordinance approved as to form.

**RECOMMENDATION/PROPOSED MOTION:**
Staff recommends the approval of the First Reading of the proposed Budget Amendment Ordinance.
November 2, 2019

Sarah Buckelew, CPA
Director of Finance
City of Fair Oaks Ranch
7286 Dietz Elkhorn Road
Fair Oaks Ranch, TX 78015

Dear Mrs. Buckelew:

Enclosed for your files is a copy of the letter agreement extending the Depository Agreement dated October 1, 2014 between City of Fair Oaks Ranch and Frost Bank. Also, enclosed is an extract from the minutes of Frost Bank’s Board of Directors meeting held October 30, 2019 approving this extension.

Sincerely,

Ana Maria Carpio
Administrative Officer

Enclosures
September 10, 2019

Ms. Sarah Buckelew, CPA
Director of Finance
City of Fair Oaks Ranch
7286 Dietz Elkhorn Road
Fair Oaks Ranch, Texas  78015

Re: Three (3) month Extension of 2014 Bank Depository Agreement

Dear Ms. Buckelew:

Pursuant to the Bank Depository Agreement dated October 1, 2014 between Frost Bank and City of Fair Oaks Ranch, both parties agree to extend said contract for Three (3) months, for the period October 1, 2019 to December 31, 2019.

Both parties agree that all pricing, terms and conditions of the original proposal package and subsequently executed Security Agreement addendum shall remain the same until the extended contract expiration date.

Agreed to by:

CITY OF FAIR OAKS RANCH

Tobin Maples
City Manager

September 19, 2019

Date

FROST BANK

Jerry Yost
Senior Vice President

October 15, 2019

Date
At a meeting of the Board of Directors of Frost Bank duly called and held on October 30, 2019, a quorum being present, the following resolution was approved:

RESOLVED, that the Board of Directors approve Frost Bank entering into a three-month extension of the Bank Depository Agreement dated October 1, 2014 with City of Fair Oaks Ranch.

I, James L. Waters, Group Executive Vice President and Secretary of Frost Bank Board of Directors, do certify that the above is a true copy from the minutes of a meeting of the Board of Directors of Frost Bank held on October 30, 2019.
AN ORDINANCE

AMENDING THE BUDGET OF THE CITY OF FAIR OAKS RANCH, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020 AND ENDING SEPTEMBER 30, 2021

WHEREAS, the budget for the City of Fair Oaks Ranch, Texas for FY 2020-2021 has heretofore been approved as provided by law and filed with the City Secretary under Ordinance 2020-25

WHEREAS, per above said Ordinance 2020-25, the City Manager may move amounts within the same fund but budget amendments between funds must be approved by City Council by ordinance; and,

WHEREAS, pursuant to Texas LGC §102.010, budget amendments shall be passed and approved by City Council; and,

WHEREAS, staff recommends making the attached budget amendments as shown in Exhibit A; and,

WHEREAS, the City Council finds the budget amendments as detailed in the attachment are warranted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:

PART 1. That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

PART 2. That the City Secretary is hereby directed to file this ordinance as an Amendment to the original budget and the Finance Director is hereby directed to amend the original budget with the amendments listed in the attached Exhibit A.

PART 3. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.

PART 4. That it is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

PART 5. This ordinance shall take effect following a second reading on February 4, 2021 and after passage, adoption and publication as may be required by governing law.

PART 6. The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.
PASSED and APPROVED on first reading this 21st day of January 2021.

PASSED, APPROVED AND ADOPTED on second reading the 4th day of February 2021.

____________________________________________________
Garry Manitzas, Mayor

ATTEST: APPROVED AS TO FORM:

___________________________________________   ____________________________________________________
Christina Picioccio, City Secretary  Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney


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### Proposed Increases to Revenue

<table>
<thead>
<tr>
<th>Amendment #</th>
<th>Department</th>
<th>Acct #</th>
<th>Acct Name</th>
<th>Reason for Budget Surplus</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1 Revenue</td>
<td>01-400-110</td>
<td>M&amp;O Property Tax Revenue</td>
<td>Increased Property tax value reported from BCAD</td>
<td>$423,237</td>
<td></td>
</tr>
<tr>
<td>#1 Revenue</td>
<td>06-400-110</td>
<td>I&amp;S Property Tax Revenue</td>
<td>Increased Property tax value reported from BCAD</td>
<td>$4,316</td>
<td></td>
</tr>
</tbody>
</table>

**Total Proposed Revenue Increases** $427,553

### Proposed Increases to Budgeted Expenditures

<table>
<thead>
<tr>
<th>Amendment #</th>
<th>Department</th>
<th>Acct #</th>
<th>Acct Name</th>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>#2 IT</td>
<td>01-615-701</td>
<td>Tech/Internet/Software Maintenance</td>
<td>Increase in Internet Bandwidth</td>
<td>$9,750</td>
<td></td>
</tr>
<tr>
<td>#3 Administration</td>
<td>01-611-101</td>
<td>Salaries</td>
<td>Organizational Changes to hire Deputy City Manager</td>
<td>$88,376</td>
<td></td>
</tr>
<tr>
<td>#3 Administration</td>
<td>01-611-102</td>
<td>Taxes - Social Security</td>
<td>Organizational Changes to hire Deputy City Manager</td>
<td>$5,480</td>
<td></td>
</tr>
<tr>
<td>#3 Administration</td>
<td>01-611-103</td>
<td>Taxes - Medicare</td>
<td>Organizational Changes to hire Deputy City Manager</td>
<td>$1,281</td>
<td></td>
</tr>
<tr>
<td>#3 Administration</td>
<td>01-611-104</td>
<td>Taxes - SUTA/FUTA</td>
<td>Organizational Changes to hire Deputy City Manager</td>
<td>$225</td>
<td></td>
</tr>
<tr>
<td>#3 Administration</td>
<td>01-611-105</td>
<td>Workers Compensation</td>
<td>Organizational Changes to hire Deputy City Manager</td>
<td>$239</td>
<td></td>
</tr>
<tr>
<td>#3 Administration</td>
<td>01-611-106</td>
<td>Retirement</td>
<td>Organizational Changes to hire Deputy City Manager</td>
<td>$10,382</td>
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</tr>
<tr>
<td>#3 Administration</td>
<td>01-611-107</td>
<td>Health Insurance</td>
<td>Organizational Changes to hire Deputy City Manager</td>
<td>$4,389</td>
<td></td>
</tr>
<tr>
<td>#4 SAP Fund</td>
<td>02-501-568</td>
<td>Stormwater Funding</td>
<td>Increased scope for Kimley Horn Workshop</td>
<td>$15,000</td>
<td></td>
</tr>
<tr>
<td>#5 Maintenance</td>
<td>01-640-803</td>
<td>Furniture, Fixtures, Equipment</td>
<td>Emergency HVAC repair on City Hall AC unit</td>
<td>$8,179</td>
<td></td>
</tr>
<tr>
<td>#6 Engineering &amp; Planning</td>
<td>01-642-300</td>
<td>Professional Services</td>
<td>Increased budget for planning and General Engineering Consultant ($20k Corridor Study, $40k Planning)</td>
<td>$60,000</td>
<td></td>
</tr>
<tr>
<td>#7 Shared Expenses</td>
<td>01-690-700</td>
<td>Facility Contracts &amp; Services</td>
<td>Expense of keeping portable for remainder of the year</td>
<td>$20,000</td>
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</tr>
<tr>
<td>#8 Public Safety</td>
<td>01-630-803</td>
<td>Furniture, Fixtures, Equipment</td>
<td>AED unit for portable building</td>
<td>$8,000</td>
<td></td>
</tr>
<tr>
<td>#9 Maintenance</td>
<td>01-640-200</td>
<td>Supplies &amp; Consumables</td>
<td>Increase in budget for COVID PPE</td>
<td>$5,000</td>
<td></td>
</tr>
<tr>
<td>#10 HR &amp; Communications</td>
<td>01-613-803</td>
<td>Furniture, Fixtures, Equipment</td>
<td>Timedclocks needed for new timekeeping system</td>
<td>$16,000</td>
<td></td>
</tr>
</tbody>
</table>

**Total Proposed Expenditure Increases** $252,301

### Transfers Required Between Funds

<table>
<thead>
<tr>
<th>Amendment #</th>
<th>Acct #</th>
<th>Acct Name</th>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>01-690-805</td>
<td>Transfer to SAP Fund</td>
<td>For Increased scope for Kimley Horn Workshop</td>
<td>$(15,000)</td>
</tr>
<tr>
<td>SAP Fund</td>
<td>02-400-986</td>
<td>Transfer From General Fund</td>
<td>For Increased scope for Kimley Horn Workshop</td>
<td>$15,000</td>
</tr>
</tbody>
</table>

**Total Net Transfers between Funds** $0
AGENDA TOPIC: Consideration and possible action on appointing a Council Member to the Citizens Code of Conduct Advisory Committee as the Committee Project Sponsor

DATE: January 21, 2021

DEPARTMENT: City Council

PRESENTED BY: Snehal R. Patel, J.D., M.P.Aff., Council Member, Place 5

INTRODUCTION:
At the January 7, 2021 City Council meeting, City Council approved a Citizens Code of Conduct Advisory Committee charter and approved staff to proceed with the procedural schedule for the selection of members to the Citizens Code of Conduct Advisory Committee. During the discussion of the Charter approval, Council determined a City Council member would be appointed as a Committee project sponsor.

According to the newly adopted charter, Section VIII Committee Support – Non-Voting, the Committee sponsor’s role is “to enable Council to ensure resources and consideration of recommendations.” Tonight’s agenda item is to appoint a Council member as the Committee project sponsor.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:
1. Complies with the direction of City Council.
2. Ensures necessary Committee resources

LONG-TERM FINANCIAL & BUDGETARY IMPACT:
N/A

LEGAL ANALYSIS:
N/A

RECOMMENDATION/PROPOSED MOTIONS:
I move to appoint Council member ____________________ to the Citizens Code of Conduct Advisory Committee as the Committee’s project sponsor.
INTRODUCTION/BACKGROUND:

The city’s weeds, high grass and debris on lots ordinance found in Chapter 6 (Health and Sanitation) of the city’s Code of Ordinances was adopted March 1989. To date, no updates to the regulations relative to weeds, high grass, and debris have been made. Accordingly, a thorough review of the ordinance was made by Code Compliance to ensure inclusion of any state statute adopted since 1989, inclusion of other public health issues such as stagnant water, and to provide an effective enforcement provision.

The purpose of this presentation is to discuss the necessary and potential amendments to the Weeds, High Grass and Debris on Lots ordinance.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

1. Necessary amendments will ensure legal compliance
2. Potential amendments will create a more uniformed ordinance
3. Effectively addresses public health through preventative ways for rodents, insects, unsanitary debris, and stagnant water to develop

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

Presentation/discussion item only.

LEGAL ANALYSIS:

Presentation/discussion item only.

RECOMMENDATION/PROPOSED MOTION:

Subsequent to the presentation, provide staff with insight and general discussion on advancing an amending ordinance for Council’s consideration at a future meeting. No formal action is required at this time.
Weeds, High Grass and Debris on Lots Ordinance

Presented by Amber Little, Code Compliance Officer
January 21, 2021
Chapter 6. Health and Sanitation, Article 6.02 Weeds, High Grass and Debris on Lots
Change of Chapter and Ordinance Name

- Chapter 6 Health and Sanitation
- Chapter 8 Offenses and Nuisances

High Grass, Vegetation, Nuisance Conditions and Abatement
Violations

- Grass, weeds and vegetation not regularly cultivated at a height greater than 12 inches
- Rubbish, trash, and other objectionable, unsanitary and unsightly conditions

Exceptions

- Natural Conservation Areas
- Preserves/ Habitats
- Highly eroded areas with natural vegetation
Real Property Examples

#1 Sidewalk to Curb/ EOP

#2 Barrier to Curb/ EOP
Real Property Examples

#3 Barrier to Easement

#4 Property Line to Curb/ EOP

Fence

ROW
Real Property Examples

#5 Property Line to Easement

#6 10 ft. inside Property Line
The accumulation and stagnation of water constitutes a health hazard.
Strides for Compliance

- Educate Residents
- Citations
- Assessments of expenses/liens
- Penalty Provision
Questions?
SPECIAL ELECTION CALENDAR FOR MAY 1, 2021

February 4  City Council Orders Special Election
               First Day for Filing Application for Candidacy (After Special Election Ordered)
               Resolution Authorizing Joint Agreement & Authorizing CM to Sign

March 1  Last Day for Filing Application for Candidacy

March 5  Last Day to Withdraw Candidacy

March 9  Draw for order of Names on the Ballot

April 1  Due Date for Filing First Report of Campaign Contributions and Expenditures by
               Opposed Candidates (30th Day Before Election)

April 13  Publish Notice of Election in Boerne Star

April 19  First day for Early Voting in Person

April 23  Due Date for Filing Second Report of Campaign Contributions and Expenditures
               by Opposed Candidates (8th day before election)

April 27  Last day of Early Voting in Person

May 1  Election Day
               Post Unofficial Tabulation of Results

May 6  Special Council Meeting Required to Canvass Election
               Issue Certificates of Election and Sign Statement of Elected Officer

May 6  Perform Oath of Office
               Per Home Rule Charter - First Day Elected Officials May Assume Duties of
               Office

Dates/process subject to change

January 15, 2021