

May 18, 2026
Item No. 7.12.
LRC Splashpad Project Design Contract

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a design contract with Studio 16:19 for the design of the Splashpad Project at the Lincoln Center in the amount of \$144,725 in Community Development Block Grant (CDBG) funds.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project includes the design for the removal and replacement of the existing splashpad at the Lincoln Center. Overall intent for the project is to upgrade the park area on the corner of Eleanor St and Holleman Drive and is meant to follow the Lincoln Center Area Improvements 2022 Bond Project. Overall scope is to increase the size and functionality of the splashpad, add a playground component, improve landscaping, and increase pedestrian sidewalk access to the park area. This project is meant to follow and complement the Lincoln Center Area Improvements project, which partially defines the location of this new splashpad and playground area.

Studio 16:19 was approved as the designer for both of these projects in April of 2024 and the concepts were developed concurrently for them to ensure compatibility and consistency for both. These two projects are distinctly separate, with different funding sources and different requirements. This particular contract is to complete the design of the Splashpad project from the conceptual design to a full design ready for construction.

Budget & Financial Summary: Sufficient funds are available in CDBG for this design contract and related expenses. Additional funds needed for construction are available in Parkland Dedication and will be proposed on Budget Amendment #2 later this year.

Attachments:

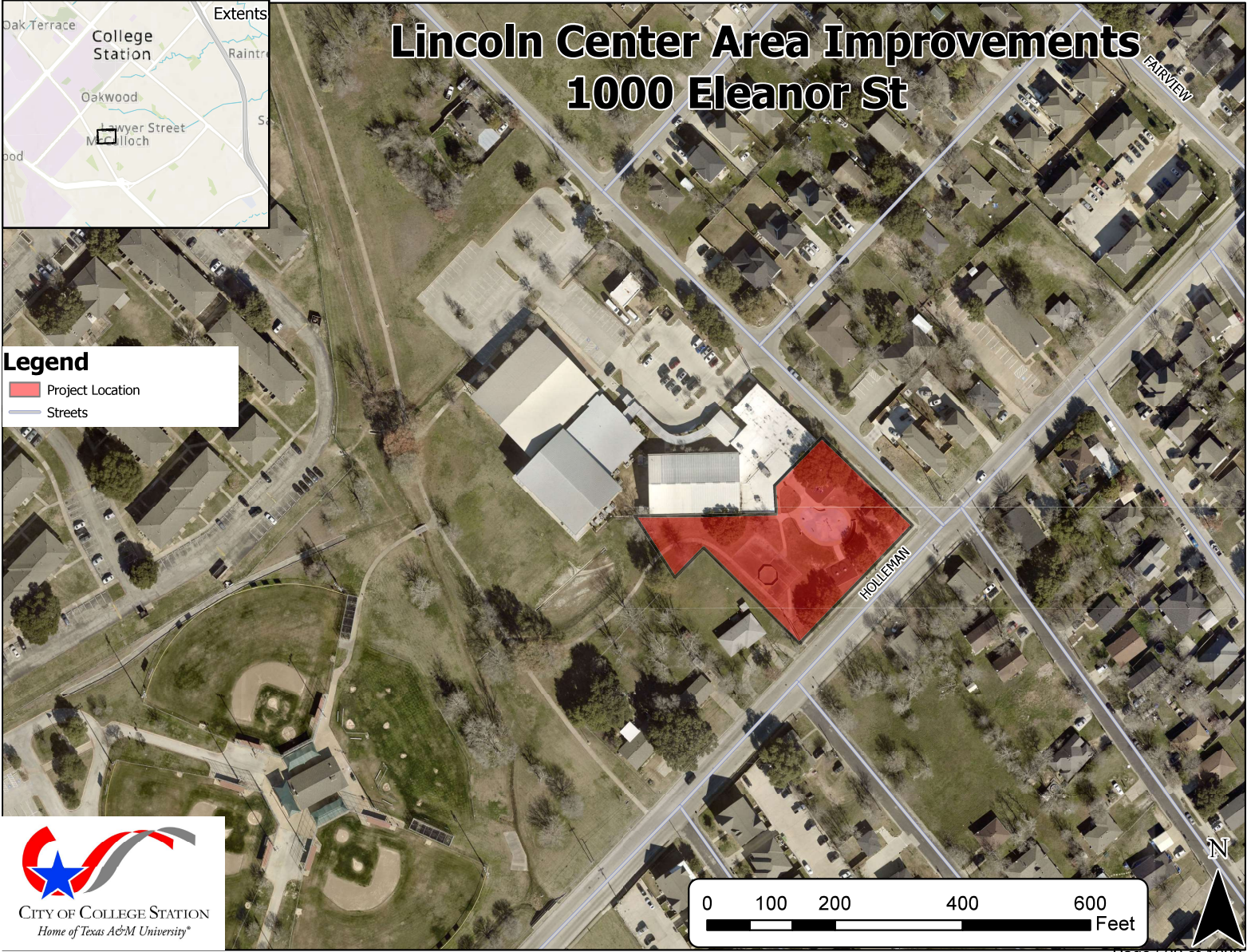
1. LRC Improvements Map
2. LRC Design Contract

Lincoln Center Area Improvements 1000 Eleanor St



Legend

- Project Location
- Streets





CITY OF COLLEGE STATION
Home of Texas A&M University*

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 26300518 PROJECT#: PK2308 BID/RFP/RFQ#: N/A

Project Name / Contract Description: Design of Splash-Pad at Lincoln Center

Name of Contractor: Studio 16:19, LLC

CONTRACT TOTAL VALUE: \$ 144,725.00 Grant Funded Yes No
If yes, what is the grant number:

Debarment Check Yes No N/A Davis Bacon Wages Used Yes No N/A
Section 3 Plan Incl. Yes No N/A Buy America Required Yes No N/A
Transparency Report Yes No N/A

NEW CONTRACT RENEWAL # N/A CHANGE ORDER # N/A OTHER N/A

BUDGETARY AND FINANCIAL INFORMATION (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)
Funding from CDBG account 31220630-5900

CRC Approval Date*: N/A (If required)* Council Approval Date*: 5/18/2026 Agenda Item No*: TBD

--Section to be completed by Risk, Purchasing or City Secretary's Office Only--

Insurance Certificates: DDV Performance Bond: N/A Payment Bond: N/A Info Tech: N/A

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain 5/8/2026
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT DATE

ASST CITY MGR – CFO DATE

LEGAL DEPARTMENT DATE

APPROVED & EXECUTED

CITY MANAGER DATE

N/A

MAYOR (if applicable) DATE

N/A

CITY SECRETARY (if applicable) DATE

Original(s) sent to CSO on _____

Scanned into Laserfiche on _____

Original(s) sent to Fiscal on _____

**CITY OF COLLEGE STATION
ARCHITECTS & ENGINEERING PROFESSIONAL SERVICES CONTRACT
WITH CONSTRUCTION**

This Contract is between the **City of College Station**, a Texas home-rule municipal corporation, (the “City”) and Studio 16:19, LLC, a Texas corporation (the “Consultant”), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

**ARTICLE I
SCOPE OF SERVICES**

1.01 In consideration of the compensation stated in paragraph 2.01 below, the Consultant agrees to provide the City with the professional services as described in **Exhibit “A”**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows to be paid for in whole or in part with federal funding in the form of [Community Development Block Grant (CDBG) CDBA 14.218] awarded by [The US Department of Housing and Urban Development (“Federal Agency”) on [10/1/2024 and 10/1/2025], subject to certain terms and conditions (“Grant Terms”), [\$144,725.00] of which is allocated by the City to this Contract (“Federal Funds”) for the design and other architectural or engineering professional services on the following (“Project”):

Lincoln Center Splashpad Design for Construction

**ARTICLE II
PAYMENT**

2.01 In consideration of the Consultant’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit “B”**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed One Hundred Forty-Four Thousand Seven Hundred Twenty-Five and No/100 Dollars (\$144,725.00), to be paid in compliance with the Grant Terms applicable to Consultant, including but not limited to the requirements specifically listed in **Exhibit “D”**, attached and incorporated for all purposes (“Federal Requirements”).

2.02 Virtual Payment Method. For increased payment and financial information security, the Consultant must use the City’s approved virtual payment card system or digital payment system for all payments, storing, and modifications of financial information used for City payments to the Consultant. Any related reasonable fees paid by the Consultant for use of the virtual payment card system or digital payment system may be passed through to the City.

ARTICLE III
TIME OF PERFORMANCE AND CONSTRUCTION COST

3.01 The Consultant shall perform all professional services necessary for the complete design and construction documentation of the Project within the times set forth below and in Section 3.02. Consultant expressly agrees that such times are as expeditious as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Furthermore, the Consultant shall perform with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license.

- (a) Conceptual Design: See Below **calendar days** after the authorization to commence planning.
- (b) Preliminary Design: See Below **calendar days** after authorization to commence PPD.
- (c) Final Design: See Below **calendar days** after authorization to commence final design.

3.02 All design work and other professional services provided under this Contract must be completed by the following date(s):

Proposed Project Schedule
010 Project Coordination 540 days
060 Design Development 90 days
070 Construction Documents 90 days
080 Agency Review 30 days
090 Bid / Procurement 30 days
100 Construction Phase Services 270 days
108 Project Close-Out 30 days

3.03 Time is of the essence of this Contract. The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible and with adequate resources and manpower in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates, which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule over which Consultant has absolute control shall not be exceeded without written approval from the City. Consultant may request in writing an extension of the contract time due to delays beyond their control. In the event that a deadline provided in this Contract is not met by the Consultant, Consultant shall provide the City with a written narrative setting forth in a

reasonable degree of detail a plan of recovery to overcome or mitigate the delay which may include (i) employing additional people, or (ii) accelerating the work by working longer hours on any portion of the Project that is deemed by the City to be behind schedule (“Recovery Plan”). With the City’s approval, Consultant shall execute the Recovery Plan at no additional cost to the City.

(a) **Liquidated Damages.**

(1) The time for the completion of all Work described in this Agreement are reasonable times for the completion of each task by the agreed upon days or dates, taking into consideration all conditions, including but not limited to the usual industry conditions prevailing in this locality. The amount of liquidated damages for the Consultant's failure to meet contractual deadlines specifically set forth in the Consultant’s scope of services and schedule are fixed and agreed on by the Consultant because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be deducted by the City from current amounts owed to Consultant for payment or from final payment.

(2) As a result of the difficulty in estimation, calculation and ascertainment of City’s damages due to a failure of Consultant to achieve timely completion of the Work, if the Consultant should neglect, or fail, or refuse to complete the Work within the times specified in the Consultant’s scope of services and schedule, or any proper extension thereof granted by the City's Representative pursuant to this Agreement, then the Consultant does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Consultant's total compensation the sum of **TWO HUNDRED FIFTY and 00/100 DOLLARS (\$250.00)** for each and every calendar day that the Consultant shall be in default after the time(s) stipulated completion of the task(s) in question, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet any of the deadlines specified in the Consultant’s scope of services and schedule for completion in this Agreement.

3.04 The Consultant’s services consist of all of the services required to be performed by Consultant, Consultant’s employees and Consultant’s sub-consultants under the terms of this Contract. Such services include normal civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services, and any other design services that are normally or customarily furnished and reasonably necessary for the Project. The Consultant shall contract and employ at its expense sub-consultants necessary for the design of the Project, and such sub-consultants shall be licensed as required by the State of Texas and approved in writing by the City.

3.05 The Consultant shall designate a principal of the firm reasonably satisfactory to the City who shall, for so long as acceptable to the City, be in charge of Consultant’s services to be performed hereunder through to completion, and who shall be available for general consultation

throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.

3.06 Consultant shall be responsible for the coordination of its services with those of its subconsultants, the City, and the City's consultants, including the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for its compliance with all applicable codes, ordinances, regulations, laws and statutes. Upon receipt from the City, the Consultant shall review the services and information furnished by the City and the City's consultants for accuracy and completeness. The Consultant shall provide prompt written notice to the City if the Consultant becomes aware of any error, omission or inconsistency in such services or information. Once notice has been provided to the City, the Consultant shall not proceed without written instruction from the City to do so.

3.07 Consultant's evaluations of the City's project budget and the preliminary estimates of construction cost and detailed estimates of construction cost, represent the Consultant's best judgment as a design professional familiar with the construction industry.

3.08 The construction budget for this Project, which is established as a condition of this Contract is \$1,600,000.00. This construction budget shall not be exceeded unless the amount is changed in writing by the City and any change order complies with the Federal Requirements.

ARTICLE IV CONCEPTUAL DESIGN

4.01 Upon the Consultant's receipt from the City of a letter of authorization to commence planning, the Consultant shall meet with the City for the purpose of determining the nature of the Project. The Consultant shall inquire in writing as to the information it believes the City may have in its possession that is necessary for the Consultant's performance. The City shall provide the information within its possession that it can make available to the Consultant. The City shall designate a representative to act as the contact person on behalf of the City.

4.02 The Consultant shall determine the City's needs with regard to the Project, including, but not limited to, tests, analyses, reports, site evaluations, needs surveys, comparisons with other municipal projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design, design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the Project budget, if applicable.

4.03 The Consultant shall prepare a Conceptual Design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The Consultant shall consider environmentally responsible design alternatives, such as material

choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the City's Program, the Project Schedule and budget. The Consultant shall reach an understanding with the City regarding the requirements of the Project. The Conceptual Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Consultant shall meet with City staff and the City Council to make a presentation of its report.

ARTICLE V PRELIMINARY DESIGN

5.01 The City shall direct the Consultant to commence work on the Preliminary Design by sending to the Consultant a letter of authorization to begin work on the Preliminary Design pursuant to this Contract. Upon receipt of the letter of authorization to commence Preliminary Design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.

5.02 The Consultant shall prepare the Preliminary Design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate both the cost of each category of work involved in constructing the Project and the time required for construction of the Project from commencement to final completion.

5.03 Upon completion of the Preliminary Design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall meet with the City staff and City Council to make a presentation of its Preliminary Design of the Project. The Consultant shall provide an explanation of the Preliminary Design, including any material changes and deviations that have taken place from the Conceptual Design, a cost estimate, and shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VI FINAL DESIGN

6.01 The City shall direct the Consultant to commence work on the Final Design of the Project by sending to the Consultant a letter of authorization to begin work on the Final Design phase of the Project. Upon receipt of the Letter of Authorization to proceed with Final Design of the Project, the Consultant shall immediately prepare the Final Design, including, but not limited to, the bid documents, contract, drawings, and specifications, to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Final Design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.

6.02 Notwithstanding the City’s approval of the Final Design, the Consultant warrants that the Final Design will be sufficient and adequate to fulfill the purposes of the Project.

6.03 The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City’s *current* pre-approved, “Standard Form of Construction Agreement” for the construction contract between the City and the construction contractor. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City’s standard form without the prior written approval of the City.

6.04 The Consultant shall provide the City with complete contract documents sufficient to be advertised for bids by the City. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City staff and the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design, including identification of all material changes and deviations that have taken place from the Preliminary Design Documents and a cost estimate. The Consultant shall verify that, to the best of Consultant’s belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VII BID PREPARATIONS & EVALUATION

7.01 The Consultant shall assist the City in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Consultant shall meet with City staff and the City Council to present, and make recommendations on, the bids submitted for the construction of the Project.

7.02 The Consultant shall review the construction contractors' bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid. If the lowest bid for the construction of the Project exceeds the final cost estimate set forth in the Final Design of the Project, then the Consultant, at its sole cost and expense, shall revise the construction documents so that the total construction costs of the Project will not exceed the final cost estimate contained in the Final Design of the Project.

7.03 Where substitutions are requested by a construction contractor, the Consultant shall review the substitution requested and shall recommend approval or disapproval of such substitutions.

ARTICLE VIII CONSTRUCTION

8.01 The Consultant shall be a representative of, and shall advise and consult with, the City (1) during construction, and (2) at the City's direction from time to time during the correction, or warranty, period described in the construction contract. The Consultant shall have authority to act

on behalf of the City only to the extent provided in this Contract unless modified by written instrument.

8.02 The Consultant shall make visits to the site, to inspect the progress and quality of the executed work of the construction contractor and its subcontractors and to determine if such work is proceeding in accordance with the contract documents. The minimum number of site visits and their frequency shall be established by the City and Consultant prior to commencement of construction. Consultant shall periodically review the as-built drawings for accuracy and completeness and shall report its findings to the City.

8.03 The Consultant shall keep the City informed of the progress and quality of the work. The Consultant shall employ the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license in discovering and promptly reporting to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform to the contract documents.

8.04 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that each construction contractor or subcontractor is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.

8.05 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by construction contractors or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the construction contractor in accordance with the contract documents.

8.06 The Consultant shall issue all instructions of the City to the construction contractor as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Consultant shall, within a reasonable time, render such interpretations and clarifications as it may deem necessary for the proper execution and progress of the work. Consultant shall receive no additional compensation for providing clarification of the drawings and specifications.

8.07 The Consultant shall review the amounts owing to the construction contractor and recommend to the City, in writing, payments to the construction contractor of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections and its experience and qualifications as a design professional, shall constitute a recommendation by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.

8.08 Upon notification from the construction contractor that the Project is substantially complete, the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the construction contractor that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project to verify final completion.

8.09 The Consultant shall not be responsible for the work of the construction contractor or any of its subcontractors, except that the Consultant shall be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.

8.10 The Consultant shall conduct at least one on-site inspection during the warranty period and shall report to the City as to the continued acceptability of the work.

8.11 The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project without an advance, written authorization from the City.

8.12 The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.

8.13 The Consultant shall assist the construction contractor and City in obtaining a Certificate of Occupancy by accompanying governing officials during inspections of the Project if requested to do so by the City.

ARTICLE IX CHANGE ORDERS, DOCUMENTS & MATERIALS

9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized personnel of the City. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project. The schedules, milestones, timelines, and deadlines contained in this Agreement, the Scope of Services, and the Construction Schedule shall not be modified except by written change order. Additional days or changes to the number of days in the Construction Schedule shall also be by written change order. After a written change order is approved and fully executed by all parties, the Consultant shall submit an updated schedule that reflects changes authorized by approved change orders.

9.02 **When the original contract amount plus all change orders is \$100,000 or less, the City Manager or his delegate may approve the written change order provided the change order does not increase the total amount set forth in the contract to more than \$100,000. For such contracts, when a change order results in a total contract amount that exceeds \$100,000, the City Council must approve such change order prior to commencement of the services.**

9.03 When the original contract amount plus all change orders is equal to or greater than \$100,000, the City Manager or his delegate may approve the written change order provided the change order does not exceed \$50,000 and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract, the City Council must approve such change order prior to commencement of the services or work. Thereafter, any additional change orders exceeding \$50,000 or any additional change orders totaling 25 percent following such council approval, must be approved by City Council.

9.04 Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the City prior to the Consultant providing such services or the right to payment for such additional services shall be waived. If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

9.05 The Consultant shall furnish the City with both electronic (PDF) and CAD file sets of all plans and specifications. The Consultant shall provide the City one (1) set of reproducible, mylar record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the construction contractor to the Consultant. The Consultant shall provide copies of Work Product including documents, computer files if available, surveys, notes, and tracings used or prepared by the Consultant. The foregoing documentation, the Consultant's Work Product, and other information in the Consultant's possession concerning the Project shall be the property of the City from the time of preparation. The Consultant shall furnish one set of digital files representing the final record drawings.

ARTICLE X WARRANTY, INDEMNIFICATION & RELEASE

10.01 As an experienced and qualified design professional, the Consultant warrants that the information provided by the Consultant reflects the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. The Consultant warrants that the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of all other services under this Contract are performed with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their Work Product or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the

City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

10.02 The Consultant shall promptly correct any defective Work Product, including designs or specifications, furnished by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.

10.03 In all activities or services performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Consultant shall be responsible for the professional services and the final Work Product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of the services it is to provide under this Contract. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors.

10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as its personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

10.05 Indemnity.

- (a) **To the fullest extent permitted by law, Consultant agrees to indemnify and hold harmless the City, its Council members, officials, officers, agents, employees, and volunteers (separately and collectively referred to in this paragraph as "Indemnatee") from and against all claims, damages, losses and expenses (including but not limited to attorney's fees) arising out of or resulting from any negligent act, error or omission, intentional tort or willful misconduct, intellectual property infringement or including failure to pay a subconsultant, subcontractor, or supplier pursuant to this Contract by Consultant, its employees, subcontractors, subconsultants, or others for whom Consultant may be legally liable ("Consultant Parties"), but only to the extent caused in whole or in part by the Consultant Parties. IF THE CLAIMS, ETC. ARE CAUSED IN PART BY CONSULTANT PARTIES, AND ALSO IN PART BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OR ALL OF THE INDEMNITEES OR ANY OTHER THIRD PARTY, THEN CONSULTANT SHALL ONLY INDEMNIFY ON A COMPARATIVE BASIS, AND ONLY FOR THE AMOUNT FOR WHICH CONSULTANT PARTIES ARE FOUND LIABLE AND NOT FOR ANY AMOUNT FOR**

WHICH ANY OR ALL INDEMNITEES OR OTHER THIRD PARTIES ARE LIABLE.

- (b) To the fullest extent permitted by law, Consultant agrees to defend the Indemnitees where the indemnifiable acts listed in Article 10 above occur outside the course of performance of professional services (i.e. non-professional services) and the claim is not based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, the agency's agent, employee, or other entity over which the governmental agency exercises control, other than the Consultant or Consultant Parties.**
- (c) Consultant shall procure liability insurance covering its obligations under this section.**
- (d) It is mutually understood and agreed that the indemnification provided for in this section 10.05 shall indefinitely survive any expiration, completion or termination of this Contract. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.**

10.06 Release. The Consultant releases, relinquishes, and discharges the City, its Council members, officials, officers, agents, employees, and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party. There shall be no additional release or hold harmless provision other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

10.07 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Paragraphs 10.05 and 10.06, such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE XI INSURANCE

11.01 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are as set forth on below.

During the term of this Contract Consultant's insurance policies shall meet the minimum requirements of this section:

11.02 Types. Consultant shall have the following types of insurance:

- (a) Commercial General Liability.
- (b) Business Automobile Liability.
- (c) Workers' Compensation/Employer's Liability.
- (d) Professional Liability.

11.03 Certificates of Insurance. For each of these policies, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officials, agents, employees and volunteers. Any self-insurance or insurance policies maintained by the City, its officials, agents, employees and volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, attached hereto as Exhibit C, and approved by the City before any letter of authorization to commence planning will issue or any work on the Project commences.

11.04 General Requirements Applicable to All Policies. The following General Requirements to all policies shall apply:

- (a) Only licensed insurance carriers authorized to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits of liability except after thirty (30) calendar days prior written notice has been given to the City of College Station.
- (e) The Certificates of Insurance shall be prepared and executed by the insurance carrier or its authorized agent on the most current State of Texas Department of Insurance-approved forms.

11.05 Commercial General Liability Requirements. The following Commercial General Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
- (c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (d) The coverage shall not exclude premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, Explosion Collapse and Underground coverage.
- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.06 Business Automobile Liability Requirements. The following Business Automobile Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.07 Workers’ Compensation/Employers Liability Insurance Requirements. The following Workers’ Compensation Insurance requirements shall apply; and the term “contractor” shall be construed to mean “consultant” as identified in this Contract:

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Consultant, the Consultant, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers’ compensation insurance policy: either directly through their employer’s policy (the Consultant’s, or subcontractor’s policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Consultants and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the

subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.

(b) The workers' compensation/Employer's Liability insurance shall include the following terms:

- i. Employer's Liability limits of \$1,000,000 for each accident is required.
- ii. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
- iii. Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

(c) Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Contract, the bid specifications, this Contract, and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

i. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Consultant's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Consultant has undertaken to perform on the project, regardless of whether that person contracted directly with the Consultant and regardless of whether that person has employees. This includes, without limitation, independent Consultants, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

ii. The Consultant shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage

agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Consultant providing services on the project, for the duration of the project.

- iii. The Consultant must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- iv. If the coverage period shown on the Consultant's current certificate of coverage ends during the duration of the project, the Consultant must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- v. The Consultant shall obtain from each person providing services on a project, and provide to the governmental entity:
 1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 2. no later than seven calendar days after receipt by the Consultant, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- vi. The Consultant shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- vii. The Consultant shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Consultant knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.
- viii. The Consultant shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- ix. The Consultant shall contractually require each person with whom it contracts to provide services on a project, to:
 1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 2. provide to the Consultant, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

3. provide the Consultant, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. obtain from each other person with whom it contracts, and provide to the Consultant:
 - A. a certificate of coverage, prior to the other person beginning work on the project; and
 - B. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 7. Contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.
- x. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Consultant is representing to the governmental entity that all employees of the Consultant who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Consultant to administrative penalties, criminal penalties, civil penalties, or other civil actions.
 - xi. The Consultant's failure to comply with any of these provisions is a breach of contract by the Consultant that entitles the governmental entity to declare the contract void if the Consultant does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.”

11.01 Professional Liability Requirements. The following Professional Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current A.M. Best Key Rating Guide.

- (b) Minimum of \$1,000,000 per claim and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City of College Station when requested.
- (c) Consultant must continuously maintain professional liability insurance with prior acts coverage for a minimum of two years after completion of the Project or termination of this Contract, as may be amended, whichever occurs later. Coverage under any renewal policy form shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of services for the Project. The purchase of an extended discovery period or an extended reporting period on this policy will not be sufficient to comply with the obligations hereunder.
- (d) Retroactive date must be shown on certificate.

ARTICLE XII USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

12.01 Any and all drawings, specifications and other documents prepared, furnished, or both prepared and furnished by Consultant or any Subconsultant or other designer contracted under Consultant pursuant to this Contract (including, without limitation, the Construction Documents) ("Work Product"), shall be the exclusive property of the City, whether the Project is completed or not. Upon completion or termination of this Contract, Consultant shall promptly deliver to the City all records, notes, data, memoranda, models, and equipment of any nature that are within Consultant's possession or control and that are the City's property or relate to the City or its business. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant's Work Product and related documents and information relating to the Project.

12.02 Consultant warrants to City that (i) Consultant has the full power and authority to enter into this Contract, (ii) Consultant has not previously assigned, transferred or otherwise encumbered the rights conveyed herein, (iii) Work Product is an original work of authorship created by Consultant's employees during the course of their employment by Consultant, and does not infringe on any copyright, patent, trademark, trade secret, contractual right, or any other proprietary right of any person or entity, (iv) Consultant has not published the Work Product (including any derivative works) or any portion thereof outside of the United States, and (v) to the best of the Consultant's knowledge, no other person or entity, except City, has any claim of any right, title, or interest in or to the Work Product.

12.03 Consultant shall not seek to invalidate, attack, or otherwise do anything either by act of omission or commission which might impair, violate, or infringe the title and rights assigned to City by Consultant in this Article 12 of the Contract.

12.04 The documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the

Consultant and its sub-consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect or engineer to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype, that architect or engineer will be entitled to use Consultant's sub-consultants on the same basis that Consultant would have been entitled to use them for the work on the reuse of the prototype, and such architect or engineer will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect or engineer. The Consultant shall commit its subconsultants to the terms of this subparagraph. The provisions of this section shall survive termination of this Contract.

12.05 In the event of termination of this Contract for any reason, the City shall receive all Work Product and original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

12.06 Only the details of the drawings relating to this Project may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The City-furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

ARTICLE XIII TERMINATION

13.01 The City may terminate this Contract at any time upon **thirty (30)** calendar days written notice. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. The Consultant shall be compensated for the services satisfactorily performed prior to the termination date.

13.02 If, through any cause, the Consultant fails to fulfill its obligations under this Contract, or if the Consultant violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Consultant **five (5)** calendar days written notice. The Consultant will be compensated for the services satisfactorily performed prior to the termination date.

13.03 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for damages sustained by the City because of any breach of contract and/or negligence by the Consultant. The City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

ARTICLE XIV CONFLICT OF INTEREST, LOBBYING, POLITICAL ACTIVITIES AND OTHER FEDERAL REQUIREMENTS

14.01 Debarment. As a condition precedent to disbursement of any Federal Funds under this Agreement, Consultant shall provide to the City Consultant's Unique Entity Identifier Number (UEI) and shall be registered on www.sam.gov (or any successor thereto). Consultant will not be

eligible to submit any Payment Application unless Consultant's status on sam.gov is active, Consultant has no exclusions, has no delinquent federal debt and has not been declared ineligible, or otherwise excluded, disqualified, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from doing business with the federal government, State of Texas, or the City.

14.02 Subcontractor Debarment. Consultant shall ensure that all contractors, subcontractors, and vendors utilized by Consultant are properly licensed, and that no such entity is excluded, disqualified, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from doing business with the federal government, State of Texas, or the City. Consultant shall submit printed verification of such entity's status on www.sam.gov (or any successor thereto) along with the first Payment Application which includes invoices from such contractor, subcontractor, or vendor. In the event the City determines that any contractor, subcontractor, or vendor is excluded, disqualified, debarred, suspended, or is not properly licensed, Consultant shall immediately cause the contractor, subcontractor, or vendor to stop work on the Project. In the event that a contractor, subcontractor, or vendor is excluded, disqualified, debarred, suspended, or is not properly licensed, the City shall be under no obligation to use Funds to pay for any work performed by such party, and any Funds already paid to the contractor, subcontractor, or vendor shall be reimbursed by Consultant to the City within ten (10) days of City's written demand for same. In no event shall this section be construed to be an assumption of any responsibility or liability by City for the determination of the legitimacy, quality, ability, or good standing of any Consultant or subcontractor.

14.03 Conflict of Interest Certification. The certification, attached hereto as **Exhibit "E"** and incorporated by reference, as completed, executed and submitted by Consultant is a material representation of fact upon which reliance was placed when this Agreement, including each Disbursement of Federal Funds related to this Agreement, was made or entered into. Pursuant to 2 CFR § 200.112 and 24 CFR § 570.611, Consultant must comply with the requirements, prohibitions, and limitations of the City's conflict of interest policies, rules, or regulations and state and federal common law regulating conflicts of interest, which includes but is not limited to a requirement that Consultant must disclose in writing to the City any potential conflict of interest as soon as possible after learning of such conflict.

14.04 Consultant Conflict of Interest Policy. Consultant agrees to abide by the provisions of 2 CFR 200 and 24 CFR 570.611, which include maintaining a written code or standards of conduct governing the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds.

14.05 Byrd Anti-Lobbying and Hatch Act Certification. The certification, attached hereto as **Exhibit "E"** and incorporated by reference, as completed, executed and submitted by Consultant is a material representation of fact upon which reliance was placed when this Agreement, including each Disbursement of Federal Funds related to this Agreement, was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Further, Consultant agrees that no funds provided, nor personnel employed under the

Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of 5 U.S.C. Chapter 15.

14.06 Whistleblower Protection. Consultant may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing, in accordance with 41 U.S.C. § 4712, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. OR Consultant is responsible for complying with all requirements of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and also requirements implementing the Act at 2 CFR parts 25 and 170. This also includes statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.

14.07 False Statements. Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Consultant's actions pertaining to this Agreement. False statements or claims may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law. Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device or who makes any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, § 1001. Consultant shall provide notice of this requirement to its contractors, subcontractors, and vendors that perform any portion of the Services on the Project.

ARTICLE XV MISCELLANEOUS TERMS

15.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

15.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

15.03 Fraud Reporting. To reduce the risk of fraud and to protect the Consultant's financial information from fraud, the Consultant must report to the City in writing at VendorInvoiceEntry@cstx.gov if the Consultant reasonably suspects or knows if any of their financial information has been subject to fraudulent activity or suspected fraudulent activity.

City of College Station

STUDIO 16:19, LLC

Attn: Jon Hall
PO BOX 9960
1101 Texas Ave
College Station, TX 77842
____ _ jhall@cstx.gov

Attn: __ Brent Baker _____
_305 W. Liberty _____
_ Suite 100 _____
_ Round Rock, TX 78664 _____
_512-534-8680 _____

15.03 No action or failure to act by the City shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing. No waiver of any provision of the Contract shall be of any force or effect, unless such waiver is in writing, expressly stating to be a waiver of a specified provision of the Contract and is signed by the party to be bound thereby. In addition, no waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition and shall not in any way limit or waive that party’s right thereafter to enforce or compel strict compliance with the Contract or any portion or provision or right under the Contract.

15.04 This Contract represents the entire and integrated contract between the City and the Consultant and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

15.05 This Contract and all rights and obligations contained herein may not be assigned by the Consultant without the prior written approval of the City.

15.06 Invalidity. If any provision of this Contract shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Contract with legal terms and conditions approximating the original intent of the parties.

15.07 Prioritization. Consultant and City agree that City is a political subdivision of the State of Texas and is thus subject to certain laws. Because of this there may be documents or portions thereof added by Consultant to this Contract as exhibits that conflict with such laws, or that conflict with the terms and conditions herein excluding the additions by Consultant. In either case, the applicable law or the applicable provision of this Contract excluding such conflicting addition by Consultant shall prevail. The parties understand this section comprises part of this Contract without necessity of additional consideration.

15.08 The Consultant, its agents, employees, and subconsultants must comply with all applicable federal and state laws, the charter and ordinances of the City of College Station, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Consultant must obtain all necessary permits and licenses required in completing the services required by this Contract.

15.09 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract. If there is a conflict between a provision in any documents provided by Consultant made a part of this Contract and any other provision in this Contract, the latter controls.

15.10 This Contract goes into effect when duly approved by all the parties hereto.

15.11 Notice of Indemnification. City and Consultant hereby acknowledge and agree that this Contract contains certain indemnification obligations and covenants.

15.12 Verification No Boycott of Israel. To the extent this Contract is considered a contract for goods or services subject to §2270.002 Texas Government Code, Consultant verifies that it (i) does not boycott Israel and (ii) will not boycott Israel during the term of this Contract.

15.13 Verification No Boycott of Firearms. If this Contract is for goods and services subject to § 2274.002 Texas Government Code, Consultant verifies that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association; and

15.14 Verification No Boycott of Energy Companies. Subject to § 2274.002 Texas Government Code Consultant herein verifies that it (i) does not boycott energy companies; and (ii) will not boycott energy companies during the term of this Contract.

15.15 Foreign Terrorist Organizations. Consultant represents that it: (i) does not engage in business with Iran, Sudan, or any foreign terrorist organization, and (ii) is not listed by the Texas Comptroller pursuant to § 2252.153 Texas Government Code as a company known to have contracts with or provide supplies or services to a foreign terrorist organization, where in each case “foreign terrorist organization” has the meaning give such term in § 2252.151 Texas Government Code.

15.16 Force Majeure. Force majeure shall be any acts of God or the public enemy; compliance with any order, rule, regulation, decree, or request of any governmental authority or agency or person purporting to act therefore; acts of war, public disorder, rebellion, terrorism, or sabotage; floods, hurricanes, or other storms; strikes or labor disputes; or any other cause, whether or not of the class of kind specifically named or referred to herein, not within the reasonable control of the Party affected. A delay in or failure of performance of either Party shall not constitute a default hereunder nor be the basis for, or give rise to, any claim for damages, if and to the extent such delay or failure is cause by force majeure.

List of Exhibits

- A. Scope of Services
- B. Payment Schedule
- C. Certificates of Insurance
- D. Federal Requirements
- E. Conflict of Interest and Byrd Anti-Lobbying Certification

____STUDIO 16:19, LLC_____

CITY OF COLLEGE STATION

By: B.A.Baker

By: _____

Printed Name: Brent A Baker

City Manager

Date: _____

Title: Principal Partner + Founder

Date: 5/8/2026

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A
SCOPE OF SERVICES

March 19, 2026

City of College Station
Jon Hall
PO Box 9960
College Station, TX 77842
jhall@cstx.gov
979.764.3528

Re: Lincoln Center Splash Pad – College Station, TX
Proposal/Agreement for Professional Landscape Architecture Services

Dear Jon:

We first want to say, ‘Thank You’ for the opportunity to partner with City of College Station as part of the team for Lincoln Center Splash Pad. Please find attached the Proposed Professional Services Agreement (“Agreement”). As discussed, the key provisions include the following:

- Project Coordination
- Design Development
- Construction Documents
- Agency Review
- Bid / Procurement
- Construction Phase Services
- Project Close-Out

Once you have had the opportunity to review the Agreement, please feel free to contact **studio 16:19, LLC** should you have any questions, comments, or require clarification to what is proposed. You may reach me via e-mail at brent@studio1619.com or by phone at **512.534.8680**. If you concur with the Agreement, please sign in the place provided below and return a signed copy for formal execution. This Proposal is valid for thirty (30) days.

Respectfully submitted,

studio 16:19 LLC



Brent A. Baker, PLA, ASLA, CLARB
principal partner + founder

scope of services / consultant compensation / schedule

section 1.1 :: project overview and understanding

- The Splash Pad Project will consist of final design, permitting, bidding, and construction for the removal and replacement of the existing splash pad, as well as re-defined pedestrian access, re-purposed area to accommodate the existing playground and program space for the Lincoln Center, and associated hardscape, limited softscape, lighting, pump equipment/controls, and site furnishings.
- This Project scope takes the work previously performed for the Lincoln Center Restroom project to achieve a 30% construction document level of design to refine and complete the design process for the Splash Pad and adjacent site areas.
- Because the Splash Pad will consist of a "pass through" water-use system, additional civil engineering work will be required to convert the existing detention basin into a re-irrigation pond with irrigation tie-in system.
- Based on the volume of water for the pass through system, a robust re-irrigation system will be required. Therefore, the adjacent Wayne Smith Athletic Complex's existing irrigation system will need to be surveyed, evaluated, and designed to be converted to a non-potable irrigation system.
- Additional playground equipment, not in original Restroom Project scope, is to be specified and coordinated to support the new Splash Pad.
- All of these scope items require increased construction documents to 100% completion, coordination with potential vendors – such as Craftsman – for CDBG-federal funding compliance (BABA, Davis Bacon, etc.), and construction phase services.
- An updated Opinion of Probable Construction Cost (OPCC) resulted in a construction cost/budget of approximately \$1,600,000 – an owner-requested increase of approximately \$850,000 from the original \$665,000 construction budget.
- The Project is located at 1000 Eleanor St, College Station, TX 77840.
- The Project is within the City of College Station full-purpose jurisdiction and all plans shall comply with the corresponding Development Codes.
- Coordination of landscape architecture documentation with architectural and engineering site plans for review and approvals by the jurisdictional authorities will be integral to the design process.
- **Meetings:**
 - Consultant will be available to attend virtual biweekly design team coordination meetings during the design and construction phases, as scheduled by the Owner/Development Coordinator.
 - Four (4) in-person design meetings and/or site visits are included in basic services.
 - Ten (10) in-person construction meetings and/or site visits are included in basic services.
- Sub-Consultants to be retained by the Consultant to complete and deliver the proposed Scope of Work include:
 - Surveying – Gessner Engineering
 - Civil Engineering – Gessner Engineering
 - Structural Engineering – Gessner Engineering
 - Mechanical/Electrical Engineering – Aptus Engineering
 - Accessibility Consultant - Contour Collective
 - Construction Materials Testing - Gessner Engineering
 - Asbestos Survey and Report - Terracon

section 1.2 :: basic services

- **010 – Project Coordination**
 - The Consultant will manage the Project design team activities associated with the Project and secure resources necessary to produce the Project deliverables and meet the Project schedule.
 - All communications associated with the Project will be directly channeled through the Consultant Project Manager (PM) for distribution to the Project team as appropriate. The Consultant's PM will be responsible throughout the Project for project coordination and communications, with the Client's PM.
- **060 – Design Development (60% - permit phase)**
 - Prepare overall refined design plans and supplemental graphics, imagery, details, and material selections for the project improvements that will culminate in sixty percent (60%) site development permit drawings.
 - Coordinate design development drawings with Client and design team members.
 - Coordinate with municipal agency Development staff to resolve questions or comments that arise during the permitting review process regarding code requirements.
 - Provide one (1) revision/refinement to drawings per Client meeting.
- **070 – Construction Documents (90/100% construction plans/specification documentation)**
 - **Landscape Planting Plans** – documenting plant names (common and botanical), location, size, quantity, general appearance/overall condition, planting details, notes, and plan specifications.
 - **Hardscape Design Plans** – construction details for all hardscape elements pertaining to common amenity areas; to be in accordance with State and Federal accessibility requirements.
 - **Irrigation Design Plans** – detailed design plans documenting areas to be irrigated, point of connection, controller location, sleeving locations, incorporation of specific zones, hydraulic calculations, mainlines, and detailed head layout for turf areas, drip/line layout for all landscape planting beds including irrigation details and specifications, and irrigation calculations.



- **Specification Development** – preparation of a Project Manual including written division technical specifications to assist in bidding and construction for landscape, hardscape, and irrigation scope.
- Provide one (1) revision/refinement to drawings per Client meeting.
- **080 – Agency Review** – coordination with municipal agency staff to resolve questions or comments that arise during the site development review process and tree mitigation discussions after submission
 - Includes a total of **two (2) rounds** of submittals/comment responses for agency permitting. Agencies having jurisdiction to be included in anticipated review process may include but are not limited to the City, County, WCID, Franchise Utilities, State and other regulatory agencies.
- **090 – Bid / Procurement** – coordination and oversight on scope items as requested by Client, Owner, or Contractor including but not limited to RFI responses and coordination, Bid Tab reviews, and coordination with contractor on various issues that arise during the bidding process.
- **100 – Construction Phase Services** – coordination and oversight on scope items as requested by Client, Owner, or Contractor that could include but not be limited to RFI responses and coordination, shop drawing reviews, or coordination with contractor on various issues that arise during the installation process to verify that the approved site development plans are being carried out per plans, notes, details, and specifications.
- **108 – Project Close-Out**
 - Punch List development for landscape, hardscape, and irrigation scope during a final comprehensive site walk-through once project is complete and ready for inspection.
 - Prepare and submit the Landscape Architect's Concurrence letter for final acceptance.
 - Review as-built plans on a redlined set from the Contractor for landscape, hardscape, and irrigation scope to codify record set of drawings during the project close-out process.

Sub-Consultant Team

Although a budgeted allowance to cover sub-consultant costs are included in this proposal, Client will be billed for actual costs once finalized.

- **301 – Surveying** – Survey services, as required, to be provided by Sub-Consultant Company as a sub-consultant to the Consultant. The project Surveyor's scope of service shall include:
 - Prepare a map of the overall Project area.
 - The survey will include outlined drawings of existing improvements, topography, and document alignment of existing utilities in the area by utilizing the Texas OneCall System. Potholing and Subsurface Utility Investigation to determine the depth and to confirm alignment of underground utilities shall be provided by the City or Client, and discoveries shall be surveyed.
 - Prepare drawings including topography, ROW, and Utility information gathered for the Project, and provide in CAD format for engineering use.
- **303 – Civil Engineering** – Civil Engineering services, as required, to be provided by Gessner Engineering as a sub-consultant to the Consultant. The project Civil Engineer's scope of service shall include:
 - Site Development Construction Documents, Permitting Submittals and Approvals
 - Storm Water Pollution Prevention Plan (SWPPP)
 - Project Meetings and Coordination
 - Construction Phase Services
- **305 – Structural Engineering** – Structural Engineering services, as required, to be provided by Gessner Engineering as a sub-consultant to the Consultant. The project Structural Engineer's scope of service shall include:
 - Design of structural foundations for the Project's foundation(s), structural components, and walls
 - Construction Phase Services
- **306 – Mechanical/Electrical/Plumbing Engineering** – MEP Engineering services, as required, to be provided by APTUS as a sub-consultant to the Consultant. The project MEP Engineer's scope of service shall include:
 - Design of electrical service and power for potential lighting and/or irrigation service within limits of scope
 - Primary service connections and utility provider coordination
 - Construction Phase Services
- **307 – Accessibility Consultant** – Registered Accessibility Specialist services to be provided by Contour Collective as a sub-consultant to the Consultant. The project RAS scope shall include:
 - Review of final PS&E for compliance with Texas Accessibility Standards (TAS)
 - Register the Project with Texas Department of Licensing and Registration (TDLR)
 - Field verify final constructed scope items comply with TDLR, TAS, and American Disability Act (ADA)
- **308 – Construction Materials Testing** – Earthwork and concrete testing for the replacement of an existing splash pad area with a new pad, approximately 1.5-2 times the existing size. Earthwork and concrete testing for a picnic pavillion and earthwork testing for site fill.
- **309 – Asbestos Survey and Report** – Asbestos survey in accordance with Texas Asbestos Health Protection Rules (TAHPR) and USEPA regulation 40CFR Part 61 Subpart M, the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP) - 9 bulk samples



section 1.3 :: additional services

Additional Services are in addition to the Basic Scope of Services and, when requested by Client or Owner – either written or oral – shall entitle Consultant to additional compensation beyond the original agreed Compensation stated in 2.1 below. An Additional Fee will be agreed upon for the task or service once the program/scope has been finalized. The following Additional Services under this Agreement include but are not limited to:

- ANY Professional Service or task not currently identified in Basic Services.
- ANY Sub-Consultant service(s) not currently identified in Basic Services.
- Meetings – attendance at **virtual** and/or **in-person** design or construction phase meetings and/or site visits beyond those listed in Section 1.1.
- **Agency Review** – more than total submittals/comment responses for agency permitting as denoted in Basic Services.
- **License Agreement** – any drafting of legal documentation for the purposes of a license agreement regarding proposed landscape, hardscape, and irrigation within the public right-of-way.
- **Signage Design** – development of project signage including signage design, dimensional control of proposed signage, and coordination with sign contractor for constructability and construction administration.
- LEED Compliance Certification process or SITES Compliance related design services.
- Exterior Furnishing, Fixtures, and Equipment (FF&E) Selection.
- Rainwater/Condensate Harvesting – design and coordination of active and/or passive rainwater/condensate collection systems including storage tanks, pump systems, enclosures, etc. for reuse within the landscape.

section 2.1 :: consultant compensation

Compensation for Consultant Services performed under this Agreement shall be paid according to the following, plus Reimbursable Expenses as defined in Agreement:

Basic Services

	Lump Sum Tasks		\$ 66,120.00
010	Project Coordination	(lump sum)	\$ 7,880.00
060	Design Development	(lump sum)	\$ 7,800.00
070	Construction Documents	(lump sum)	\$ 18,720.00
080	Agency Review	(hourly est.)	\$ 5,460.00
090	Bid / Procurement	(hourly est.)	\$ 3,840.00
100	Construction Phase Services	(hourly est.)	\$ 16,900.00
108	Project Close-Out	(lump sum)	\$ 5,520.00
	Sub Consultants		\$ 75,205.00
301	Survey	(lump sum)	\$ 8,800.00
303	Civil Engineering	(lump sum)	\$ 45,200.00
305	Structural	(lump sum)	\$ 2,750.00
306	MEP	(lump sum)	\$ 6,380.00
307	Accessibility	(lump sum)	\$ 1,875.00
308	Construction Materials Testing	(lump sum)	\$ 8,800.00
309	Asbestos Survey	(lump sum)	\$ 1,400.00
400	Reimbursables	(cost+)	3,400.00
	Total:		\$ 144,725.00

Consultant may alter the compensation distribution between individual phases or tasks to be consistent with the services actually rendered, within the contract maximum.

Hourly fee provided for Client budgeting purposes based on proposed scope herein. Hourly total, as needed, is to be subject to Agreement. If fee budget is to be exceeded, it will occur in a professional, diligent, and forthright manner to the extent needed either to procure the required Project permits and/or certificate of occupancy as the external agencies and construction industry are external factors beyond the control of Consultant.

section 2.2 :: reimbursable expenses

For Reimbursable Expenses, expenditures made by Consultant, its employees, and sub consultants in the interest of the Project will be billed to Client plus an administrative fee of ten percent (10%). Reimbursable Expenses include but are not limited to travel expenses, costs of reproduction of documents, postage, services of professional consultants which cannot be quantified at the time of this agreement, and other, similar, direct Project-related expenditures.



section 2.3 :: payments

Consultant shall begin services upon mutual execution of this Agreement. Consultant will bill Client monthly for services performed. In order to ensure the orderly and continuous progress of the project, Consultant shall be compensated for their services and expenses within fifteen (15) days but no more than thirty (30) days of the invoice date. Invoiced amounts unpaid forty-five (45) days after the invoice date shall be deemed overdue and at Consultant's discretion may accrue 1.5% simple interest per month. Subject to the termination provisions contained herein, overdue payments may be grounds for termination of this Agreement. Client shall reimburse Consultant for all expenses related to collections of compensation due Consultant. These expenses consist of but are not limited to, Attorney's fees, court cost, lost time, etc.

section 3.1 :: schedule

Consultant is prepared to provide the Professional Services in a commercially reasonable manner – with adequate resources and personnel – to complete the work by the times specified. Consultant may request, in writing, an extension of the Agreement time due to delays beyond their control. In the event that a deadline provided in this Agreement is not met by Consultant, Consultant shall provide Client with a written narrative setting forth in a reasonable degree of detail a plan of recovery to overcome or mitigate the delay.

Proposed Project Schedule

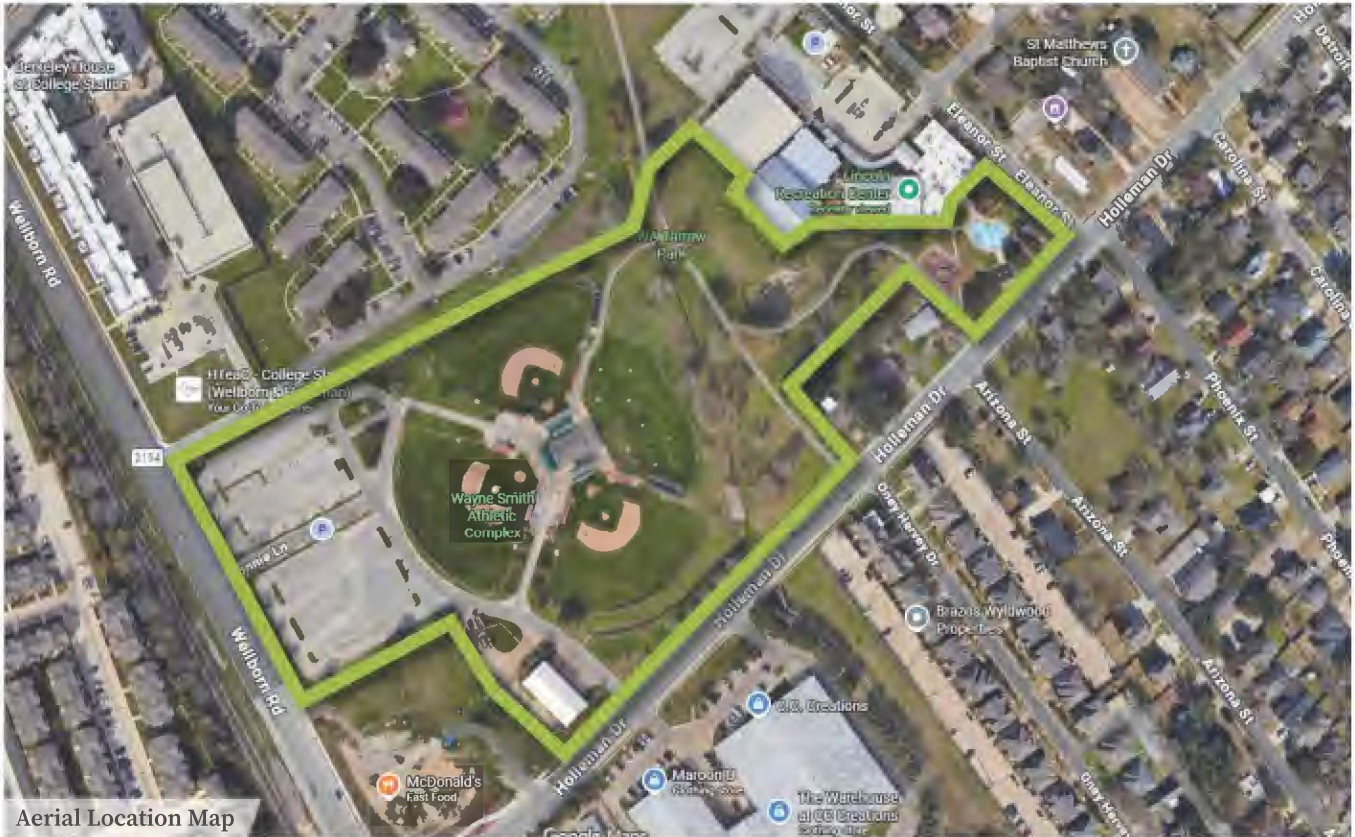
010	Project Coordination	540 days
060	Design Development	90 days
070	Construction Documents	90 days
080	Agency Review	30 days
090	Bid / Procurement	30 days
100	Construction Phase Services	270 days
108	Project Close-Out	30 days



'ATTACHMENT B'

proposed project site / site plan

Lincoln Center Splash Pad - College Station, TX



Aerial Location Map



Proposed Concept Dated 03/2025

EXHIBIT B PAYMENT TERMS

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

The Consultant may submit *monthly* invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

Schedule of Payment for each phase:

Please see attached...

EXHIBIT C
CERTIFICATE(S) OF INSURANCE

Contract No. 26300518
A&E Professional Services with Construction
Form 05-06-269



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/28/2026

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Watkins Insurance Group-Austin 3834 Spicewood Springs Rd, Ste. 100 Austin TX 78759		CONTACT NAME: Michelle Ziats PHONE (A/C, No, Ext): 512-637-4409 E-MAIL ADDRESS: mziats@watkinsinsurancegroup.com FAX (A/C, No): 512-452-0999	
INSURED Studio 1619 LLC 305 W. Liberty Ave, Suite 100 Round Rock TX 78664		INSURER(S) AFFORDING COVERAGE INSURER A : Sentinel Insurance Company INSURER B : Hartford Casualty Insurance Company INSURER C : Underwriters at Lloyd's, London INSURER D : INSURER E : INSURER F :	
		NAIC # 11000 29424 15792	

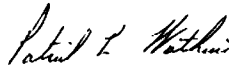
COVERAGES **CERTIFICATE NUMBER:** 682322640 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			65SBATB6822	10/14/2025	10/14/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			65SBATB6822	10/14/2025	10/14/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			65SBATB6822	10/14/2025	10/14/2026	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
B	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N <input type="checkbox"/> N / A			65WECAP3DRG	12/3/2025	12/3/2026	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A C	Property Professional			65SBATB6822 PSO0140533622	10/14/2025 10/14/2025	10/14/2026 10/14/2026	Personal Property/Ded 407,700/1,000 Per Claim/Aggregate 1,000,000/2,000,00

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: Lincoln Center Splash Pad - College Station, TX
 The City of College Station is additional insured on the general liability policy with waiver of subrogation on the general liability and workers compensation policies when required by written contract.
 General liability is primary and non-contributory when required by written contract.

CERTIFICATE HOLDER**CANCELLATION**

City of College Station PO Box 9960 College Station TX 77842	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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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
 - (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph **(6)** above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "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; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

BUSINESS LIABILITY COVERAGE FORM

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you 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 Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

BUSINESS LIABILITY COVERAGE FORM

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;
 - (b) Designing or determining content of web sites for others; or
 - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:
 - (a) An "advertisement" for others on your web site;
 - (b) Placing a link to a web site of others on your web site;
 - (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
 - (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions **c.** through **h.** and **k.** through **o.** do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance.

BUSINESS LIABILITY COVERAGE FORM

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (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 such inspections, adjustments, tests or servicing as the vendor 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 vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor 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:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor 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.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

BUSINESS LIABILITY COVERAGE FORM

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance**.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions**.

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.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

BUSINESS LIABILITY COVERAGE FORM

This Paragraph **f.** applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a.** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b.** With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a.** To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b.** To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a.** As if each Named Insured were the only Named Insured; and
- b.** Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1)** The statements in the Declarations are accurate and complete;
- (2)** Those statements are based upon representations you made to us; and

- (3)** We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us**a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision – Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1)** "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2)** "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a.** WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b.** The insurance afforded to the vendor is subject to the following additional exclusions:

- (1)** This insurance does not apply to:
 - (a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b)** Any express warranty unauthorized by you;
 - (c)** Any physical or chemical change in the product made intentionally by the vendor;
 - (d)** Repackaging, unless 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 such inspections, adjustments, tests or servicing as the vendor 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 vendor's premises in connection with the sale of the product;

- (g)** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h)** "Bodily injury" or "property damage" arising out of the sole negligence of the vendor 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:

- (i)** The exceptions contained in Subparagraphs **(d)** or **(f)**; or

- (ii)** Such inspections, adjustments, tests or servicing as the vendor 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.

- (2)** This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a.** Their financial control of you; or
- b.** Premises they own, maintain or control while you lease or occupy these premises.

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations for the additional insured(s); or

(2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in **a.** above;
 - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D. – Liability and Medical Expenses Limits of Insurance.**
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph **f.** does not include that part of any contract or agreement:

BUSINESS LIABILITY COVERAGE FORM

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
 - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
 - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

 - (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18.** "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 19.** "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20.** "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 22.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 23.** "Volunteer worker" means a person who:
- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
 - c. Acts at the direction of and within the scope of duties determined by you; and
 - d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 24. "Your product":**
- a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
 - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.
- 25. "Your work":**
- a. Means:
 - (1) Work or operations performed by you or on your behalf; and
 - (2) Materials, parts or equipment furnished in connection with such work or operations.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
 - (2) The providing of or failure to provide warnings or instructions.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TEXAS WAIVER OF OUR RIGHT TO
RECOVER FROM OTHERS ENDORSEMENT**

Policy Number: 65 WEC AP3DRG

Endorsement Number:

Effective Date: 12/03/22

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: STUDIO 1619 LLC

305 W LIBERTY AVE STE 100

ROUND ROCK TX 78664

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

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, but this waiver applies only with

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

The premium for this endorsement is shown in the Schedule.

Schedule

1. () Special Waiver
Name of person or organization
- (X) Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
2. Operations:
All Texas Operations
3. Premium:
The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
4. Advance Premium:

**EXHIBIT D
FEDERAL REQUIREMENTS**

EXHIBIT D
FEDERAL REQUIREMENTS – CDBG DIRECT-ENTITLEMENT
ARCHITECTURAL/ENGINEERING SERVICES CONTRACT PROVISIONS

NOTE: City reserves the right to modify and update this exhibit in its sole discretion upon written notice to Consultant in order to comply with federal law and City's obligations as recipient of federal funds

The agreement to which this Exhibit is attached (the “**Agreement**”) has been or is anticipated to be funded in whole or in part by federal funds from the U.S. Department of Housing and Urban Development’s (“**HUD**” or “**Federal Agency**”) pursuant to the Community Block Development Grant (“**CDBG**”) program (the “**Federal Funds**”). The non-City Party to the Agreement (“**Consultant**”) is a “contractor” as such term is defined in 2 CFR 200.1, procured by the City of College Station (“**City**” or “**Recipient**”) in its role as recipient of Federal Funds to provide architectural/engineering (A/E) professional services for a project funded in whole or in part with Federal Funds (the “**Project**”).

Consultant must comply, and assist the City in complying, with the Federal Requirements, as such term is defined in the Agreement, which include but are not limited to all duties, requirements, and obligations imposed on Consultant (or the City that are passed through to Consultant under the Agreement) by the applicable requirements of this Exhibit, the CDBG program requirements¹, and the specific terms and conditions of the grant agreement by and between the City and Federal Agency under which Federal Funds have been provided to the City in accordance with the CDBG program (Collectively, the “**Federal Requirements**”). Consultant agrees it is its responsibility to keep itself fully informed of and in compliance with all such requirements and to provide all notices as required by law; provided, however, Consultant is not responsible for compliance with the Federal Requirements by the general contractor on the Project unless the Agreement expressly provides otherwise. Consultant shall make a good faith effort to ensure project manual, procurement documents, design specifications and similar deliverables provided to the City by Consultant under the Agreement comply with and reference the Federal Requirements.

Subcontracts of Consultant on any tier, if any, must contain a provision making them subject to all applicable provisions of the Federal Requirements, including but not limited to the requirements of this Exhibit and the Agreement.

The Federal Requirements for the City’s CDBG program generally include, without limitation, compliance with the following laws and regulations:

- National Objectives under 24 CFR 570.204 (Area Benefit; Limited Clientele; Housing Activities; Prevention or Elimination of Slums or Blight; Urgent Need);
- Eligible activities and costs under 24 CFR 570.201-.207²;
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR 200³;

¹ Applicable CDBG program regulations include Title 24 of the Code of Federal Regulations (“CFR”), Part 570, Subparts A, C, J, and K. 24 CFR Subparts D, E, F, G, and I are applicable to activities funded under entitlement grants, special purpose grants, Small Cities and Insular Areas programs, Urban Development Action Grants, and State CDBG programs.

² 24 CFR 570.209-.210 may be applicable for economic development projects and employment relocation activities.

³ Requirements of 2 CFR Part 200 apply as modified by 24 CFR 570.502.

- Grant administration requirements⁴ under 24 CFR 570 Subpart J, including, without limitation, requirements for;
 - Records submission and maintenance;
 - Program Income reporting;
 - Reversion of assets;
 - Debarment, suspension, and remedies;
- 24 CFR 570 Subpart K requirements, including, without limitation, requirements for;
 - Fair Housing Act and title VI of the Civil Rights Act;
 - Affirmatively furthering fair housing;
 - Equal Employment Opportunity and Section 3;
 - Non-discrimination⁵;
 - Labor standards⁶;
 - Environmental Standards under 24 CFR Part 58⁷;
 - National Flood Insurance Program under 24 CFR 570.605;
 - Relocation assistance under 24 CFR 570.606⁸;
 - Lead-based paint⁹;
 - Prohibition on use of debarred, suspended, or ineligible contractors or subrecipients under 24 CFR 570.609;
 - Conflicts of interest under 24 CR 570.611¹⁰;
 - Architectural Barriers Act of 1968 and Americans with Disabilities Act of 1990 under 28 CFR Parts 35-36;
- Closeout procedures established by HUD for the applicable funding program(s);
- The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 et seq.);
- The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983;
- Cash Management Improvement Act regulations (31 C.F.R. Part 205);
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200); and
- Single Audit Act Amendments of 1996, 31 U.S.C. § 7501.

⁴ Additional state law requirements may also apply. See Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning.

⁵ Includes requirements of Section 109 of the Housing and Community Development Act of 1974, as amended, and Section 504 of the Rehabilitation Act of 1973.

⁶ Includes section 110(a) of the Housing and Community Development Act of 1974, as amended; the Contract Work Hours and Safety Standards Act Department of Labor Regulations under 29 CFR Parts 1, 3, 5, 6 and 7; regulations under 24 CFR Part 70 for volunteers; and Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5).

⁷ Subject to 24 CFR 570.503, 570.509, and 570.604, as applicable.

⁸ Includes requirements under 49 CFR Part 24, as applicable.

⁹ Includes requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801 *et seq.*); the Residential Lead-Based Paint Hazard Reduction Act of 1992; and 24 CFR Part 35, as applicable.

¹⁰ Requires compliance with 24 CFR 570.611.

Contract No. 26300518

More detailed Agreement provisions are contained in the remainder of this Exhibit. Headings are for internal City use and are not dispositive nor limiting in the application of a provision to the Agreement, Consultant or any of Consultant's employees, officers, subcontractors, volunteers or representatives in any way.

I. REQUIREMENTS ASSOCIATED WITH THE CDBG PROGRAM

A. Compliance With Law.

Consultant hereby covenants and agrees that it has complied and continue to comply with all applicable federal, state and local laws, ordinances, regulations, policies, guidelines, and requirements as they relate to acceptance and use of Federal funds for this federally-assisted program. It is the Consultant's responsibility to keep itself fully informed of and in compliance with all such requirements and to provide all notices as required by law. The Agreement is subject to all such laws, ordinances, regulations, policies, and guidelines, including, without limitation, the Housing and Community Development Act of 1974 (the "Housing and Community Development Act"); 24 CFR Subtitle B, including but not limited to Parts 5, 85, and 570; and 2 CFR Subtitle A, and Subtitle B Chapter XXIV.

B. Build America, Buy America Act (BABA)

Consultant acknowledges that the Agreement may be subject to the Build America, Buy America Act ("BABA"), enacted as part of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, and Consultant agrees to comply with BABA. Pursuant to BABA, Consultant is required to apply a domestic content procurement preference (the "Buy America preference" or "BAP") for all iron, steel, manufactured products, and construction materials incorporated into the Project. All iron, steel, manufactured products and construction materials incorporated into the Project must be produced in the United States, including such materials installed by any subcontractors or suppliers. Definitions of iron, steel, manufactured products, and construction materials can be found in 2 C.F.R. Part 184 and are incorporated herein by this reference. Additional information regarding BABA requirements and compliance may be found at https://www.hud.gov/program_offices/general_counsel/build_america_buy_america and is incorporated herein by this reference.

A. BABA Opinions and Estimates. All opinions and estimates relating to costs or expenses prepared or provided by Consultant relating to the Project shall incorporate, be consistent with, and reflect compliance with BABA requirements.

B. Confirmation of Compliance. From the date of this Agreement until three (3) years after the Project is completed, Consultant must obtain and maintain records sufficient to: (1) track all product purchases relating to the Project in sufficient detail to identify the source of the funding for the purchase; and (2) demonstrate compliance with BABA as follows: (i) for products purchased in compliance with the BAP, obtaining and maintaining documentation that the product complied with BAP requirements; and (ii) for products purchased pursuant to a waiver or other exemption from the BAP, obtaining and maintaining adequate information to validate that the purchase was covered by a waiver or other exemption.

For all iron, steel, manufactured products, and construction materials incorporated into the Project, Consultant shall, upon receipt of the same, obtain confirmation that the product or material was

purchased in compliance with the BAP. Such confirmation must take one or more of the following forms:

- (1) A certificate from the manufacturer or reseller stating that the product complies with BABA;
- (2) For products that cost less than \$100 per product, a copy of a label that indicates the product was made in the United States; or
- (3) For small purchases of product that are less than the Simplified Acquisition Threshold (see 2 CFR 200.320(a)(2), as may be adjusted from time to time, either a copy of a product specification that provides sufficient detail to conclude that the product complies with the BAP or a certification from a manufacturer or reseller of a product that confirms that the product is BABA compliant.

C. Displacement, Relocation, Acquisition, and Replacement of Housing (URA) (24 CFR 570.606).

If the Project or any work provided in accordance with the Agreement will result in the displacement of persons, Consultant covenants and agrees to comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations at 49 CFR Part 24.

D. Civil Rights Act.

Consultant must comply with the Civil Rights Act of 1964, as amended, and all regulations applicable thereto, which provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.

Consultant must make it known that the Project is available to all on a nondiscriminatory basis. Where the procedures that Consultant intends to use to make known the availability of the Project are unlikely to reach persons with disabilities or persons of any particular race, color, religion, sex, age, or national origin within the area of the Project who may qualify, Consultant must establish additional procedures that will ensure that these persons are made aware of Project. Consultant must also adopt and implement procedures designed to make available to interested persons information concerning the existence and location of the Project that are accessible to persons with a disability. Consultant must include the requirements of this section in every subcontract or purchase order.

E. Non-Discrimination and Equal Opportunity (24 CFR § 5.105(a)).

Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, sexual orientation, gender identity, age, national origin, or ancestry and must comply with all non-discrimination laws relating to same, including, without limitation, ensuring compliance with the following:

- i. The Fair Housing Act (42 U.S.C. 3601 et seq.), as amended, and implementing regulations at 24 CFR Parts 100 and 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as amended, and implementing regulations issued at 24 CFR Part 1, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin and require actions which affirmatively promote fair housing. Consultant must cooperate in the fulfillment and submission of any requirements related to certifying

- compliance with obligations related to affirmatively furthering fair housing as set forth in 24 CFR 5.152.
- ii. Equal Access in Accordance with Gender Identity (24 CFR § 5.106).
 - iii. The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as amended, and implementing regulations at 24 CFR Part 146.
 - iv. Executive Order 11625, as amended by Executive Order 12007, relating to Minority Business Enterprises; Executive Order 12432, relating to Minority Business Enterprise Development; and Executive Order 12138, as amended by Executive Order 12608 relating to Women's Business Enterprise.
 - v. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, which prohibit discrimination on the basis of age and discrimination against otherwise qualified individuals with disabilities.
 - vi. The Equal Employment Opportunity Act of 1972, as amended, and the regulations issued at 41 CFR chapter 60, which provide for the promotion and insuring of equal opportunity for all persons, without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin, employed or seeking employment.
 - vii. The requirements of 2 CFR 200.321 requiring Consultant to make efforts when possible to use small, minority-owned, veteran-owned and women-owned business enterprises for any activities funded in connection with the Agreement or this Exhibit.
 - viii. Executive Order 11063, as amended by Executive Order 12259, and 24 CFR Part 107 ("Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"); The failure or refusal of Consultant to comply with the requirements of Executive Order 11063 or 24 CFR Part 107 shall be a proper basis for the imposition of sanctions specified in 24 CFR 107.60.
 - ix. Americans with Disabilities Act of 1990. Consultant must not discriminate against handicapped persons and must provide accessibility for handicapped persons in connection with the Agreement and the Project. Consultant must comply with all applicable requirements of the Americans with Disabilities Act of 1990 and implementing regulations (28 CFR Parts 35-36), in order to provide handicapped accessibility to the extent readily achievable.
 - x. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
 - xi. Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, et seq.), as amended;
 - xii. The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);
 - xiii. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688), as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
 - xiv. Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;

- xv. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- xvi. §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; and
- xvii. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing.

F. Protections for Whistleblowers.

Consultant may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing, in accordance with 41 U.S.C. § 4712, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

G. Section 3 of the Housing and Urban Development Act of 1968.

Consultant acknowledges that any labor to be performed under the Agreement is being performed on a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (“**Section 3**”), 24 C.F.R. §§ 135.3(a)(2) and (a)(3). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents and that contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the project. Consultant must comply with the provisions of Section 3 and the regulations issued pursuant thereto by the U.S. Secretary of Housing and Urban Development (“**Secretary**”) as set forth in 24 CFR Part 75, and all applicable rules and orders of HUD issued thereunder as of or prior to the Agreement. Consultant further agrees to include these Section 3 requirements in any subcontracts executed under or funded by funds derived from the Agreement. Specifically, Consultant will include the following language in all subcontracts:

“The work to be performed under this contract is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low and very low-income persons residing in the city in which the project is located.”

- i. Notice to Labor Organizations. Consultant must send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising such labor organization or workers’ representative of its commitments under the Section 3 clause (set forth in “Include in Subcontracts” below)

and must post copies of the notice in conspicuous places available to employees and applicants for employment or training.

- ii. Include in Subcontracts. Consultant must include a Section 3 clause in every contract and subcontract for work in connection with the Project and must, at the direction of the City, take appropriate action pursuant to the contract or subcontract upon a finding that the contractor or subcontractor is in violation of regulations issued at 24 CFR Part 75. Consultant must not contract or subcontract with any party where Consultant has notice or knowledge that such party has been found in violation of regulations under 24 CFR Part 75 and must not let any contract or subcontract unless the contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of said regulations.
- iii. Sanctions. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 75, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Agreement must be a condition of the federal financial assistance provided to the Project, binding upon the Consultant, its successors, and assigns. Failure to fulfill these requirements shall subject Consultant, its contractors and subcontractors, successors, and assigns to those sanctions as are specified by 24 CFR Part 75¹¹.

H. Conflicts of Interest.

In addition to any conflict of interest requirements required by the City in connection with the Project and 2 CFR Part 200, under 24 CFR 570.611¹² no person:

- i. who (i) is an employee, agent, consultant, officer, or elected or appointed official of City, Consultant, or any state recipient, local government recipient, or nonprofit recipient (or of any designated public agency) that receives CDBG funds pursuant to the Agreement and (ii) exercises or has exercised any functions or responsibilities with respect to assisted activities, or
- ii. who is in a position to participate in a decision making process or gain inside information with regard to such activities,

shall obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter. HUD may grant an exception to this exclusion as provided in 24 CFR 570.611(d).

Consultant also agrees to abide by the provisions of 24 CFR 570.611, which include, but are not limited to, the following:

- i. Consultant must maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds.

¹¹ Per 24 CFR 75.33(c), remedies and sanctions may be imposed by HUD “in accordance with the laws and regulations for the program under which the violation was found.”

¹² 24 CFR 570.611 requires compliance with 2 CFR 200.317-.318 for recipients and subrecipients and compliance with 24 CFR 570.611 otherwise.

- ii. No employee, officer, or agent of the Consultant shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- iii. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, Consultant, or any designated public agency.

I. Drug Free Workplace (24 CFR § 5.105).

Consultant must comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, title v, subtitle D; 41 U.S.C. 701 *et seq.*) and implementing regulations at 2 CFR part 2429 and 2 CFR part 182, and maintain a drug-free work environment. The final rule, government-wide requirements for drug-free work place (grants), issued by the office of management and budget (2 CFR part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor must comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

J. Lead-Based Paint.

Consultant must comply with the requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (43 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851-4856), and the implementing regulations at 24 CFR Part 35, Subparts A, B, J, K and R and 40 CFR part 745, including, without limitation, taking appropriate actions to protect occupants of residential dwellings from the hazards associated with lead-based paint abatement procedures.

K. Building Construction

If Consultant is performing activities required to develop and construct the Project, the Consultant must provide documentation that such activities performed for the Project, including all related buildings and facilities, are in compliance with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Chapter 469, Texas Government Code, and the Texas Department of Licensing and Regulation (TDLR) Architectural Barriers Administrative Rules, 16 Texas Administrative Code, Part 4, Chapter 68.

L. Environmental Laws

Consultant must comply with environmental standards that may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988 as interpreted in HUD regulations at 24 C.F.R. Part 55; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 *et seq.*); (f) conformity

to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.), 40 C.F.R. Parts 6, 51, and 93; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205); (i) Wild and Scenic Rivers Act of 1989 (16 U.S.C. § 1271 *et seq.*); (j) Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149; (k) Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*); (l) Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658); (m) applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51) (other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); (n) HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979; (o) Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859. Consultant must include this requirement in all subcontracts under the Agreement.

M. Political Activities.

Consultant agrees that moneys paid under the Agreement must be used exclusively for performance of the work required under the Agreement, and that no funds made available under the Agreement shall be used to promote political activities as provided under 24 CFR 570.207. Further, Consultant agrees that it will not perform, nor permit to be performed, any political activities in connection with the Project or the Agreement.

Consultant is prohibited from using funds provided under the Agreement or personnel employed in the administration of the Project for political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

N. Labor Standards (24 CFR § 570.603).

In addition to any other labor standards set forth in this Exhibit and the Agreement, Consultant must comply with 24 CFR part 70 with regard to the use of volunteers.

Consultant agrees that, except with respect to the rehabilitation or construction of residential property containing fewer than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation, or repair work financed in whole or in part with CDBG assistance, must comply with the requirements of the Davis-Bacon Act (40 USC, Chapter 3, Section 276a-276a-5) adopted by the Federal Agency pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR parts 1, 3, 5, and 7, governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Consultant of its obligation, if any, to require payment of the higher wage. The Consultant must cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

O. Eligibility restrictions for certain resident aliens and noncitizens (24 CFR § 570.613 and 24 CFR Part 5, Subpart E).

To the extent applicable to the Agreement, Consultant must comply with the restrictions on the provision of benefits to newly legalized aliens if applicable under 24 CFR § 570.613 and to noncitizens under 24 CFR Part 5, Subpart E.

P. Housing counseling (24 CFR § 570.615).

If Consultant provides housing counseling, as defined in 24 CFR 5.100, under the Agreement, the housing counseling must be carried out in accordance with 24 CFR 5.111.

Q. Records.

The following access to records requirements apply to the Agreement:

- i. Consultant must maintain and provide to the City on request sufficient records to meet the requirements of 24 CFR §§ 570.506 – 570.507.
- ii. Consultant agrees to provide the City, any Federal Agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Consultant which are pertinent to the Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Consultant must keep its books, documents, papers, and records available for this purpose for the longer of at least (i) five (5) years after the Agreement terminates or expires, (ii) following the completion of the closeout of the Agreement, or (iii) such longer time as the City specifies prior to the end of such 5-year period, provided, however, in the event of litigation, claim, or audit, the records must be retained until all litigation, claims, and audit findings involving the records have been fully resolved. This provision does not limit the applicable statute of limitations.
- iii. Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iv. Consultant agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
- v. Consultant acknowledges and agrees that no language in the Agreement is intended to prohibit audits or internal reviews by the Federal Agency or its authorized representatives or the Comptroller General of the United States.
- vi. Within ten (10) days of written request by the City, Consultant agrees to provide the City all relevant documentation pertaining to the Agreement to confirm compliance with Federal requirements, ensure the Agreement is achieving its purpose, and to respond to audits, as necessary.
- vii. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action commences during this required retention period, all records must be retained until a full and final resolution of the action.

R. Reports.

Consultant must prepare and submit financial, Project progress, monitoring, evaluation, personnel, property, and financial records and other reports as required by City and in the format acceptable to City to assure proper accounting of all Federal and non-Federal project funds. Consultant must furnish such information that, in the judgment of the Director, may be relevant to questions of compliance with contractual conditions hereunder or granting agency directives, or with the effectiveness, legality, and goals of the Agreement. Consultant must establish a record keeping system which is consistent with 24 CFR 570.506.

S. Monitoring.

The City shall have the right to conduct periodic reviews, focusing on the extent to which the Project has been implemented and measurable goals achieved, effectiveness of any Project management, and impact of the Project, and other criteria as described in 24 CFR Part 570, Subpart O. Authorized representatives of City and HUD shall have the right of access to all activities and facilities operated by Consultant under the Agreement. "Facilities" include all files, records, and other documents related to the performance of the Agreement. Activities include attendance at staff, board of directors, advisory committee, and advisory board meetings and inspection by City and HUD representatives. Consultant must ensure that its employees, officers, managers, or board members furnish such information as, in the judgment of City and HUD representatives, may be relevant to the question of compliance with contractual conditions and HUD directives, or the effectiveness, legality, and achievements of the Project.

T. Public Access to Records and Privacy (24 CFR § 570.508).

Consultant must provide citizens with reasonable access to records regarding the use of CDBG funds in connection with the Project or the Agreement, consistent with applicable State and local laws regarding privacy and obligations of confidentiality and with 24 CFR 570.508 and 2 CFR 200.303. Consultant agrees and must ensure that no information about or obtained from any person in connection with the Project or the Agreement shall be voluntarily disclosed in any form identifiable with such person without first obtaining the written consent of such person.

U. Equal Participation of Faith-Based Organizations (24 CFR §§ 5.109; 570.200(j); 570.607).

Consultant must perform all activities under the Agreement in a manner that does not discriminate against an organization on the basis of the organization's religious character, affiliation, or lack thereof, or on the basis of the organization's religious exercise and, to the extent applicable, must comply with Executive Order 13279 (Equal Protection of Laws for Faith-Based and Community Organizations) and the implementing regulations at 41 CFR chapter 60.

V. Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, Stalking and Trafficking

Consultant must comply with the applicable protections provided to victims of domestic violence, dating violence, sexual assault, and stalking set forth in Title 24, Part 5, subpart L.

Consultant must comply with the applicable requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits Consultant from (1) engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) procuring a commercial sex act during the period of time that the award is in effect or (3) using forced labor in the performance of the Agreement.

II. REQUIREMENTS TO IMPLEMENT GENERAL FEDERAL LAWS

A. Historic Preservation (16 U.S.C. § 470; 16 U.S.C. § 469a-1 et seq.)

Consultant must assist the City, as applicable, in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1 et seq); 36 C.F.R. Part 800; and The Reservoir Salvage Act of 1960, as amended by the

Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq*), particularly section 3 (16 U.S.C. § 469a-1).

B. Energy Policy and Conservation Act (42 U.S.C. § 6201).

Consultant must comply, as applicable, with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).

C. Hatch Act

Consultant agrees that no funds provided, nor personnel employed under the Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of 5 U.S.C. Chapter 15.

D. Coastal Barriers.

Consultant must comply, as applicable, with the Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq., which provides that no financial assistance under the Agreement may be made available within the Coastal Barrier Resources System.

E. Federal Government not a Party.

Consultant acknowledges that the Federal Government is not a party to the Agreement and is not subject to any obligations or liabilities to the City, Consultant, or any other party pertaining to any matter resulting from the Agreement.

F. False Statements.

Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Consultant's actions pertaining to the Agreement. False statements or claims may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device or who makes any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, § 1001.

ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. § 287, 18 U.S.C. § 1001, AND 31 U.S.C. § 3729.

G. Logos.

Consultant must not use the Federal Agency seal(s), logos, crests, or reproductions of flags or likenesses of any Federal Agency officials without specific Federal Agency pre-approval.

H. Debts Owed to the City.

Any funds paid to Consultant (1) in excess of the amount to which Consultant is finally determined to be authorized to retain under the terms of its award from Treasury; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to

be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by the Consultant shall constitute a debt to the City and to the Federal government.

Any debts determined to be owed to the City must be paid promptly by Consultant for repayment to the federal government.

A debt is delinquent if it has not been paid by the date specified in the City's initial written demand for payment, unless other satisfactory arrangements have been made or if the Consultant knowingly or improperly retains funds that are a debt as defined in this paragraph. The City will take any actions available to it to collect such a debt.

I. Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Consultant is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating Consultant-owned, rented, or personally-owned vehicles.

J. Reducing Text Messaging While Driving.

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Consultant is encouraged to adopt and enforce policies that ban text messaging while driving.

III.2 CFR PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS, INCLUDING APPENDICES

Consultant must comply with the applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), including all appendices, other than such provisions as Treasury may determine are inapplicable to the Agreement and subject to such exceptions as may be otherwise provided by Treasury. All Appendices and Subparts E – Cost Principles and F – Audit Requirements of the Uniform Guidance implementing the Single Audit Act apply to the Agreement, including, but not limited, to the following:

A. Appendix II to Part 200 (A) – Remedies.

The administrative, contractual, or legal remedies in the Agreement and in the Funding Law, Regulations, and Guidelines apply when the Consultant defaults, violates, or breaches the Agreement.

B. Appendix II to Part 200 (B) - Termination for Cause/Convenience.

The parties must comply with the termination for cause provision and the termination for convenience provision set forth in this Exhibit.

C. Appendix II to Part 200 (C) – Equal Employment Opportunity

The Agreement meets the definition of a “federal assisted construction contract” in 41 CFR § 60-1.3. During the performance of the Agreement, Consultant agrees as follows:

- i. Consultant must not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Consultant must take affirmative action to ensure that applicants are employed, including, but not limited to, implementing the principles in Executive Order 11246, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender

identity, or national origin. Consultant must include the requirements of this section in all subcontracts. Such action shall include, but not be limited to the following:

- ii. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this clause.
- iii. Consultant must, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- iv. Consultant must not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Consultant's legal duty to furnish information.
- v. Consultant must send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Consultant's commitments under this section and must post copies of the notice in conspicuous places available to employees and applicants for employment.
- vi. Consultant must comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vii. Consultant must furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and must permit access to books, records, and accounts by the Federal Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- viii. In the event of Consultant's noncompliance with the nondiscrimination clauses of the Agreement or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and Consultant may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- ix. Consultant must include the requirements of the preceding subparagraphs of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Consultant. Consultant must take such action with respect to any subcontract or purchase order as the Federal Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

D. Appendix II to Part 200 (D), (E) – Davis-Bacon Act; Contract Work Hours and Safety Standards Act.

Consultant must comply, as applicable, with 40 U.S.C. 3141-3148, 40 U.S.C. 3701-3708, and 29 CFR pt. 5 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Copeland Anti-Kickback Act).

E. Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:

If Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under the Agreement, the Consultant must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

F. Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act:

In addition to generally applicable environmental laws, the Consultant must comply with the following:

- i. Pursuant to the Clean Air Act, (1) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Agency and the appropriate Environmental Protection District Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.
- ii. Pursuant to the Federal Water Pollution Control Act, (1) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.

G. Appendix II to Part 200 (H) – Debarment and Suspension (See also 24 CFR § 5.105).

- i. The Agreement is a covered transaction for purposes of 2 CFR pt. 180. As such Consultant is required to verify that none of the Consultant’s principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

- ii. Consultant must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 2424 and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. Consultant must certify that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Consultant further agrees to notify the City in writing immediately if Consultant or any of its contractors or subcontractors are not in compliance during the term of the Agreement. This certification is a material representation of fact relied upon by City. If it is later determined that Consultant did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 2424 in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. Consultant agrees to comply with the requirements of 2 CFR pt. 180, subpart C throughout the Agreement. The Consultant further agrees to include a provision requiring such compliance in its subcontracts.
- v. Consultant warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Consultant also agrees to verify that all subcontractors performing work under the Agreement are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Consultant further agrees to notify the City in writing immediately if Consultant or its subcontractors are not in compliance during the term of the Agreement.

H. Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act (See also 24 CFR § 5.105; Appendix A to 24 CFR part 87).

Consultant must submit to the City a certification as required by law which provides that Consultant certifies and requires subcontractors to certify that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Consultant and each of Consultant’s subcontractors must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures must be immediately forwarded to the City.

I. Appendix II to Part 200 (J) – §200.323 Procurement of Recovered Materials.

- i. Consultant must comply, as applicable, with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
- ii. In the performance of the Agreement, Consultant must make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (1) Competitively within a timeframe providing for compliance with the Agreement

performance schedule; (2) Meeting Agreement performance requirements; or (3) At a reasonable price.

- iii. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- iv. Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

J. Appendix II to Part 200 (K) – §200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

- i. Consultant must not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under the Agreement. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(2) Telecommunications or video surveillance services provided by such entities or using such equipment.

(3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- ii. See Public Law 115-232, section 889 for additional information.
- iii. Subcontracts. Consultant must include the substance of this section, including this paragraph, in all subcontracts and other contractual instruments.

K. Appendix II to Part 200 (L) – §200.322 Domestic Preferences for Procurement.

Consultant must, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts. For purposes of this section:

- i. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

- ii. “Manufactured products” means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

L. Compliance with Subpart D of 2 CFR part 200.

Materials, supplies and services procured in connection with activities under the Agreement must be procured, used, managed, and disposed in accordance with the requirements in Subpart D of 2 CFR part 200, as modified and supplemented by 24 CFR 570.502.

M. Patents and Copyrights (2 CFR 200.315).

Consultant acknowledges and agrees that the City and HUD each reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

- i. The copyright in any work developed under the Agreement;
- ii. Any rights of copyright to which Consultant purchases ownership with proceeds from the Agreement;
- iii. The patent for any invention developed under the Agreement; and
- iv. Any rights in any patent to which Consultant purchases ownership with proceeds from the Agreement.

N. Conflicts of Interest Prohibited (2 CFR § 200.112; 24 CFR § 570.611).

Pursuant to 2 CFR § 200.112 and 24 CFR § 570.611, Consultant must comply with the requirements, prohibitions, and limitations of the City’s conflict of interest policies, rules, or regulations and state and federal common law regulating conflicts of interest.

- v. In the procurement of supplies, equipment, construction, and services by the Consultant, the conflict of interest provisions in 2 CFR Part 200, Subpart B - General Provisions, shall apply.
- vi. In all cases not governed by 2 CFR Part 200, Subpart B, the provisions of this section shall apply, unless the Federal Agency grants an exception. Such cases include, but may not be limited to, the acquisition and disposition of real property and the provision of assistance by the Consultant, by its contractors, subcontractors, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities).
- vii. No person who is an employee, agent, consultant, officer, or elected or appointed official of the City or of any designated public agency; contractor; subcontractor; or subrecipient which receives funds under the Funding Law, Regulations and Guidelines who exercise or have exercised any functions or responsibilities with respect to federal activities or who are in a position to participate in a decision-making process or gain inside information with regard to federal assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter with respect to the federal assisted activity, or with respect to the proceeds of the federal assisted activity.

- viii. Disclosure of potential conflicts of interest. As soon as possible after learning of such conflict, Consultant must disclose in writing to the City any potential conflict of interest.

O. Mandatory Disclosure (2 CFR § 200.113, 41 U.S.C. § 2313).

Consultant must disclose, in a timely manner, in writing to the City all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Agreement. Failure to make required disclosures constitutes a breach of the Agreement. During the term of the Agreement, Consultant must submit the information to the City about each proceeding that:

- i. Is in connection with the Agreement or performance of work or services for the Project, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five-year period; and
- iii. Is one of the following:
 - 1) A criminal proceeding that resulted in a conviction;
 - 2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - 3) An administrative proceeding, that resulted in a finding of fault and liability and the Grantee's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - 4) Any other criminal, civil, or administrative proceeding if:
 - a. It could have led to an outcome described above;
 - b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the Consultant's part; and
 - c. The requirement to disclose information about the proceeding does not conflict with applicable laws and regulations.

P. Internal Controls (2 CFR § 200.303).

Consultant must take reasonable measures to safeguard protected personally identifiable information and other information considered to be sensitive consistent with applicable Federal, State, and local laws regarding privacy and responsibility over confidentiality.

Q. Accessibility and Nondiscrimination.

In addition to any other accessibility and nondiscrimination laws in the Agreement and Exhibit, Consultant must adhere to the accessibility and nondiscrimination requirements set forth in state and federal law applicable to the Agreement and Project, including but not limited to the following:

- i. Uniform Federal Accessibility Standards;
- ii. 24 CFR Part 8, or HUD's modified version of the 2010 ADA Standards for Accessible Design (Alternative 2010 ADAS), HUD-2014-0042-0001, 79 F.R. 29671 (5/27/14) (commonly referred to as "the Alternative Standards" or "HUD Deeming Notice");
- iii. 24 CFR part 8.26; and
- iv. Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157).

R. Protections for Whistleblowers (2 CFR § 200.217).

Consultant is responsible for complying with all requirements of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and also requirements implementing the Act at 2 CFR parts 25 and 170. This also includes statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310. Consultant must inform its subcontractors and employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

An employee must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in [paragraph \(a\)\(2\) of 41 U.S.C. 4712](#) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The recipient and subrecipient must inform their employees in writing of employee whistleblower rights and protections under [41 U.S.C. 4712](#). See statutory requirements for whistleblower protections at [10 U.S.C. 4701](#), [41 U.S.C. 4712](#), [41 U.S.C. 4304](#), and [10 U.S.C. 4310](#).

S. Contracting with Small, Veteran-owned, Minority-owned and Women’s Business Enterprises, and Labor Surplus Area Firms (2 CFR § 200.321).

If Consultant intends to subcontract any portion of the work covered by the Agreement, Consultant shall ensure that small, minority-owned and veteran-owned businesses, women’s business enterprises and labor surplus area firms (collectively, “MWVSBES”) are considered and used when possible. Consideration includes Consultant taking and documenting the following steps:

- i. Placing qualified MWVSBES on solicitation lists (ex., the Texas Comptroller maintains a list of Historically Underutilized Businesses searchable by type and geographic area at: <https://mycpa.cpa.state.tx.us/tpasscmblsearch/>);
- ii. Assuring that MWVSBES are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MWVSBES ;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by MWVSBES; and
- v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring this clause in any subcontracts.

T. Minimum Bonding Requirements (2 CFR § 200.326)

If the Agreement involves construction or facility improvements for the Project in excess of the simplified acquisition threshold, as that term is defined in 2 CFR 200 subpart A, Consultant must maintain a performance bond for 100 percent (100%) of the contract price to secure fulfillment of all the Agreement’s requirements.

U. Certification Regarding Lobbying (2 CFR § 200.450; 24 CFR § 5.105; 24 CFR part 87 31 U.S.C. § 1352)

Consultant must comply with the requirements of 31 U.S.C. § 1352, 2 CFR § 200.450, and 24 CFR 87. Consultant must submit the certification regarding lobbying as required by law to the City. Consultant must include language in all contracts, subcontracts, and other agreements requiring that all parties to same to certify and disclose that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

IV. DAVIS BACON ACT; CONSTRUCTION CONTRACT LABOR CLAUSES

Consultant acknowledges that the Project, including any contract with a prime general contractor on the Project (Contract) and any reference to Federal Requirements in the project manual, is subject to the following labor requirements:

A. Davis-Bacon Act (Prevailing Wage)

If this Contract is a prime construction contract in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act (40 USC 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- i. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- ii. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- iii. Additionally, contractors are required to pay wages not less than once a week.

B. Compliance with Contract Work Hours and Safety Standards Act.

If the Contract is in excess of \$100,000 the Contractor must comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable, and during performance of this Contract the Contractor agrees as follows:

Contract No. 26300518

- i. **Overtime Requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- ii. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (i) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (i) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (i) of this section.
- iii. **Withholding for Unpaid Wages and Liquidated Damages.** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other

C. Compliance with Copeland “Anti-Kickback” Act.

If the Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland “Anti- Kickback” Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- i. **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this Contract.
- ii. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- iii. **Breach.** A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

- (1) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

EXHIBIT E
CONFLICT OF INTEREST AND BYRD ANTI-LOBBYING CERTIFICATION

The undersigned consultant (“Consultant”) certifies, to the best of their knowledge and belief, the following certification and disclosure regarding payments to influence certain transactions involving federal funds:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
3. As required under 24 CFR 570.611, no employee, agent, consultant, officer, contractor or elected or appointed official of the City who exercises or has exercised any functions or responsibilities with respect to federally-assisted activities of the City, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted with federal funds provide by the City, has a financial interest or benefit from the Agreement with the undersigned Consultant; nor has a financial interest in the Agreement with Consultant, nor any of Consultant’s subcontracts under the Agreement; nor has a financial interest in the proceeds derived from the Agreement, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.
4. As required under 2 CFR 200.318 and the City’s Conflict of Interest Policy, no member of the City Council has a financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in this Agreement with the Consultant, or is financially interested, directly or indirectly, in the sale to, or purchase from, the City of any land, materials, supplies, or services except on behalf of the City; provided, however that the provisions of this section shall only be applicable when the stock owned by the member of City Council exceeds one percent (1%) of the total capital stock of the corporation; AND no member of City Council, nor any officer or employee of the City of College Station, has accepted, directly or indirectly, any gift, privilege, or employment from the Consultant, except as may be authorized by law or ordinance; AND no employee, officer, agent, member of City Council or board member, nor any member of their immediate family, their partner, or an organization that employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from the selection, award, or administration of this Agreement, nor has accepted from Consultant, Consultant’s employees, agents or officers gratuities, favors, or anything of


monetary value.

5. The Consultant shall require that the language of this certification be included in all contracts and subcontracts and require that all contractors and subcontractors of Consultant certify and disclose accordingly any real or apparent conflict of interest, lobbying activity, or other activity listed above.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995).

ANY PERSON WHO FAILS TO FILE THE REQUIRED CERTIFICATION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$10,000 AND NOT MORE THAN \$100,000 FOR EACH SUCH FAILURE.

The Consultant, as represented by an authorized representative with authority to bind Consultant and make the above representations on behalf of Consultant, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Consultant Company Name:	Studio 16:19,LLC
Authorized Signature:	
Name of Authorized Official:	Brent A Baker
Title:	Principal Partner + Founder
Date:	5/8/2026