



# CITY COUNCIL AGENDA

## NOTICE OF REGULAR MEETING

Tuesday, December 20, 2016

7:00 p.m.

City Hall - Council Chamber

Daniel P. Moore Community Center Complex

1900 Billy G. Webb Drive

Portland, Texas

### A. PROCEDURAL MATTERS, HONORS AND RELATED NON-ACTION ITEMS:

1. **CALL TO ORDER:** MAYOR KREBS
2. **INVOCATION AND PLEDGE:** MAYOR KREBS OR DESIGNEE
3. **FORMAL ANNOUNCEMENTS, RECOGNITION, PRESENTATIONS AND REPORTS THAT MAY BE DISCUSSED:**
  - PRESENTATION OF CHRISTMAS AND NEW YEARS DAY HOLIDAY SCHEDULE (FACILITIES AND SERVICES) – DIRECTOR OF MARKETING AND COMMUNICATIONS
4. **CITY COUNCIL COMMENTS CONCERNING ITEMS OF COMMUNITY INTEREST THAT MAY NOT BE DISCUSSED:**

Members of the City Council may present reports regarding items of community interest, provided no action is taken or discussed. Items of community interest include the following:

- Expressions of thanks, congratulations, or condolence
- Information regarding holiday schedules
- Honorary recognition of city officials, employees, or other citizens
- Reminders about upcoming events sponsored by the city or another entity that is scheduled to be attended by a city official or city employee
- Announcements of imminent threats to the public health and safety of the city

**5. CITY MANAGER’S REPORT:**

The City Manager may present announcements, comments and updates on City operations and projects.

**B. ACTION ITEMS, RESOLUTIONS AND ORDINANCES:**

- 6. EXECUTIVE SESSION:** THE CITY COUNCIL WILL CONDUCT AN EXECUTIVE SESSION ACCORDING TO SECTION 551.071, GOVERNMENT CODE, AND RULE 1.05, TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS FOR CONSULTATION WITH CITY ATTORNEY REGARDING PENDING OR CONTEMPLATED LITIGATIONS (DELINQUENT PROPERTY TAX FORECLOSURE) AND/OR ON A MATTER IN WHICH THE DUTY OF THE CITY ATTORNEY UNDER THE CITED RULE CONFLICTS WITH CHAPTER 551, GOVERNMENT CODE AND SECTION 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS RELATED TO COMMERCIAL OR FINANCIAL INFORMATION THAT THE GOVERNMENTAL BODY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE GOVERNMENTAL BODY SEEKS TO HAVE LOCATE, STAY, OR EXPAND IN OR NEAR THE TERRITORY OF THE GOVERNMENTAL BODY AND WITH WHICH THE GOVERNMENTAL BODY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS - MAYOR AND CITY MANAGER

**ACTION FOLLOWING EXECUTIVE SESSION:**

- A. THE CITY COUNCIL WILL CONSIDER A REFUND IN THE AMOUNT OF \$1,136.98 IN REFERENCE TO SUIT #S-10-1370-TX; GREGORY PORTLAND ISD, ET AL VS GLORIA B. RAMIREZ, ET AL, AND A REFUND OF CITY DEMOLITION LIENS IN THE AMOUNT OF \$20,000.00 – CITY MANAGER
- B. THE CITY COUNCIL WILL CONSIDER A RESOLUTION CONCERNING ECONOMIC DEVELOPMENT IN SAN PATRICIO COUNTY – CITY MANAGER

**7. CITIZEN COMMENTS, QUESTIONS, REQUESTS AND PROPOSALS APPEARING ON THE**

**AGENDA:** Members of the audience who wish to (1) comment on issues concerning an agenda item, (2) present questions concerning an agenda item, (3) request assistance concerning an agenda item or (4) propose regulatory changes concerning an agenda item, must comply with the following rules of procedure:

- Persons who wish to speak must fill out and turn in a speaker card before the meeting is convened (The Mayor will notify you when it’s your turn to speak and direct you to the podium)
- Persons who wish to speak must identify themselves and their places of residence
- All comments, requests and proposals must be presented to or through the Mayor
- Persons who wish to speak will be given 4 minutes to do so

8. **MINUTES OF PREVIOUS MEETINGS:** THE CITY COUNCIL WILL CONSIDER THE MINUTES OF ITS DECEMBER 6, 2016 WORKSHOP AND REGULAR MEETING – MAYOR KREBS AND CITY SECRETARY
  
9. **MUNICIPAL PARK AND SPORTS COMPLEX IMPROVEMENTS PROJECT CONTRACT:** THE CITY COUNCIL WILL CONSIDER A CONTRACT WITH HELLAS CONSTRUCTION, INC. FOR A GUARANTEED MAXIMUM PRICE OF \$16,567,446.25 FOR THE CONSTRUCTION OF IMPROVEMENTS TO THE MUNICIPAL (13-ACRE) PARK AND THE SPORTS (SOFTBALL) COMPLEX AS AUTHORIZED BY VOTERS DURING THE BOND 2016 ELECTION – CITY MANAGER
  
10. **FINANCING PLAN FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2017:** THE CITY COUNCIL WILL CONSIDER AND APPROVE A FINANCING PLAN FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2017, IN THE AMOUNT OF \$14,000,000 – FINANCE DIRECTOR
  
11. **PUBLIC HEARING – SPECIAL USE PERMIT:** THE CITY COUNCIL WILL CONDUCT A PUBLIC HEARING TO SOLICIT COMMENTS FROM CITIZENS AND OTHER INTERESTED PARTIES CONCERNING A REQUEST FROM MOBILITIE, LLC, FOR A SPECIAL USE PERMIT TO CONSTRUCT A 120-FOOT TALL MONOPOLE TELECOMMUNICATIONS TOWER IN THE PUBLIC RIGHT-OF-WAY IN THE 600 BLOCK OF BROADWAY BLVD. – ASSISTANT CITY MANAGER
  
12. **SPECIAL USE PERMIT REQUEST:** THE CITY COUNCIL WILL CONSIDER THE FIRST READING OF AN ORDINANCE THAT GRANTS A SPECIAL USE PERMIT TO CONSTRUCT A 120-FOOT TALL MONOPOLE TELECOMMUNICATIONS TOWER IN THE PUBLIC RIGHT-OF-WAY IN THE 600 BLOCK OF BROADWAY BLVD. – ASSISTANT CITY MANAGER
  
13. **PUBLIC HEARING – UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS:** THE CITY COUNCIL WILL CONDUCT A PUBLIC HEARING TO SOLICIT COMMENTS FROM CITIZENS AND OTHER INTERESTED PARTIES CONCERNING POSSIBLE UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS. A GENERAL DESCRIPTION OF PROPOSED UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS FOLLOWS:
  - REVISIONS TO SECTION 317. SUBDIVISIONS.
  - REVISIONS TO SECTION 406. PERMITTED USE TABLE.
  - REVISIONS TO SECTION 607. STREET STANDARDS.
  - REVISIONS TO SECTION 616. SANITARY SEWER FACILITIES.
  - REVISIONS TO SECTION 618. STREET LIGHT STANDARDS.
  
14. **UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS:** THE CITY COUNCIL WILL CONSIDER THE FIRST READING OF ORDINANCE NO. 2146 THAT ADOPTS UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS—ASSISTANT CITY MANAGER

**C. CITIZEN COMMENTS, QUESTIONS, REQUESTS AND PROPOSALS NOT APPEARING ON THE AGENDA:**

Members of the audience who wish to (1) comment on issues for which there is no item on this agenda, (2) present questions for which there is no item on this agenda, (3) request assistance for which there is no item on this agenda or (4) propose regulatory changes for which there is no item on this agenda, must comply with the following rules of procedure:

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- Persons who wish to speak must identify themselves and their places of residence
- All comments, requests and proposals must be presented to or through the Mayor. Persons who wish to speak will only be given 4 minutes to do so

Neither the City Council nor the Staff is legally permitted to respond to citizen comments, questions, requests or proposals at the time of the meeting. A member of the City Council or the City Manager may place an item on the agenda of a future City Council workshop or meeting to legally do so. If that is done, the audience member seeking a response will be given advance notice.

**D. ADJOURNMENT: MAYOR KREBS**

**NOTICE OF ASSISTANCE**

If you plan to attend this public meeting and you have a disability that requires special arrangements to be made, please contact City Secretary Annette Hall (361) 777-4513 or [annette.hall@portlandtx.com](mailto:annette.hall@portlandtx.com) in advance of the meeting. Reasonable accommodations will be made to facilitate your participation. The City Hall is wheelchair accessible and specially marked parking spaces are located in front of its entrance. Special seating will be provided in the Council Chamber during the meeting.

**BRaille IS NOT AVAILABLE**

**Posted:** December 16, 2016 by 5:00 p.m.  
Portland City Hall

**By:**   
Annette Hall  
City Secretary

**CITY OF PORTLAND  
CITY COUNCIL  
WORKSHOP  
MINUTES  
DECEMBER 6, 2016 – 6:00 P.M.**

On this the 6<sup>th</sup> day of December 2016, the Council of the City of Portland convened in a workshop session at 6:00 p.m. in the Council Chambers of City Hall, Daniel P. Moore Community Center Complex and notice of workshop giving the time, place and date and subject having been posted as described by Section 551 of the Government Code.

**MEMBERS PRESENT:**

David Krebs	Mayor
John Green	Mayor Pro Tem
Ron Jorgensen	Council Member
Cathy Skurow	Council Member
Nathan Taggart	Council Member
Bill T. Wilson II	Council Member

**MEMBERS ABSENT:**

Gary Moore, Sr.	Council Member
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**STAFF PRESENT:**

Randy Wright	City Manager
Brian DeLatte	Assistant City Manager
Annette Hall	City Secretary
Mark Cory	Chief of Police
Katie Griffin	Director of Finance
Lyle Lombard	Fire Chief
Mona Gandy	Director of Marketing and Communications
Troy Frazee	Director of Public Works and Development
Terrell Elliott	IT Manager

And with a quorum being present, the following business was transacted:

**1. CALL TO ORDER: MAYOR KREBS**

Mayor Pro Tem Green called the meeting to order at 6:03 pm.

2. **EXECUTIVE SESSION:** THE CITY COUNCIL WILL CONDUCT AN EXECUTIVE SESSION ACCORDING TO SECTION 551.071, GOVERNMENT CODE, AND RULE 1.05, TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS FOR CONSULTATION WITH CITY ATTORNEY REGARDING TWO PENDING OR CONTEMPLATED LITIGATIONS (CITY HALL CONSTRUCTION AND DELINQUENT PROPERTY TAX FORECLOSURE) AND/OR ON A MATTER IN WHICH THE DUTY OF THE CITY ATTORNEY UNDER THE CITED RULE CONFLICTS WITH CHAPTER 551, GOVERNMENT CODE – MAYOR AND CITY MANAGER

At 6:03 p.m. Mayor Pro Tem Green announced that the City Council will conduct an Executive Session according to Section 551.071, Government Code, and Rule 1.05, Texas Disciplinary Rules of Professional Conduction of the State Bar of Texas for consultation with City Attorney regarding two pending or contemplated litigations (City Hall Construction and Delinquent Property Tax Foreclosure) and/or a matter in which the duty of the City Attorney under the cited rule conflicts with Chapter 551, Government Code.

Mayor Krebs arrived at 6:10 p.m.

Mayor announced that the Executive Session was concluded at 6:28 p.m.

3. **ADJOURNMENT:** MAYOR KREBS

Mayor Krebs adjourned the workshop at 6:28 p.m.

#### **NOTICE OF ASSISTANCE**

If you plan to attend this public meeting and you have a disability that requires special arrangements to be made, please contact City Secretary Annette Hall 361-777-4513 or [annette.hall@portlandtx.com](mailto:annette.hall@portlandtx.com) in advance of the meeting. Reasonable accommodations will be made to facilitate your participation. City Hall is wheelchair accessible and specially marked parking spaces are located in front of its entrance. Special seating will be provided in the Council Chamber during the meeting.

#### **BRAILLE IS NOT AVAILABLE**

Approved:

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David Krebs  
Mayor

Attest:

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City Secretary

**CITY OF PORTLAND  
CITY COUNCIL  
REGULAR MEETING  
MINUTES  
DECEMBER 6, 2016 – 7:00 P.M.**

On this the 6<sup>th</sup> day of December 2016, the Council of the City of Portland convened in a regular meeting session at 7:00 p.m. in the Council Chambers of City Hall, Daniel P. Moore Community Center Complex and notice of regular meeting giving the time, place and date and subject having been posted as described by Section 551 of the Government Code.

**MEMBERS PRESENT:**

David Krebs	Mayor
John Green	Mayor Pro Tem
Ron Jorgensen	Council Member
Cathy Skurow	Council Member
Nathan Taggart	Council Member
Bill T. Wilson II	Council Member

**MEMBERS ABSENT:**

Gary Moore, Sr.	Council Member
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**STAFF PRESENT:**

Randy Wright	City Manager
Brian DeLatte	Assistant City Manager
Annette Hall	City Secretary
Mark Cory	Chief of Police
Katie Griffin	Director of Finance
Lyle Lombard	Fire Chief
Ginny Moses	Library Director
Mona Gandy	Director of Marketing and Communications
Troy Frazee	Director of Public Works and Development
Kristin Connor	Director of Parks and Recreation
Terrell Elliott	IT Manager
Drew Schell	IT Technician
Brandon Lemon	Assistant Accountant

And with a quorum being present, the following business was transacted:

**A. PROCEDURAL MATTERS, HONORS, AND RELATED NON-ACTION ITEMS:**

1. **CALL TO ORDER:** MAYOR KREBS

Mayor Krebs called the meeting to order at 7:00 pm.

## **2. INVOCATION AND PLEDGE: MAYOR KREBS OR DESIGNEE**

Council Member Taggart gave the invocation and Council Member Moore led the Pledge of Allegiance.

## **3. FORMAL ANNOUNCEMENTS, RECOGNITION, PRESENTATIONS, AND REPORTS THAT MAY BE DISCUSSED:**

Mayor Krebs announced that the presentation on the progress of the New Harbor Bridge Project will be discussed before the presentation on the possible construction of an Ethane Cracker Facility near Portland.

- PRESENTATION ON THE PROGRESS OF THE NEW HARBOR BRIDGE PROJECT – REPRESENTATIVES FROM FLATIRON/Dragados, LLC

Lorette Williams and Darrell Chambers, with Flatiron/Dragados gave an update on the US 181 Harbor Bridge Project.

- PRESENTATION ON THE POSSIBLE CONSTRUCTION OF AN ETHANE CRACKER FACILITY NEAR PORTLAND – REPRESENTATIVES OF EXXONMOBIL

Robert Tulley, with ExxonMobil, gave a presentation on the possible construction of an Ethane Cracker Facility near Portland.

## **B. ACTION ITEMS, RESOLUTIONS AND ORDINANCES:**

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- Persons who wish to speak must fill out and turn in a speaker card before the meeting is convened (The Mayor will notify you when it's your turn to speak and direct you to the podium)
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Sam Goucher, a resident at 2011 St. Charles, voiced his opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

Adair Apple, a resident at 405 1<sup>st</sup> St., voiced her opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

Kelly Maiden, a resident at 4194 Kestrel Ln, voiced his opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

Jesse Lee, a resident at 425 Moore Ave., voiced his opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

Larry Baker, a resident at CR 1612, voiced his opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

Dewey Magee II, a resident at 4252 Kestrel Ln, voiced his opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

John Malandro, a resident on Hazeltine, voiced his opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

Errol Summerlin, a resident at 1017 Diomedes, voiced his opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

Stacey Rivere, a resident at 318 CR 1910 in Gregory, voiced her opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

Jeff Howard, a resident at 512 Pinehurst, voiced his opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

Honey Holifield, a resident at 111 Lone Oak, voiced her opinion in opposition of the possible construction of an Ethane Cracker Facility near Portland.

Mayor Krebs recessed the meeting at 9:00 p.m.

Mayor Krebs reconvened the meeting at 9:10 p.m.

#### **4. CITY COUNCIL AND STAFF COMMENTS CONCERNING ITEMS OF COMMUNITY INTEREST THAT MAY NOT BE DISCUSSED:**

Members of the City Council may present reports regarding “items of community interest” and/or be presented reports from the Staff regarding “items of community interest,” provided no action is taken or discussed. “Items of community interest” include the following:

- Expressions of thanks, congratulations, or condolence
- Information regarding holiday schedules
- Honorary recognition of city officials, employees, or other citizens
- Reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by a city official or city employee
- Announcements involving imminent threats to the public health and safety of the city

**5. CITY MANAGER'S REPORT:**

The City Manager may present announcements, comments and updates on City operations and projects.

City Manager, Randy Wright, announced that video of tonight's meeting will be available online.

**6. MINUTES OF PREVIOUS MEETINGS: THE CITY COUNCIL WILL CONSIDER THE MINUTES OF ITS NOVEMBER 1, 2016 REGULAR MEETING – MAYOR KREBS AND CITY SECRETARY**

Mayor Pro Tem Green made the motion to approve the minutes of the November 15, 2016 regular meeting, seconded by Council Member Moore.

The motion passed with the following vote:

Aye: 6 - Mayor Krebs, Mayor Pro Tem Green, Council Member Jorgensen, Council Member Skurow, Council Member Taggart and Council Member Wilson

Nay: 0 -

Absent: 1 - Council Member Moore

Abstained: 0 -

**7. ISSUANCE OF A TAX NOTE IN THE AMOUNT OF \$650,000: THE CITY COUNCIL WILL CONSIDER ORDINANCE AUTHORIZING THE ISSUANCE OF \$650,000 IN PRINCIPAL AMOUNT OF CITY OF PORTLAND, TEXAS TAX NOTE, SERIES 2016; SECURING THE PAYMENT THEREOF BY AUTHORIZING THE LEVY OF AN ANNUAL AD VALOREM TAX; AND APPROVING AND AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT, A PURCHASE LETTER, AND ALL OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO – DIRECTOR OF FINANCE**

Director of Finance, Katie Griffin, presented the following information:

Budgeted Capital Projects for FY 2016-2017 include the construction of improvements to the City's Animal Control Department Facilities and its Public Works Department Facilities funded using reserves in the General and Water/Waste Water funds. To lessen the impact on the General Fund balance, an additional method of funding includes the issuance of Texas Tax Note, Series 2016. Ordinance No. 2145 will put in motion the sale of notes of up to \$650,000. Funds from this sale will assist financing the facility improvements.

**PRIOR ACTIONS OR REVIEWS**

- The City Council adopted the 2016-2017 Fiscal Year Budget on September 6, 2016.

The adopted budget Capital Improvement Projects at the Public Works Facility totaling \$2.5M.

- On November 15, 2016, in conjunction with repayment options for overpayment of Sales and Use Tax Revenue from the State Comptroller, the City Council approved the Financing Plan for the Issuance of Tax Note, Series 2016, authorizing staff and consultants to proceed with document preparation.

### **DETAILS / STAFF ANALYSIS**

During the November 15th City Council meeting, discussion took place discussing issuance of a short term tax note in order to reduce the existing Debt Service Fund balance while making available General Fund balance for the repayment of Sales and Use taxes to the State.

In discussion with the City's Financial Advisor, Victor Quiroga of Frost Investment Service, we determined that issuing a short tax note would be a strategic financing tool leveraging existing fund balances. Since the City has a good credit rating and sound financial policies, the use of Tax Notes provides a low interest rate. The rates are anticipated to be between 1.25% and 2.0%. The Series 2016 Tax Note will be paid in full on or before September 30, 2017 to avoid adversely affecting the 2017 I&S Tax Rate.

The financial plan presented includes \$635,000 for facility improvements and an additional \$15,000 for issuance costs; totaling \$650,000.

The sale of Tax Notes to fund facility improvements is consistent with the Council's operating vision to allocate sufficient resources to improve and maintain existing facilities thereby protecting the public's investment in its assets. The repayment plan for these notes exceeds the City's practice of tying the term of debt to the useful life of an asset.

Victor Quiroga, Jr. with Frost Bank, the City's Financial Advisor, along with our bond counsel, Tom Spurgeon of McCall, Parkhurst and Horton, are managing the issuance process. Both have collaborated and developed the offering statement and other documentation necessary to sell the notes on the market.

Mr. Quiroga will be present during the December 6, 2016 City Council meeting to present the bids and associated documents for the 2016 Tax Note Issuance.

### **ALTERNATIVES CONSIDERED**

The Capital Improvement Projects funded by this note are part of the adopted 2016-2017 Fiscal Year Budget and funded by either a line of credit or some other means of financing. Alternatives considered include use of fund balance or pushing the expenditures out to future years.

### **FINANCIAL IMPACT**

The funding of capital projects was adopted during the budget process and includes the Public Works facility improvements, Sports Complexes improvements, Indian Point Pavilion, Violet Andrews-Sunset Park Elevated Hike and Bike Bridge, and Doyle Addition Wastewater connections.

The issuance of Tax Notes will assist with the budgeted use of reserves for the Public Works Facility improvements. This issuance will result in low interest rates, minimizing the cost of the notes. The City can obtain a competitive rate since we have a good credit rating of AA with Standard & Poor's. Additionally, paying off the note using Debt Service Fund balance by September 30, 2017 will prevent an increase to the 2017 I&S Tax Rate for future note payments.

Victor Quiroga, Jr. with Frost Bank, the City's Financial Advisor, introduced Bond Counsel, Tom Spurgeon and Dave Juarez of McCall, Parkhurst and Horton.

Mr. Quiroga then presented and reviewed the following information:

**CITY OF PORTLAND, TEXAS  
Sale Results for the  
Issuance of \$650,000 Tax Notes, Series 2016**

**Detailed Debt Service Schedule**

<b>Period Ending</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Debt Service</b>	<b>Annual Debt Service</b>
8/15/2017			7,320.08	7,320.08	
9/30/2017					7,320.08
2/15/2018	650,000	1.74%	5,655.00	655,655.00	
9/30/2018					655,655.00
<b>Total:</b>	<b>650,000</b>		<b>12,975.08</b>	<b>662,975.08</b>	<b>662,975.08</b>

**The Tax Notes are callable at any time.**

**Final Term Sheet for the Tax Notes, Series 2016**

- Sale Date: December 6, 2016
- Closing Date: December 22, 2016
- Tax Status: Tax-Exempt, Bank Qualified
- Purpose: Improvements to the Public Works Facility and/or Animal Control Facility
- Interest rate: **Fixed rate of 1.74%**
- Interest Dates: Semi-annual on (2/15) and (8/15); first payment on 8/15/2017
- Principal Dates: One maturity due 2/15/2018
  
- Call Option:** **Anytime at Par plus Accrued Interest**
- Security: Ad Valorem Property Taxes
- Ratings: None
- Sale Type: Private Placement
- Purchaser: Broadway Bank

The City Council, City Manager and Mr. Quiroga discussed the Detailed Debt Service Schedule and the Final Term Sheet for the Tax Notes, Series 2016.

Council Member Skurow made the motion to approve Ordinance No. 2145 approving the issuance of the City of Portland, Texas Tax Note, Series 2016, seconded by Council Member Green.

The motion passed with the following vote:

Aye: 5 - Mayor Krebs, Mayor Pro Tem Green, Council Member Jorgensen, Council Member Skurow and Council Member Wilson

Nay: 0 -

Absent: 1 - Council Member Moore

Abstained: 0 - Council Member Taggart

Mayor Krebs read the following caption:

#### **ORDINANCE NO. 2145**

**ORDINANCE AUTHORIZING THE ISSUANCE OF \$650,000 IN PRINCIPAL AMOUNT OF CITY OF PORTLAND, TEXAS TAX NOTE, SERIES 2016; SECURING THE PAYMENT THEREOF BY AUTHORIZING THE LEVY OF AN ANNUAL AD VALOREM TAX; AND APPROVING AND AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT, A PURCHASE LETTER, AND ALL OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO**

- 8. AUTHORIZATION TO FILE LITIGATION:** THE CITY COUNCIL WILL CONSIDER THE FILING OF LITIGATION REGARDING THE CONSTRUCTION OF CITY HALL AND RETAINING THE LAW FIRM OF HARTLINE DACUS BARGER DREYER, LLP, TO REPRESENT THE CITY – CITY MANAGER

This item was not discussed.

#### **C. CITIZEN COMMENTS, QUESTIONS, REQUESTS, AND PROPOSALS NOT APPEARING ON THE AGENDA:**

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Amy Goldsmith, a resident at 115 Carmel Dr., voiced her opinion in support of an Ordinance for single-family dwelling in residential areas. She also voiced her concerns about standing water in front of her home due to in proper backfill while new meters were being installed.

**D. ADJOURNMENT: MAYOR KREBS**

Mayor Krebs adjourned the meeting at 9:31 p.m.

**NOTICE OF ASSISTANCE**

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**BRILLE IS NOT AVAILABLE**

Approved:

\_\_\_\_\_  
David Krebs  
Mayor

Attest:

\_\_\_\_\_  
City Secretary



## CITY COUNCIL ACTION ITEM

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**AGENDA TITLE**            **MUNICIPAL PARK AND SPORTS COMPLEX IMPROVEMENTS PROJECT CONTRACT**

THE CITY COUNCIL WILL CONSIDER A CONTRACT WITH HELLAS CONSTRUCTION INC., FOR A GUARANTEED MAXIMUM PRICE OF \$16,567,446.25 FOR THE CONSTRUCTION OF IMPROVEMENTS TO THE MUNICIPAL (13-ACRE) PARK AND SPORTS (SOFTBALL) COMPLEX AS AUTHORIZED BY THE VOTERS DURING THE BOND 2016 ELECTION

**FINANCING PLAN FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2017**

THE CITY COUNCIL WILL CONSIDER AND APPROVE A FINANCING PLAN FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2017, IN THE AMOUNT OF \$14,000,000

**MEETING DATE**            12/20/2016

**DEPARTMENT**            Administration

**SUBMITTED BY**            Randy Wright, City Manager  
Brian DeLatte, P.E., Assistant City Manager  
Katie Griffin, Finance Director

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**EXECUTIVE SUMMARY**

In May 2016, City voters approved a general obligation bond in the amount of \$25,200,000 for improvements to the Community Center, Municipal (13-Acre) Park, and Sports (Softball) Complex. In August 2016, the City Council authorized the City Manager to begin contract negotiations with Hellas Construction, Inc. (Hellas) for the improvements to the Sports Complex and Municipal Park. Hellas has prepared schematic layouts, design elements, budgets, and schedules for the proposed improvements. The City’s consulting financial advisor Frost Bank has prepared a financing plan for the project, which includes the \$3,500,000 Certificate of Obligation issued in 2015 and a \$14,000,000 general obligation bond to be issued in February 2017. If approved by the City Council, Hellas would begin construction December 21, 2016, and would be completed with the project by September 2017.

**PRIOR ACTIONS OR REVIEWS**

- April 7, 2015—The City Council engaged Coym, Rehmet, & Gutierrez Engineering, LP, to develop preliminary 30% plans for Municipal Park and the Sports Complex
- December 1, 2015—The City Council reviewed the 30% plans for Municipal Park and the Sports Complex

- May 17, 2016—The City Council canvassed the returns of the May 7, 2016, election authorizing the issuance of General Obligation debt to support the projects
- May 17, 2016—The City Council authorized City Staff to issue a Request for Qualifications for Design-Build
- June 7, 2016—The City Council engaged AGCM to provide construction management services for the project
- August 16, 2016—The City Council authorized the City Manager to begin contract negotiations with Hellas Construction, Inc.

### **DETAILS / STAFF ANALYSIS**

The City solicited Statements of Qualifications (SOQ) for Design-Build in accordance with Texas Government Code Chapter 2269 Subchapter G from contractors interested and qualified to provide improvements to the Municipal Park and Sports Complex. Hellas was selected by the City Council from a pool of qualified contractors. City Staff has worked with Hellas over the last several months to determine the project's Guaranteed Maximum Price, the final scope of the project, and the construction schedule.

City Staff and Hellas met with the sports leagues and other stakeholders to ensure that the design was a community-driven process prior to finalizing the schematic layouts. City Staff gave direction to Hellas that the complexes must fulfill three missions: (1) create destination parks for Portland's residents; (2) create high quality fields for league play for Portland youth; and (3) create tournament-caliber complexes to host large tournaments that attract visitors to Portland.

Hellas is proposing an AIA A141 design-build agreement. The agreement includes the schematic layouts, schematic-level specifications, and a line-item GMP budget. Hellas's proposal is \$16,567,446.26 with a schedule of approximately eight (8) months. Key elements of Hellas's proposed scope include:

#### **Sports Complex**

- 4 artificial turf softball fields with lighting, covered bleachers, and sound system
- Artificial turf UIL size football/soccer field with lighting, covered bleachers, and sound system
- Artificial turf multipurpose field to be open to the public
- Natural grass football/soccer practice field
- Concession stand, picnic pavilion, playground, BBQ pits, and splash pad
- 4 batting cage lanes
- Increased parking

#### **Municipal Park**

- 5 artificial turf baseball fields with lighting, covered bleachers, and sound system
- Concession stand, picnic pavilion, playground, BBQ pits, outdoor exercise equipment, and splash pad

- Covered basketball pavilion
- 4 batting cage lanes
- Jogging/hiking path around complex with acrylic surface
- Increased parking

General

- Both complexes will be completely closed for the duration of the construction period. Partial or early occupancy is not anticipated.
- All artificial turf fields will utilize the same turf system as the G-PISD football stadium with natural Geoinfill. No rubber infill will be utilized.
- All baseball and softball fields are designed to be used for the opposite sport, as well as soccer or youth football.
- Temporary fields will be constructed at Chatwork Park, Simpson Park, and G-PISD property for the Spring 2017 seasons so that no league play will be lost during the construction.

**ALTERNATIVES CONSIDERED**

None.

**FINANCIAL IMPACT**

The contract's Guaranteed Maximum Price of \$16,567,446.25 is within the project's construction budget:

Project Management

Construction Management	\$425,000.00
Geotechnical / Materials Testing	\$100,000.00
Architectural Services	\$5,000.00
Platting	\$10,000.00
Legal	\$10,000.00

Preliminary Design

Coym, Rehmet, & Gutierrez	\$125,000.00
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Construction

Sports Complex	\$8,519,793.18
Municipal Park	\$8,047,653.07

Capital Equipment

\$100,000.00

Construction Contingency

\$557,553.75

**Total Expenditures \$17,900,000.00**

The attached financing plan covers the anticipated first installment of bond proceeds in the amount of \$14,000,000. The amount of bond proceeds required is based on the current drawdown schedule. The City Council will consider authorizing the City Manager and the Consulting City Financial Advisor to proceed with the necessary document preparation to issue \$14,000,000 in bonds. According to the plan's timeline, interest rates will be locked in on February 7, 2017 and the City's project account will be funded on March 8, 2017.

### **ATTACHMENTS**

1. Proposed Contract
  - a. AIA A141-2014
  - b. AIA A141-2014 Exhibit A
  - c. AIA A141-2014 Exhibit B
  - d. Attachment A (Municipal Park Cost Breakdown)
  - e. Attachment B (Sports Complex Cost Breakdown)
  - f. Attachment C (Drawings)
    - i. Municipal Park Illustrated
    - ii. Municipal Park Rendering
    - iii. Municipal Park Schematic Concession Building
    - iv. Sports Complex Illustrated
    - v. Sports Complex Rendering
    - vi. Sports Complex Schematic Concession Building
  - g. Attachment D (Municipal Park scope)
  - h. Attachment E (Sports Complex scope)
2. Financing Plan for the Issuance of \$14,000,000 General Obligation Bonds, Series 2017

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### **RECOMMENDED ACTION**

Adopt motions that:

- 1) Authorizes the City Manager to execute all necessary contract documents with Hellas Construction, Inc., on the Sports Complex and Municipal Park Improvements with a Guaranteed Maximum Price of \$16,567,446.25.
- 2) Authorizes the City Manager to issue a Notice to Proceed on construction on December 21, 2016, with a substantial completion date of September 15, 2017.
- 3) Approves the financing plan and authorizes the City Manager and the City's Consulting Financial Advisor to proceed with necessary document presentation for the issuance of General Obligation Bonds, Series 2017 in the amount of \$14,000,000.



**AIA**<sup>®</sup>

# Document A141<sup>™</sup> – 2014

## ***Standard Form of Agreement Between Owner and Design-Builder***

**AGREEMENT** made as of the 20th day of December in the year two thousand sixteen  
*(In words, indicate day, month and year.)*

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

City of Portland  
1900 Billy G. Webb  
Portland, Texas 78374

and the Design-Builder:  
*(Name, legal status, address and other information)*

Hellas Construction, Inc.  
12710 Research Blvd, Ste. 240  
Austin, Texas 78759

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

City of Portland Bond 2016 Municipal Park and Sports Complex Improvements  
Portland, Texas

The Owner and Design-Builder agree as follows.

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

## TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- C SUSTAINABLE PROJECTS

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

#### § 1.1.1 The Owner's program for the Project:

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

#### § 1.1.2 The Owner's design requirements for the Project and related documentation:

Init.

*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

- **Request for Qualifications for Design-Build City of Portland Bond 2016 Municipal Park and Sports Complex Improvements dated May 17, 2016, Addendum 1, Addendum 2.**
- **Owner's Exhibit C - Owner's Specifications**
- **Owner's Exhibit D – Allowable General Condition Line Items**

**§ 1.1.3** The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

**Subsurface Investigation, Laboratory Testing Program and Foundation and Pavement Recommendations, Portland Parks Project Sports Complex Intersection of County Road 72 and county Road 72A and 13-Acre/Municipal Park Intersection of Memorial Parkway and Lang Road, Portland, Texas-Report Number G115175 prepared by Rock Engineering & Testing Laboratory, Inc. dated August 27, 2015.**

**§ 1.1.4** The Owner's anticipated Sustainable Objective for the Project, if any:

*(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)*

**None.**

**§ 1.1.5** Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

*(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)*

**None.**

**§ 1.1.6** The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

*(Provide total for Owner's budget, and if known, a line item breakdown of costs.)*

**§ 1.1.7** The Owner's design and construction milestone dates:

*(Paragraphs deleted)*

**Start Date: December 21, 2016**

**Substantial Completion Date: September 15, 2017**

*(Paragraphs deleted)*

.1

**§ 1.1.8** The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

*(List name, legal status, address and other information.)*

.1 Architect

Brian Rhodes, AIA  
TX License No. 18173  
Rhodes Architecture, Inc.

Int.

600 S. Tyler, Ste. 1501  
Amarillo, TX 79101  
806-468-7641

.2 Engineers

Sports/Civil Engineer:

Larry Tait, P.E.  
TX License No. 54419  
Tait-Pitkin Sports Engineers  
917 Yellowstone Drive  
Taylor, TX 76574  
[larry@tait-pitkin.com](mailto:larry@tait-pitkin.com)  
Office: (512) 352-3300  
Cell (512) 775-4328  
Fax: (512) 352-3300

Civil Engineer:

Donnie Rehmet, PE, RPLS  
TBPE F1386  
LJA Engineering, Inc.  
820 Buffalo Street  
Corpus Christi, Texas 78401-2216  
[drehmet@ljaengineering.com](mailto:drehmet@ljaengineering.com)  
Phone: 361-887-8851  
Fax: 361-887-8855

MEP Engineer:

Justin Fincher, P.E.  
Fincher Engineering, LLC  
12402 Slide Road, Suite 403  
Lubbock, TX 79424  
[justin@finchereng.com](mailto:justin@finchereng.com)  
[www.finchereng.com](http://www.finchereng.com)  
Office: (806) 701-5109  
Cell: (806) 787-1121

Structural Engineer:

Larry Brooks, P.E.  
License 24289  
13675 Mescalero Trail  
Amarillo, TX 79118

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:  
*(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)*

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

Init.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

## § 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:  
*(List name, address and other information.)*

Randy L. Wright, City Manager  
Brian DeLatte, P.E., Assistant City Manager  
City of Portland  
1900 Billy G. Webb  
Portland, TX 78374  
Phone: (361) 777-4516  
[rwright@portlandtx.com](mailto:rwright@portlandtx.com)  
[brian.delatte@portlandtx.com](mailto:brian.delatte@portlandtx.com)

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:  
*(List name, address and other information.)*

AGCM Inc.  
Paul Jackowski  
1101 Ocean Drive  
Corpus Christi, TX 78403  
[pjackowski@agcm.com](mailto:pjackowski@agcm.com)  
Office: 361-882-0469  
Cell: 361-429-7869

§ 1.2.3 The Owner will retain the following consultants and separate contractors:  
*(List discipline, scope of work, and, if known, identify by name and address.)*

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:  
*(List name, address and other information.)*

Reed J. Seaton, President and CEO  
Hellas Construction, Inc.  
12710 Research Blvd, Ste. 240  
Austin, Texas 78750  
Phone: (512) 250-2910  
Fax: (512) 250-1960

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

### § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

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

- [ X ] Arbitration pursuant to Section 14.4
- [ ] Litigation in a court of competent jurisdiction
- [ ] Other: *(Specify)*

### § 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 **Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

§ 1.4.16 **Owner's Architect or Engineer.** The Owner's Architect or Engineer is the Architect or Engineer selected by the Owner to fulfill the requirement to act as the Owner's representative in Section 2260.305 of the Texas Government Code.

§ 1.4.17 **Owner's Consultations.** The Owner's consultants are these individuals or companies hired by the Owner to provide the construction materials, engineering, testing, and inspection services and the verification testing services as necessary to comply with Section 2269.05 of the Texas Government Code.

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

### § 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Individual or Position

Rate

init.

**§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment**

**§ 2.1.3.1** Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

**§ 2.1.3.2** For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of two percent ( 2 %) of the expenses incurred.

**§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment**

**§ 2.1.4.1** Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.  
*(Insert rate of monthly or annual interest agreed upon.)*

Interest on unpaid amounts due shall accrue in accordance with the Texas Public Prompt Payment Act, Chapter 2251 Texas Government Code or the Texas Private Prompt Payment Act, Chapter 28 of Texas Property Code, whichever is applicable.

**§ 2.1.4.2** Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

**§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment**

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

**ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**

**§ 3.1 General**

**§ 3.1.1** The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

**§ 3.1.2** The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

**§ 3.1.3** The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

**§ 3.1.3.1** The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.1.3.2** Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful

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orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

### § 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

### § 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

**§ 3.1.10 Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

**§ 3.1.11 Design-Builder's Submittals**

**§ 3.1.11.1** Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

**§ 3.1.11.2** By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

**§ 3.1.11.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

**§ 3.1.11.4** The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

**§ 3.1.11.5** All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ 3.1.11.6** After selection of the Design-Builder, the Design-Builder's architects or engineer shall submit all design elements for review and determination of scope compliance to the Owner or Owner's Architect or Engineer before or concurrently with construction.

**§ 3.1.11.7** The Design-Builder shall supply a set of construction documents for the completed project to the Owner at the end of construction. The documents must note any changes made in construction.

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

**§ 3.1.13 Royalties, Patents and Copyrights**

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees.

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

**§ 3.1.14 Indemnification**

**§ 3.1.14.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

**§ 3.1.14.2** The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts except as allowed by law.

**§ 3.1.15 Contingent Assignment of Agreements**

**§ 3.1.15.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

**§ 3.1.15.2** Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 3.1.15.3** Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

**§ 3.1.16 Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B and the Bonds shall be provided in accordance with Section 2269.311 of the Texas Government Code.

**ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**

**§ 4.1 General**

**§ 4.1.1** Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

#### § 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:  
*(List additional information, if any, to be included in the Design-Builder's written report.)*

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

#### § 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

#### § 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

§ 4.4.4 The Owner reserves the right to elect or convert the Contract to a stipulated sum contract with the concurrence of the Design-Builder.

## ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

### § 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

### § 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment unless the Owner has issued a limited Notice to Proceed.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 5.3 Labor and Materials

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

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

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

#### § 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. Owner will provide Texas tax exemption certificate to Design-Builder.

#### § 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

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

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

#### § 5.6 Allowances

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

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

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§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

### § 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder understands it may be required to run criminal background checks on all project employees. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

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

### § 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

### § 5.9 Use of Site

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

### § 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

### § 5.11 Cleaning Up

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

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### § 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

#### § 5.13 Construction by Owner or by Separate Contractors

##### § 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

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

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

#### § 5.14 Mutual Responsibility

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

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

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

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

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

### **§ 5.15 Owner's Right to Clean Up**

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

## **ARTICLE 6 CHANGES IN THE WORK**

### **§ 6.1 General**

**§ 6.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

**§ 6.1.2** A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

**§ 6.1.3** Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

### **§ 6.2 Change Orders**

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### **§ 6.3 Change Directives**

**§ 6.3.1** A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

**§ 6.3.3** If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

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

**§ 6.3.5** Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

**§ 6.3.6** A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in

the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

**§ 7.2.2** The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

**§ 7.2.3** The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

**§ 7.2.4** The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

**§ 7.2.5** The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

**§ 7.2.6** If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

**§ 7.2.7** Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

**§ 7.2.8** Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

**§ 7.2.9** Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

**§ 7.2.10** The Owner shall purchase and maintain insurance as set forth in Exhibit B.

### **§ 7.3 Submittals**

**§ 7.3.1** The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate

review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 7.3.2** Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

**§ 7.4** Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

**§ 7.5** The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

**§ 7.6** The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 7.7** The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

#### **§ 7.8 Owner's Right to Stop Work**

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

#### **§ 7.9 Owner's Right to Carry Out the Work**

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

### **ARTICLE 8 TIME**

#### **§ 8.1 Progress and Completion**

**§ 8.1.1** Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.1.2** The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## § 8.2 Delays and Extensions of Time

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

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents or as allowed by law.

## ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

### § 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the

Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 Certificates for Payment**

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

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

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

**§ 9.5.3** If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

#### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

**§ 9.6.2** The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

**§ 9.6.3** The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the

Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

**§ 9.6.4** The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

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

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

**§ 9.6.7** Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

#### **§ 9.7 Failure of Payment**

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

#### **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

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

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

**§ 9.8.4** Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

**§ 9.8.5** When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the

date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

#### § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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

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

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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

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

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

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

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

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

### § 10.3 Hazardous Materials

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

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

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

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

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

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as

required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

### **ARTICLE 11 UNCOVERING AND CORRECTION OF WORK**

#### **§ 11.1 Uncovering of Work**

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

#### **§ 11.2 Correction of Work**

**§ 11.2.1 Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

#### **§ 11.2.2 After Substantial Completion**

**§ 11.2.2.1** In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

**§ 11.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

**§ 11.2.3** The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

**§ 11.2.4** The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

**§ 11.2.5** Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to

correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

#### **§ 11.3 Acceptance of Nonconforming Work**

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

### **ARTICLE 12 COPYRIGHTS AND LICENSES**

**§ 12.1** Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

**§ 12.2** The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ 12.3** Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

**§ 12.3.1** The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

**§ 12.3.2** In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

Init.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment**

**§ 13.1.1** If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

**§ 13.1.2** If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

**§ 13.1.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

**§ 13.1.4** Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 13.1.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

**§ 13.1.6** In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

### **§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment**

#### **§ 13.2.1 Termination by the Design-Builder**

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

**§ 13.2.1.2** The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

### § 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder, unless breached by Contractors;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon unless owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall be paid for work completed along with reasonable overhead & profit on the Work completed.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

### § 13.2.3 Suspension by the Owner for Convenience

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

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

### § 13.2.4 Termination by the Owner for Convenience

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

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

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

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

## ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

### § 14.1 Claims

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

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

### § 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 14.1.6 Claims for Additional Time

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

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

#### **§ 14.1.7 Claims for Consequential Damages**

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

#### **§ 14.2 Initial Decision**

**§ 14.2.1** An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

#### **§ 14.2.2 Procedure**

**§ 14.2.2.1 Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

**§ 14.2.2.2 Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

**§ 14.2.3** In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

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

**§ 14.2.5** The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 14.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

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

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

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

### § 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the terms of this section. Request for mediation shall be initiated by giving the other party to the Design-Build Contract written notice. The parties agree to discuss in good faith with each other and with the mediator the exchange of relevant information prior to or during mediation if, in any party's view, such an exchange is necessary to engage in meaningful settlement discussions. Unless excused by the mediator, representatives of each party who have authority to resolve the dispute shall attend the mediation sessions. The parties agree that it, in the mediator's judgment, the attendance of non-signatories to the Design-Build Contract is necessary to or desirable in resolving the dispute, the mediator has discretion to request the voluntary attendance of those persons. The parties further agree that they will use their best efforts to obtain the voluntary attendance at mediation of all such non-signatories with whom they have a relationship or over whom they have influence or control. The initial mediation session will occur at a time mutually agreed on by the parties in consultation with the mediator, though no later than thirty (30) days from service of the initial notice, unless otherwise agreed by the parties and the mediator. If the parties are unable to settle through mediation the matters to be mediated pursuant to this agreement, and the matter proceeds to arbitration, the parties may by mutual agreement engage in further attempts to settle the dispute by mediation or other non-binding dispute resolution methods. It is the parties' intention that further mediation efforts be by mutual agreement only, and not by court order. The mediation mandated in this clause shall satisfy the requirements, if any, of court-annexed alternative dispute resolution programs.

The mediation will be deemed to continue, and thus not to have concluded, until: (a) a written settlement agreement is executed by all parties; or (b) the mediator gives written notice of conclusion of the mediation to the parties; or (c) a party gives written notice of withdrawal. No party may withdraw from the mediation until three (3) business days following the initial mediation session. Thereafter, if the matter has not been resolved, either party may by written notice withdraw from the mediation. Except as otherwise provided in this agreement, no party may initiate arbitration prior to the conclusion of mediation as defined by this paragraph.

The mediator will be chosen by mutual agreement of the parties. If the parties cannot reach agreement on selection of a mediator within five (5) days after service of the notice initiating mediation, then either party may initiate arbitration in accordance with the terms of this contract which shall be subject to abatement until such time as the tribunal appoints a mediator of the tribunal's choosing and the authorized mediation process is concluded.

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

### § 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Prevailing party may recover attorney fees & expenses, including expert consultant fees and costs from the non-prevailing party.

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

#### § 14.4.4 Consolidation or Joinder

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

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

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

### ARTICLE 15 MISCELLANEOUS PROVISIONS

#### § 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Texas Arbitration Act shall govern Section 14.4.

#### § 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § 15.3 Written Notice

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

### § 15.4 Rights and Remedies

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

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

### § 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder such as those situations set forth under Section 2269.058 of the Texas Government Code.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those

employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

**§ 15.7 Capitalization**

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

**§ 15.8 Interpretation**

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

**§ 15.8.2** Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

**ARTICLE 16 SCOPE OF THE AGREEMENT**

**§ 16.1** This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds

*(Paragraphs deleted)*

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

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DESIGN-BUILDER** *(Signature)*

Reed J. Seaton  
\_\_\_\_\_  
*(Printed name and title)*

# **Additions and Deletions Report for** **AIA® Document A141™ – 2014**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:46:10 on 12/13/2016.

**PAGE 1**

**AGREEMENT** made as of the 20th day of December in the year two thousand sixteen

...

City of Portland  
1900 Billy G. Webb  
Portland, Texas 78374

...

Hellas Construction, Inc.  
12710 Research Blvd, Ste. 240  
Austin, Texas 78759

...

City of Portland Bond 2016 Municipal Park and Sports Complex Improvements  
Portland, Texas

**PAGE 3**

- Request for Qualifications for Design-Build City of Portland Bond 2016 Municipal Park and Sports Complex Improvements dated May 17, 2016, Addendum 1, Addendum 2.
- Owner's Exhibit C - Owner's Specifications
- Owner's Exhibit D – Allowable General Condition Line Items

...

Subsurface Investigation, Laboratory Testing Program and Foundation and Pavement Recommendations, Portland Parks Project Sports Complex Intersection of County Road 72 and county Road 72A and 13-Acre/Municipal Park Intersection of Memorial Parkway and Lang Road, Portland, Texas-Report Number G115175 prepared by Rock Engineering & Testing Laboratory, Inc. dated August 27, 2015.

...

None.

...

None.

...

~~.1 Design phase milestone dates:~~

~~.2 Submission of Design Builder Proposal:~~

~~.3 Phased completion dates:~~

**Start Date: December 21, 2016**

~~.4 Substantial Completion date:~~ **Date: September 15, 2017**

~~.5 Other milestone dates:~~

~~.1~~

...

Brian Rhodes, AIA  
TX License No. 18173  
Rhodes Architecture, Inc.  
600 S. Tyler, Ste. 1501  
Amarillo, TX 79101  
806-468-7641

~~.2 Consultants~~

~~.2 Engineers~~

Sports/Civil Engineer:

Larry Tait, P.E.  
TX License No. 54419  
Tait-Pitkin Sports Engineers  
917 Yellowstone Drive  
Taylor, TX 76574  
larry@tait-pitkin.com  
Office: (512) 352-3300  
Cell (512) 775-4328  
Fax: (512) 352-3300

Civil Engineer:

Donnie Rehmet, PE, RPLS  
TBPE F1386  
LJA Engineering, Inc.  
820 Buffalo Street  
Corpus Christi, Texas 78401-2216  
drehmet@ljaengineering.com  
Phone: 361-887-8851  
Fax: 361-887-8855

MEP Engineer:

Justin Fincher, P.E.  
Fincher Engineering, LLC  
12402 Slide Road, Suite 403  
Lubbock, TX 79424  
justin@finchereng.com  
www.finchereng.com  
Office: (806) 701-5109  
Cell: (806) 787-1121

Structural Engineer:

Larry Brooks, P.E.  
License 24289  
~~3 Contractors~~ 13675 Mescalero Trail  
Amarillo, TX 79118

**PAGE 5**

Randy L. Wright, City Manager  
Brian DeLatte, P.E., Assistant City Manager  
City of Portland  
1900 Billy G. Webb  
Portland, TX 78374  
Phone: (361) 777-4516

...

AGCM Inc.  
Paul Jackowski  
1101 Ocean Drive  
Corpus Christi, TX 78403  
pjackowski@agcm.com  
Office: 361-882-0469  
Cell: 361-429-7869

...

Reed J. Seaton, President and CEO  
Hellas Construction, Inc.  
12710 Research Blvd, Ste. 240  
Austin, Texas 78750  
Phone: (512) 250-2910  
Fax: (512) 250-1960

**PAGE 6**

[  ] Arbitration pursuant to Section 14.4

**PAGE 7**

§ 1.4.16 Owner's Architect or Engineer. The Owner's Architect or Engineer is the Architect or Engineer selected by the Owner to fulfill the requirement to act as the Owner's representative in Section 2260.305 of the Texas Government Code.

§ 1.4.17 Owner's Consultations. The Owner's consultants are these individuals or companies hired by the Owner to provide the construction materials, engineering, testing, and inspection services and the verification testing services as necessary to comply with Section 2269.05 of the Texas Government Code.

PAGE 8

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of two percent (2%) of the expenses incurred.

...

%—Interest on unpaid amounts due shall accrue in accordance with the Texas Public Prompt Payment Act, Chapter 2251 Texas Government Code or the Texas Private Prompt Payment Act, Chapter 28 of Texas Property Code, whichever is applicable.

PAGE 10

§ 3.1.11.6 After selection of the Design-Builder, the Design-Builder's architects or engineer shall submit all design elements for review and determination of scope compliance to the Owner or Owner's Architect or Engineer before or concurrently with construction.

§ 3.1.11.7 The Design-Builder shall supply a set of construction documents for the completed project to the Owner at the end of construction. The documents must note any changes made in construction.

PAGE 11

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. ~~Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.~~

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts acts except as allowed by law.

...

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B-B and the Bonds shall be provided in accordance with Section 2269.311 of the Texas Government Code.

PAGE 13

§ 4.4.4 The Owner reserves the right to elect or convert the Contract to a stipulated sum contract with the concurrence of the Design-Builder.

...

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment. Amendment unless the Owner has issued a limited Notice to Proceed.

PAGE 14

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. Owner will provide Texas tax exemption certificate to Design-Builder.

PAGE 15

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder understands it may be required to run criminal background checks on all project employees. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

PAGE 21

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents. Documents or as allowed by law.

PAGE 30

- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the ~~Design-Builder~~ Design-Builder, unless breached by Contractors;

...

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon unless owned by the Design-Builder;

...

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall ~~not be entitled to receive further payment until the Work is finished.~~ be paid for work completed along with reasonable overhead & profit on the Work completed.

PAGE 33

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. ~~A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings in accordance with the terms of this section. Request for mediation shall be initiated by giving the other party to the Design-Build Contract written notice. The parties agree to discuss in good faith with each other and with the mediator the exchange of relevant information prior to or during mediation if, in any party's view, such an exchange is necessary to engage in meaningful settlement discussions. Unless excused by the mediator, representatives of each party who have authority to resolve the dispute shall attend the mediation sessions. The parties agree that it, in the mediator's judgment, the attendance of non-signatories to the Design-Build Contract is necessary to or desirable in resolving the dispute, the mediator has discretion to request the voluntary attendance of those persons. The parties further agree that they will use their best efforts to obtain the voluntary attendance at mediation of all such~~

non-signatories with whom they have a relationship or over whom they have influence or control. The initial mediation session will occur at a time mutually agreed on by the parties in consultation with the mediator, though no later than thirty (30) days from service of the initial notice, unless otherwise agreed by the parties and the mediator. If the parties are unable to settle through mediation the matters to be mediated pursuant to this agreement, and the matter proceeds to arbitration, the parties may by mutual agreement engage in further attempts to settle the dispute by mediation or other non-binding dispute resolution methods. It is the parties' intention that further mediation efforts be by mutual agreement only, and not by court order. The mediation mandated in this clause shall satisfy the requirements, if any, of court-annexed alternative dispute resolution programs.

The mediation will be deemed to continue, and thus not to have concluded, until: (a) a written settlement agreement is executed by all parties; or (b) the mediator gives written notice of conclusion of the mediation to the parties; or (c) a party gives written notice of withdrawal. No party may withdraw from the mediation until three (3) business days following the initial mediation session. Thereafter, if the matter has not been resolved, either party may by written notice withdraw from the mediation. Except as otherwise provided in this agreement, no party may initiate arbitration prior to the conclusion of mediation as defined by this paragraph.

The mediator will be chosen by mutual agreement of the parties. If the parties cannot reach agreement on selection of a mediator within five (5) days after service of the notice initiating mediation, then either party may initiate arbitration in accordance with the terms of this contract which shall be subject to abatement until such time as the tribunal appoints a mediator of the tribunal's choosing and the authorized mediation process is concluded.

PAGE 34

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Prevailing party may recover attorney fees & expenses, including expert consultant fees and costs from the non-prevailing party.

...

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the ~~Federal~~ Texas Arbitration Act shall govern Section 14.4.

PAGE 35

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the ~~Design-Builder~~ Design-Builder such as those situations set forth under Section 2269.058 of the Texas Government Code.

PAGE 36

~~4~~ AIA Document A141™ 2014, Exhibit C, Sustainable Projects, if completed  
~~5~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

~~6~~ Other:

...



**Certification of Document's Authenticity**  
AIA® Document D401™ – 2003

I, Reed J. Seaton, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:46:10 on 12/13/2016 under Order No. 3708779206\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

---

*(Title)*

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*(Dated)*



**AIA**<sup>®</sup>

# Document A141™ – 2014 Exhibit A

## Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the 20th day of December in the year two thousand sixteen (the "Agreement")  
*(In words, indicate day, month and year.)*

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

City of Portland Bond 2016 Municipal Park and Sports Complex Improvements  
Portland, Texas

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

City of Portland  
1900 Billy G. Webb  
Portland, Texas 78374  
Contact: Brian DeLatte, P.E.  
[Brian.delatte@portlandtx.com](mailto:Brian.delatte@portlandtx.com)

**THE DESIGN-BUILDER:**  
*(Name, legal status and address)*

Hellas Construction, Inc.  
12710 Research Blvd, Ste. 240  
Austin, Texas 78759

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

The Owner and Design-Builder hereby amend the Agreement as follows.

### TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

### ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the

Owner paid the Design-Builder for Work performed prior to execution of this Amendment:  
(Check the appropriate box.)

- Stipulated Sum, in accordance with Section A.1.2 below
- Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below
- Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

**§ A.1.2 Stipulated Sum**

**§ A.1.2.1** The Stipulated Sum with Guaranteed Maximum Price (GMP) shall be **sixteen million five hundred sixty-seven thousand four hundred forty-six dollars and twenty-five cents (\$16,567,446.25)** subject to authorized adjustments as provided in the Design-Build Documents.

**Breakdown**

<b>Sports Complex</b>	<b>\$8,519,793.18</b>
<b>13-Acre Municipal Park</b>	<b>\$8,047,653.07</b>

**§ A.1.2.2** The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)*

\$

**§ A.1.2.3** Unit prices, if any:

*(Identify item, state the unit price, and state any applicable quantity limitations.)*

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

**§ A.1.3 Cost of the Work Plus Design-Builder's Fee**

*(Intentionally deleted)*

*(Paragraphs deleted)*

**§ A.1.4.3 Guaranteed Maximum Price**

Refer to:

**Hellas Attachment A-Municipal 13-acre Park Estimate dated 12/13/16; and  
Hellas Attachment B-Sports Complex estimate dated 12/13/16.**

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

**§ A.1.5 Payments**

**§ A.1.5.1 Progress Payments**

**§ A.1.5.1.1** Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

**§ A.1.5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Init.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 30th day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 15th day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than fifteen ( 15 ) days after the Owner receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

#### § A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent ( 10 %) on the Work and then reduced to five percent (5%) upon completion of 50% of the work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage as stated above.
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

Init.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

(Intentionally deleted)

(Paragraphs deleted)

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

(Intentionally deleted)

(Paragraphs deleted)

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

## ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work as follows:

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

**Start Date: December 21, 2016**

**Portion of Work**

**Municipal Park and Sports Complex**

**Substantial Completion Date**

**September 15, 2017**

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

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

Init.

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

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

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

§ A.3.1.2 The Specifications:

*(Either list the specifications here or refer to an exhibit attached to this Amendment.)*

**Request for Qualifications for Design-Build City of Portland Bond 2016 Municipal Park and Sports Complex Improvements dated May 17, 2016.**

**Owner's Exhibit C Owner's Specifications**

**Owner's Exhibit D Allowable General Condition Line Items**

Section	Title	Date	Pages
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§ A.3.1.3 The Drawings:

*(Either list the drawings here or refer to an exhibit attached to this Amendment.)*

**See Hellas Attachment C – Thirteen Acre Municipal Park and Sports Complex drawings by Hellas Construction, Inc.**

§ A.3.1.4 The Sustainability Plan, if any:

*(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)*

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

Other identifying information:

§ A.3.1.5 Allowances and Contingencies:

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

.1 Allowances

Please see **Hellas Attachments D and E.**

.2 Contingencies

Int.

§ A.3.1.6 Design-Builder's assumptions and clarifications:

See the following proposals:

Hellas Attachment D- 13-Acre Municipal Park proposal dated 12/13/16; and  
Hellas Attachment E- Sports Complex proposal dated 12/13/16.

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

To be submitted through Procore provided by AGCM.

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

*(Identify name, title and contact information.)*

.1 Superintendents

Josh Davidson (Superintendent/Project Manager)

512-785-5226

[joshd@hellasconstruction.com](mailto:joshd@hellasconstruction.com)

Johnny Cash

512-773-2611

[jcash@hellasconstruction.com](mailto:jcash@hellasconstruction.com)

Timothy Smith

512-348-4771

[Tsmith@hellasconstruction.com](mailto:Tsmith@hellasconstruction.com)

.2 Project Managers:

Taylor Medlin

817-239-3350, cell

[tmedlin@hellasconstruction.com](mailto:tmedlin@hellasconstruction.com)

Brandon Pelt

512-417-1473, cell

[bpelt@hellasconstruction.com](mailto:bpelt@hellasconstruction.com)

.3 Others

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

*(List name, discipline, address and other information.)*

See A141Section 1.1.8 dated December 20, 2016..

Init.

**ARTICLE A.5 COST OF THE WORK**

**§ A.5.1 Cost To Be Reimbursed as Part of the Contract**

**§ A.5.1.1 Labor Costs**

**§ A.5.1.1.1** Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ A.5.1.1.2** With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

*(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

<b>Person Included</b>	<b>Status (full-time/part-time)</b>	<b>Rate (\$0.00)</b>	<b>Rate (unit of time)</b>
------------------------	-------------------------------------	----------------------	----------------------------

**§ A.5.1.1.3** Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ A.5.1.1.4** Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

**§ A.5.1.1.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

**§ A.5.1.2 Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

**§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ A.5.1.4.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

**§ A.5.1.4.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ A.5.1.4.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

**§ A.5.1.5 Miscellaneous Costs**

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable. Owner will provide a Texas tax exemption certificate to Design-Builder.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ A.5.1.6 Other Costs and Emergencies**

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

#### § A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

#### § A.5.2 Costs Not to Be Reimbursed as Part of this Contract

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

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

#### § A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ A.5.4.2** Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

**§ A.5.4.3** The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

**§ A.5.5 Accounting Records**

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

**§ A.5.6 Relationship of the Parties**

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

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

\_\_\_\_\_  
*OWNER (Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*DESIGN-BUILDER (Signature)*

\_\_\_\_\_  
Reed J. Seaton President and CEO

\_\_\_\_\_  
*(Printed name and title)*

Init.

# Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit A

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:49:49 on 12/13/2016.

## PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the 20th day of December in the year two thousand sixteen (the "Agreement")

...

City of Portland Bond 2016 Municipal Park and Sports Complex Improvements  
Portland, Texas

...

City of Portland  
1900 Billy G. Webb  
Portland, Texas 78374  
Contact: Brian DeLatta, P.E.  
Brian.delatta@portlandtx.com

...

Hellas Construction, Inc.  
12710 Research Blvd, Ste. 240  
Austin, Texas 78759

## PAGE 2

[  ] Stipulated Sum, in accordance with Section A.1.2 below

...

§ A.1.2.1 The Stipulated Sum shall be ~~(\$ )~~, with Guaranteed Maximum Price (GMP) shall be sixteen million five hundred sixty-seven thousand four hundred forty-six dollars and twenty-five cents (\$16,567,446.25) subject to authorized adjustments as provided in the Design-Build Documents.

### Breakdown

<u>Sports Complex</u>	<u>\$8,519,793.18</u>
<u>13-Acre Municipal Park</u>	<u>\$8,047,653.07</u>

...

§

...  
*(Intentionally deleted)*

~~§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.3.2 The Design Builder's Fee:~~

~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)*~~

~~§ A.1.4 Cost of the Work Plus Design Builder's Fee With a Guaranteed Maximum Price~~

~~§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.4.2 The Design Builder's Fee:~~

~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee and the method for adjustment to the Fee for changes in the Work.)*~~

Refer to:

Hellas Attachment A-Municipal 13-acre Park Estimate dated 12/13/16; and

Hellas Attachment B-Sports Complex estimate dated 12/13/16.

~~§ A.1.4.3.1 The sum of the Cost of the Work and the Design Builder's Fee is guaranteed by the Design Builder not to exceed (\$ \_\_\_\_\_), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design Builder without reimbursement by the Owner.~~

~~*(Insert specific provisions if the Design Builder is to participate in any savings.)*~~

~~§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price~~

~~Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design Builder's Fee, and other items that comprise the Guaranteed Maximum Price.~~

~~*(Provide information below or reference an attachment.)*~~

~~§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:~~

~~*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)*~~

~~§ A.1.4.3.4 Unit Prices, if any:~~

~~*(Identify item, state the unit price, and state any applicable quantity limitations.)*~~

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

PAGE 3

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 30th day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 15th day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than fifteen ( 15 ) days after the Owner receives the Application for Payment.

...

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ~~percent ( — %) on the Work~~ ten percent ( 10 % ) on the Work and then reduced to five percent (5%) upon completion of 50% of the work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~— percent ( — %) as stated above.~~

PAGE 4

*(Intentionally deleted)*

~~§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1 Take the Cost of the Work as described in Article A.5 of this Amendment;~~
- ~~.2 Add the Design-Builder's Fee, less retainage of — percent ( — %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.3 Subtract retainage of — percent ( — %) from that portion of the Work that the Design-Builder self performs;~~
- ~~.4 Subtract the aggregate of previous payments made by the Owner;~~
- ~~.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.~~

~~§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on~~

agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

*(Intentionally deleted)*

~~§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

~~§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.~~
- ~~2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;~~
- ~~3. Add the Design-Builder's Fee, less retainage of \_\_\_\_\_ percent (\_\_\_\_\_%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~4. Subtract retainage of \_\_\_\_\_ percent (\_\_\_\_\_%) from that portion of the Work that the Design-Builder self performs;~~
- ~~5. Subtract the aggregate of previous payments made by the Owner;~~
- ~~6. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~7. Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.~~

~~§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.~~

...

~~§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than \_\_\_\_\_ (\_\_\_\_\_) days from the date of this Amendment, or as follows:~~

...

**Start Date: December 21, 2016**

...

**Municipal Park and Sports Complex**

**September 15, 2017**

PAGE 5

**Request for Qualifications for Design-Build City of Portland Bond 2016 Municipal Park and Sports Complex Improvements dated May 17, 2016.**

**Owner's Exhibit C Owner's Specifications**  
**Owner's Exhibit D Allowable General Condition Line Items**

...

**See Hellas Attachment C – Thirteen Acre Municipal Park and Sports Complex drawings by Hellas Construction, Inc.**

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

...

**Please see Hellas Attachments D and E.**

PAGE 6

**See the following proposals:**  
**Hellas Attachment D- 13-Acre Municipal Park proposal dated 12/13/16; and**  
**Hellas Attachment E- Sports Complex proposal dated 12/13/16.**

...

**To be submitted through Procore provided by AGCM.**

...

**.1 Superintendent-Superintendents**

**Josh Davidson (Superintendent/Project Manager)**  
**512-785-5226**  
**[joshd@hellasconstruction.com](mailto:joshd@hellasconstruction.com)**

**Johnny Cash**  
**512-773-2611**  
**[jcash@hellasconstruction.com](mailto:jcash@hellasconstruction.com)**

**Timothy Smith**  
**512-348-4771**  
**[Tsmith@hellasconstruction.com](mailto:Tsmith@hellasconstruction.com)**

**.2 Project ManagerManagers:**

**Taylor Medlin**  
**817-239-3350, cell**  
**[tmedlin@hellasconstruction.com](mailto:tmedlin@hellasconstruction.com)**

**Brandon Pelt**  
**512-417-1473, cell**

...

**See A141Section 1.1.8 dated December 20, 2016..**

**PAGE 8**

**§ A.5.1.5.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable. Owner will provide a Texas tax exemption certificate to Design-Builder.

**PAGE 10**

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Reed J. Seaton President and CEO

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## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Reed J. Seaton, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:49:49 on 12/13/2016 under Order No. 3708779206\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*



**AIA**<sup>®</sup>

# Document A141™ – 2014 Exhibit B

## Insurance and Bonds

**for the following PROJECT:**

*(Name and location or address)*

City of Portland Bond 2016 Municipal Park and Sports Complex Improvements

**THE OWNER:**

*(Name, legal status and address)*

City of Portland  
1900 Billy G. Webb  
Portland, Texas 78374  
Contact: Brian DeLatte, P.E.  
[Brian.delatte@portlandtx.com](mailto:Brian.delatte@portlandtx.com)

**THE DESIGN-BUILDER:**

*(Name, legal status and address)*

Hellas Construction, Inc.  
12710 Research Blvd., Ste. 240  
Austin, Texas 78759

**ADDITIONS AND DELETIONS:**

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

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

**THE AGREEMENT**

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the 20th day of December in the year 2016 .

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

**TABLE OF ARTICLES**

- B.1 GENERAL**
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS**
- B.3 OWNER'S INSURANCE**
- B.4 SPECIAL TERMS AND CONDITIONS**

**ARTICLE B.1 GENERAL**

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

**ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS**

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required

insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

*(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ B.2.1.1 Commercial General Liability with policy limits of not less than one million (\$ 1,000,000 ) for each occurrence and two million dollars (\$ 2,000,000 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and ten million dollars (\$ 10,000,000 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within ten (10) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.6 **Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

*(Paragraphs deleted)*

**§ B.2.2 Performance Bond and Payment Bond**

The Design-Builder shall provide surety bonds as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Performance and Payment Bonds	Full contract amount

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## ARTICLE B.3 OWNER'S INSURANCE

### § B.3.1 Owner's Liability Insurance

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

### § B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

**§ B.3.2.4 Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

**§ B.3.2.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ B.3.2.6** Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ B.3.2.7 Waivers of Subrogation.** The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ B.3.2.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

**§ B.3.2.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

**§ B.3.2.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Init.

# **Additions and Deletions Report for** **AIA<sup>®</sup> Document A141<sup>™</sup> – 2014 Exhibit B**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:29:12 on 12/06/2016.

## **PAGE 1**

### City of Portland Bond 2016 Municipal Park and Sports Complex Improvements

...

City of Portland  
1900 Billy G. Webb  
Portland, Texas 78374  
Contact: Brian DeLatte, P.E.  
Brian.delatte@portlandtx.com

*(Name, legal status and address)*

Hellas Construction, Inc.  
12710 Research Blvd., Ste. 240  
Austin, Texas 78759

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the 20th day of December in the year 2016.

## **PAGE 2**

§ **B.2.1.1 Commercial General Liability with policy limits of not less than one million (\$ 1,000,000 ) for each occurrence and two million dollars (\$ 2,000,000 ) in the aggregate providing coverage for claims including**

...

§ **B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and ten million dollars (\$ 10,000,000 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.**

...

§ **B.2.1.5 Employers' Liability with policy limits as provided below:**  
**The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within ten (10) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.**

~~§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than — (\$ —) per claim and — (\$ —) in the aggregate. **Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.~~

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than — (\$ —) per claim and — (\$ —) in the aggregate.~~

~~§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$ —) per claim and — (\$ —) in the aggregate.~~

~~§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.~~

~~§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.~~

~~§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.~~

...

Performance and Payment Bonds

Full contract amount



Attachment A

12.13.16

Municipal 13 Acre Park

	Quantity	Unit	Unit Price	Amount	Extended
1					
2	32	WK	\$ 2,077.35	\$ 66,475.11	
3	32	WK	\$ 2,257.99	\$ 72,255.56	
4	1	LS	\$ 6,773.96	\$ 6,773.96	
5	8	MO	\$ 1,572.46	\$ 12,579.69	
6	8	MO	\$ 212.25	\$ 1,698.01	
7	8	EA	\$ 619.59	\$ 4,956.73	
8	8	MO	\$ 1,354.79	\$ 10,838.33	
9	1	LS	\$ 2,890.22	\$ 2,890.22	
10	16	EA	\$ 260.00	\$ 4,160.00	
11					\$ 182,627.62
12	9	MO	\$ 567.00	\$ 5,103.00	
13	1	LS	\$ 335.00	\$ 335.00	
14					\$ 5,438.00
15					
16	1	LS	13485.13	\$ 13,485.13	
17	1	LS	84628.19	\$ 84,628.19	
18	1	LS	42313.65	\$ 42,313.65	
19	1	LS	42314.54	\$ 42,314.54	
20	1	LS	7911.28	\$ 7,911.28	
21					\$ 190,652.79
22	1	LS	\$ 18,672.41	\$ 18,672.41	\$ 18,672.41
23	3720	LF	\$ 3.23	\$ 12,015.25	\$ 12,015.25
24	8	MO (7-8 pieces )	\$ 30,229.17	\$ 241,833.36	\$ 241,833.36
25	1	LS	\$ 53,462.25	\$ 53,462.25	\$ 53,462.25
26	87745	SY	\$ 1.39	\$ 122,269.46	\$ 122,269.46
27	388	LD	\$ 123.69	\$ 47,993.51	\$ 47,993.51
28					
29	4	EA	\$ 2,012.20	\$ 8,048.79	
30	560	LF	\$ 41.15	\$ 23,042.67	
31	400	LF	\$ 27.18	\$ 10,870.81	
32	1500	LF	\$ 18.03	\$ 27,037.69	
33					\$ 68,999.97
34					
35	2	EA	\$ 6,141.13	\$ 12,282.26	
36	240	LF	\$ 21.13	\$ 5,070.41	
37					\$ 17,352.67
38	440	LF	\$ 54.68	\$ 24,058.37	\$ 24,058.37
39	37735	SY	\$ 5.45	\$ 205,580.02	\$ 205,580.02
40					
41	1446	LF	\$ 14.80	\$ 21,397.45	
42	483	LF	\$ 13.18	\$ 6,365.68	
43					\$ 27,763.13
44					
45	8149	SF	\$ 8.01	\$ 65,274.86	
46	1549	SF	\$ 10.10	\$ 15,638.50	\$ 80,913.36
47	2	EA	\$ 496.76	\$ 993.51	\$ 993.51
48					
49	1	LS	\$ 70,122.68	\$ 70,122.68	
50	1	LS	\$ 53,041.52	\$ 53,041.52	
51	1	LS	\$ 17,980.18	\$ 17,980.18	
52	1	LS	\$ 40,314.25	\$ 40,314.25	
53	1	LS	\$ 20,277.14	\$ 20,277.14	
54					\$ 201,735.77
55	12	EA	\$ 2,037.15	\$ 24,445.85	
56	1	LS	\$ 19,221.71	\$ 19,221.71	
57	2	EA	\$ 7,015.11	\$ 14,030.22	
58	4	EA	\$ 9,830.00	\$ 39,320.00	
59	4	EA	\$ 2,550.00	\$ 10,200.00	
60					\$ 107,217.78
61	1	EA	\$ 17,451.56	\$ 17,451.56	\$ 17,451.56
62					

63	4' Ornamental fence 1"	696	LF	\$ 39.29	\$ 27,343.53	
64	Fencing					\$ 27,343.53
65	Site Electrical & SVC.					
66	Site Electrical	1	LS	\$ 137,043.02	\$ 137,043.02	
67	Electrical Service	1	LS	\$ 80,566.39	\$ 80,566.39	
68	Site Electrical & SVC.					\$ 217,609.41
69	Synthetic Turf Accessories					
70	Kubota BX 2370	1	EA	\$ 10,822.08	\$ 10,822.08	
71	Clean sweep	1	EA	\$ 9,268.58	\$ 9,268.58	
72	Geo Groomer	1	EA	\$ 4,967.57	\$ 4,967.57	
73	Synthetic Turf Accessories					\$ 25,058.23

**GC Site Common Areas**

**\$ 1,897,041.95**

Pod Pricing

1 - Pony Baseball Field	1	LS	\$ 941,567.05	\$ 941,567.05
1A - Batting Cage	2	LS	\$ 38,570.68	\$ 77,141.36
2 - Bronco Baseball Field	1	LS	\$ 606,784.56	\$ 606,784.56
3 - Bronco Baseball Field	1	LS	\$ 607,516.75	\$ 607,516.75
4 - Pinto Baseball Field	1	LS	\$ 477,339.22	\$ 477,339.22
5 - T-Ball Baseball Field	1	LS	\$ 366,168.01	\$ 366,168.01
6 - Large Sail Shade Structure	1	LS	\$ 40,847.74	\$ 40,847.74
7 - Concession Building, HVAC & Breezeway	1	LS	\$ 496,953.88	\$ 496,953.88
8 - Basketball Pavilion	1	LS	\$ 244,289.65	\$ 244,289.65
9 - Decomposed Granite	1	LS	\$ 143,981.14	\$ 143,981.14
10 - Concessions Pavilion	1	LS	\$ 66,904.15	\$ 66,904.15
11 - Splash Pad Allowance	1	LS	\$ 250,000.00	\$ 250,000.00
12 - Picnic Shelters, Shelter Tables & Grills	1	LS	\$ 60,437.49	\$ 60,437.49
13 - Playground with Sail Cover & Turf	1	LS	\$ 55,404.21	\$ 55,404.21
13-A 5 Piece Workout Area	1	LS	\$ 25,111.52	\$ 25,111.52
14 - Asphalt Walking Trail	1	LS	\$ 172,417.14	\$ 172,417.14
15 - Maintenance Building	1	LS	\$ 68,407.66	\$ 68,407.66
16 - Parking Lot, Drives, Dumpster Pad & CMU Enclosure	1	LS	\$ 544,207.94	\$ 544,207.94

**Pod Pricing Subtotal**

**\$ 5,245,479.46**

<b>Subtotal</b>		<b>\$ 7,142,521.41</b>
<b>Bonds</b>		<b>\$ 55,056.00</b>
<b>Subcontractor Insurance</b>		<b>\$ 32,818.31</b>
<b>GL Insurance</b>		<b>\$ 39,735.10</b>
<b>Builders Risk</b>		<b>\$ 8,653.42</b>
<b>OH&amp;P</b>	10.40%	<b>\$ 742,822.23</b>
<b>Hotel/ Per Diem</b>		<b>\$ 96,978.10</b>
<b>Project Subtotal</b>		<b>\$ 8,118,584.57</b>
<b>Accelerated Schedule Deduct</b>		<b>\$ (70,931.50)</b>
<b>Total Project</b>		<b>\$ 8,047,653.07</b>
<b>Sports Complex Total</b>		<b>\$ 8,519,793.18</b>
<b>Municipal Total</b>		<b>\$ 8,047,653.07</b>
<b>Project Total</b>		<b>\$ 16,567,446.26</b>



Attachment B

Sports Complex

12.13.16

	Quantity	Unit	Unit Price	Amount	Extended
1 General Conditions					
2 Supervision	32	WK	\$ 2,085.28	\$ 66,728.83	
3 Project Management	32	WK	\$ 2,266.60	\$ 72,531.33	
4 Safety	1	LS	\$ 6,799.81	\$ 6,799.81	
5 Contractor Job trailer	9	MO	\$ 1,578.46	\$ 14,206.17	
6 Storage Container	8	MO	\$ 213.06	\$ 1,704.49	
7 Dumpsters	8	EA	\$ 621.96	\$ 4,975.65	
8 Traffic Control	8	MO	\$ 1,359.96	\$ 10,879.70	
9 Project Signage	1	LS	\$ 2,901.25	\$ 2,901.25	
10 Toilets & Hand wash	16	EA	\$ 260.00	\$ 4,160.00	
11 General Conditions					\$ 184,887.23
12 Design & Development					
13 Estimating	1	LS	\$ 13,540.85	\$ 13,540.85	
14 50% Design	1	LS	\$ 84,977.87	\$ 84,977.87	
15 75% Design	1	LS	\$ 42,488.49	\$ 42,488.49	
16 100% Design	1	LS	\$ 42,489.39	\$ 42,489.39	
17 Contract Administration	1	LS	\$ 7,943.97	\$ 7,943.97	
18 Design & Development					\$ 191,440.57
19 Erosion Control	1	LS	\$ 22,058.05	\$ 22,058.05	\$ 22,058.05
20 Temporary Fence	4360	LF	\$ 3.31	\$ 14,425.52	\$ 14,425.52
21 Equipment & Fuel	8	MO (7-10 pieces )	\$ 37,119.20	\$ 296,953.59	\$ 296,953.59
22 Demolition & Disposal	1	LS	\$ 53,683.16	\$ 53,683.16	\$ 53,683.16
23 Site work & Grading	132350	SY	\$ 1.44	\$ 190,182.17	\$ 190,182.17
24 Haul off & Disposal	509	LD	\$ 124.21	\$ 63,222.24	\$ 63,222.24
25 Site Drainage					
26 Catch basins	6	EA	\$ 2,020.30	\$ 12,121.77	
27 24" RCP w/ end treatments	240	LF	\$ 82.70	\$ 19,847.64	
28 18" HDPE	560	LF	\$ 38.01	\$ 21,287.66	
29 8" HDPE	500	LF	\$ 17.45	\$ 8,724.82	
30 Site Drainage					\$ 61,981.90
31 Sanitary Sewer					
32 Manhole	3	EA	\$ 5,009.21	\$ 15,027.64	
33 8" SDR	800	LF	\$ 16.47	\$ 13,172.54	
34 6" SDR	30	LF	\$ 25.84	\$ 775.35	
35 4" SDR	400	LF	\$ 13.50	\$ 5,401.90	
36 Sanitary Sewer					\$ 34,377.42
37 Site Water 3" & Service	980	LF	\$ 31.49	\$ 30,858.70	\$ 30,858.70
38 Field Collector Drainage					
39 Junction Boxes Common Areas	2	EA	\$ 1,800.03	\$ 3,600.06	
40 Field Collector Drainage					\$ 3,600.06
41 Curbs				\$ -	
42 6x12 Site	1418	LF	\$ 14.86	\$ 21,069.82	
43 Curbs					\$ 21,069.82
44 Flatwork					
45 Sidewalk 5" w/ 4" base	19232	SF	\$ 8.04	\$ 154,688.09	
76 Colored Concrete 5" w/ 4" base FB	7273	SF	\$ -	\$ -	
46 Site Colored Concrete 5" w/ 4" base	5911	SF	\$ 10.14	\$ 59,923.26	
47 Flatwork					\$ 214,611.36
48 Bollards	9	EA	\$ 496.40	\$ 4,467.58	\$ 4,467.58
49 Landscape & Irrigation					
90 Geo Sprinkler System	1	LS	\$ -	\$ -	
50 Interior areas Irrigation	1	LS	\$ 40,153.14	\$ 40,153.14	
60 Irrigate Practice Field	0	LS	\$ -	\$ -	
51 Irrigate perimeter of hard scapes	1	LS	\$ 44,775.08	\$ 44,775.08	
52 Irrigation Sleeves	1	LS	\$ 16,249.02	\$ 16,249.02	
53 Hydro seed	1	LS	\$ 77,155.77	\$ 77,155.77	
54 Trees/ Tree Irrigation/ Shrubs	1	LS	\$ 33,086.62	\$ 33,086.62	
55 Landscape & Irrigation					\$ 211,419.64
56 Site Amenities					
57 Bench	10	EA	\$ 1,315.27	\$ 13,152.68	
58 Combination Trash & Recycle	16	EA	\$ 2,045.57	\$ 32,729.14	
59 30' Flagpole with Light	2	EA	\$ 7,041.89	\$ 14,083.77	
60 Portable Mounds	4	EA	\$ 9,830.00	\$ 39,320.00	
61 4'x10'x18" Entry Planters	5	EA	\$ 3,500.00	\$ 17,500.00	
62 Tree with Grate & Bench	4	EA	\$ 2,550.00	\$ 10,200.00	
63 Entrance Sign	1	LS	\$ 19,301.13	\$ 19,301.13	
64 Site Amenities					\$ 146,286.72
65 Fencing					
66 6' Galvanized Chain Link Fence	1751	LF	\$ 16.36	\$ 25,859.74	



Attachment B

**Sports Complex**

**12.13.16**

		Quantity	Unit	Unit Price	Amount	Extended
67	4' Gate Common Areas	5	EA	\$ 330.40	\$ 1,651.98	
68	8' Gate Pair	5	EA	\$ 661.70	\$ 3,308.48	
69	12' Gate Pair at Common Areas	2	EA	\$ 881.96	\$ 1,763.92	
70	ADD to upgrade to 6' Black Vinyl Common	1751	LF	\$ 7.63	\$ 12,060.50	
71	4' Black Vinyl Fence	460	LF	\$ 14.19	\$ 6,527.77	
72	Arched Entries	1	EA	\$ 17,523.67	\$ 17,523.67	
73	Fencing					\$ 68,696.07
74	Site Electrical & SVC.					
75	Site Electrical	1	LS	\$ 137,662.12	\$ 137,662.12	
76	Electrical Service	1	LS	\$ 110,090.24	\$ 110,090.24	
77	Site Electrical & SVC.					\$ 247,752.36
78	Turf Accessories					
79	Kubota BX 2370	1	EA	\$ 10,816.43	\$ 10,816.43	
80	Clean sweep	1	EA	\$ 9,263.75	\$ 9,263.75	
81	Geo Groomer	1	EA	\$ 4,964.98	\$ 4,964.98	
82	Turf Accessories					\$ 25,045.16
<b>GC-Site Common Areas Sub Total</b>						<b>\$ 2,087,019.31</b>

**Pod Pricing**

1 - Softball Field	1	LS	\$ 541,385.19	\$ 541,385.19
2 - Softball Field	1	LS	\$ 538,529.09	\$ 538,529.09
3 - Softball Field	1	LS	\$ 539,544.03	\$ 539,544.03
4 - Softball Field	1	LS	\$ 539,544.03	\$ 539,544.03
5 - Batting Cage	2	LS	\$ 36,693.16	\$ 73,386.32
6 - Hexagonal Shade Structure	1	LS	\$ 57,966.86	\$ 57,966.86
7 - Concession Building,HVAC & Breezeway	1	LS	\$ 498,314.30	\$ 498,314.30
8 - Concession Pavilion	1	LS	\$ 63,716.59	\$ 63,716.59
9 - Football Field	1	LS	\$ 1,014,817.93	\$ 1,014,817.93
10 - Football Field Shade Structures & Colored Concrete	1	LS	\$ 103,171.84	\$ 103,171.84
11 - Splash Pad Allowance	1	LS	\$ 250,000.00	\$ 250,000.00
12 - Playground with Sail Cover & Turf	1	LS	\$ 55,720.71	\$ 55,720.71
13 - Picnic Shelters, Shelter Tables & Grills	1	LS	\$ 60,704.35	\$ 60,704.35
14 - Multipurpose Field	1	LS	\$ 342,279.34	\$ 342,279.34
14-A Practice Football Field	1	LS	\$ 94,895.19	\$ 94,895.19
15 - Maintenance Building	1	LS	\$ 68,918.24	\$ 68,918.24
16 - Decomposed Granite	1	LS	\$ 26,569.05	\$ 26,569.05
17 - Parking Lot, Drives, Dumpster Pad & CMU Enclosure	1	LS	\$ 612,398.72	\$ 612,398.72

**Pod Pricing Sub total**

**\$ 5,481,861.78**

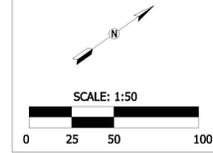
<b>Subtotal</b>	<b>\$ 7,568,881.09</b>
<b>Bonds</b>	<b>\$ 57,906.00</b>
<b>Subcontractor Insurance</b>	<b>\$ 33,610.14</b>
<b>GL Insurance</b>	<b>\$ 37,844.41</b>
<b>Builders Risk</b>	<b>\$ 8,241.67</b>
<b>OH&amp;P</b>	10.40% <b>\$ 787,163.63</b>
<b>Hotel &amp; Per diem</b>	<b>\$ 97,077.75</b>
<b>Project Subtotal</b>	<b>\$ 8,590,724.68</b>
<b>Accelerated Schedule Deduct</b>	<b>\$ (70,931.50)</b>
<b>Total Project</b>	<b>\$ 8,519,793.18</b>

<b>Sports Complex Total</b>	<b>\$ 8,519,793.18</b>
<b>Municipal Total</b>	<b>\$ 8,047,653.07</b>
<b>Project Total</b>	<b>\$ 16,567,446.26</b>

## **HELLAS ATTACHMENT C**

### **Hellas Drawings**

- **Municipal Park Dated 12/13/16**
- **13 Acre Park Illustrated Dated 12/13/16**
- **13 Acre Park Concession Dated 11/28/16**
- **Sports Complex Dated 12/13/16**
- **Sports Complex Illustrated Dated 12/13/16**
- **Sports Complex Concession Dated 12/8/16**



Hellas Construction, Inc. (P) (512) 250-2910  
 12720 Research Boulevard (F) (512) 250-1960  
 Suite 240 Austin, TX 78759 www.hellasconstruction.com



Coym, Rehmet & Gutierrez Engineering, L.P.  
 ENGINEERS \* PLANNERS \* SURVEYORS  
 TBPPE Firm Reg. No. F-388  
 TBPES Firm Reg. No. 101040-01  
 5656 South Staples, Suite 230 (P) (361) 991-8550  
 Corpus Cristi, Texas 78411 (F) (361) 993-7569  
 crg@crgel.com



OWNER: Portland, TX 78374  
 City of Portland (P) (361) 777-4500  
 1900 Billy G. Webb Drive (F) (361) 777-4501  
 Portland, TX 78374

PROJECT:  
**CITY OF PORTLAND SPORTS  
 COMPLEX & 13-ACRE/MUNICIPAL  
 PARK IMPROVEMENTS**  
 PROJECT LOCATION:  
 PORTLAND, TEXAS



917 Yellowstone Drive  
 Taylor, Texas 76574  
 (512) 775-4328  
 Texas Firm Registration  
 No. F007361

Approved As Is	
Approved As Noted	
Resubmit As Noted	
Signature:	
Print:	
Date:	

COMMENTS:

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DATE:  
**DECEMBER 13, 2016**

REVISION:  
**1**

SHEET TITLE:  
**13 ACRE MUNICIPAL PARK  
 OVERALL SITE LAYOUT**

SHEET NUMBER:  
**G1**



# CITY OF PORTLAND 13 ACRE MUNICIPAL PARK



**1** PONY BASEBALL FIELD - 250' LF/250' RF/300' CF (YOUTH SOCCER TICK MARKS AT OUTFIELD, 2 DUGOUTS, SPORTS LIGHTING, 1 SCOREBOARD, 2 FOUL POLES AND 2 SETS OF COVERED BLEACHERS)

**2** BRONCO BASEBALL FIELD - 190' LF/190' RF/220' CF (YOUTH SOCCER TICK MARKS AT OUTFIELD, 2 DUGOUTS, SPORTS LIGHTING, 1 SCOREBOARD, 2 FOUL POLES AND 2 SETS OF COVERED BLEACHERS)

**3** PINTO BASEBALL FIELD - 150' LF/150' RF/175' CF (YOUTH SOCCER TICK MARKS AT OUTFIELD, 2 DUGOUTS, SPORTS LIGHTING, 1 SCOREBOARD, 2 FOUL POLES AND 2 SETS OF COVERED BLEACHERS)

**4** T-BALL BASEBALL FIELD - 125' LF/125' RF/1150' CF (2 DUGOUTS, SPORTS LIGHTING AND 2 SETS OF COVERED BLEACHERS)

**5** DUAL LANE BATTING CAGE

**6** DECOMPOSED GRANITE AT COMMON AREAS

**7** LARGE SAIL SHADE CANOPY

**8** CONCESSION - RESTROOMS BUILDING

**9** CONCESSION PAVILLION (4 PICNIC TABLES)

**10** COVERED BASKETBALL COURT

**11** COVERED FITNESS STATION

**12** WALKING / JOGGING TRAIL WITH TPS 5000 COBALT BLUE ACRYLIC SURFACING

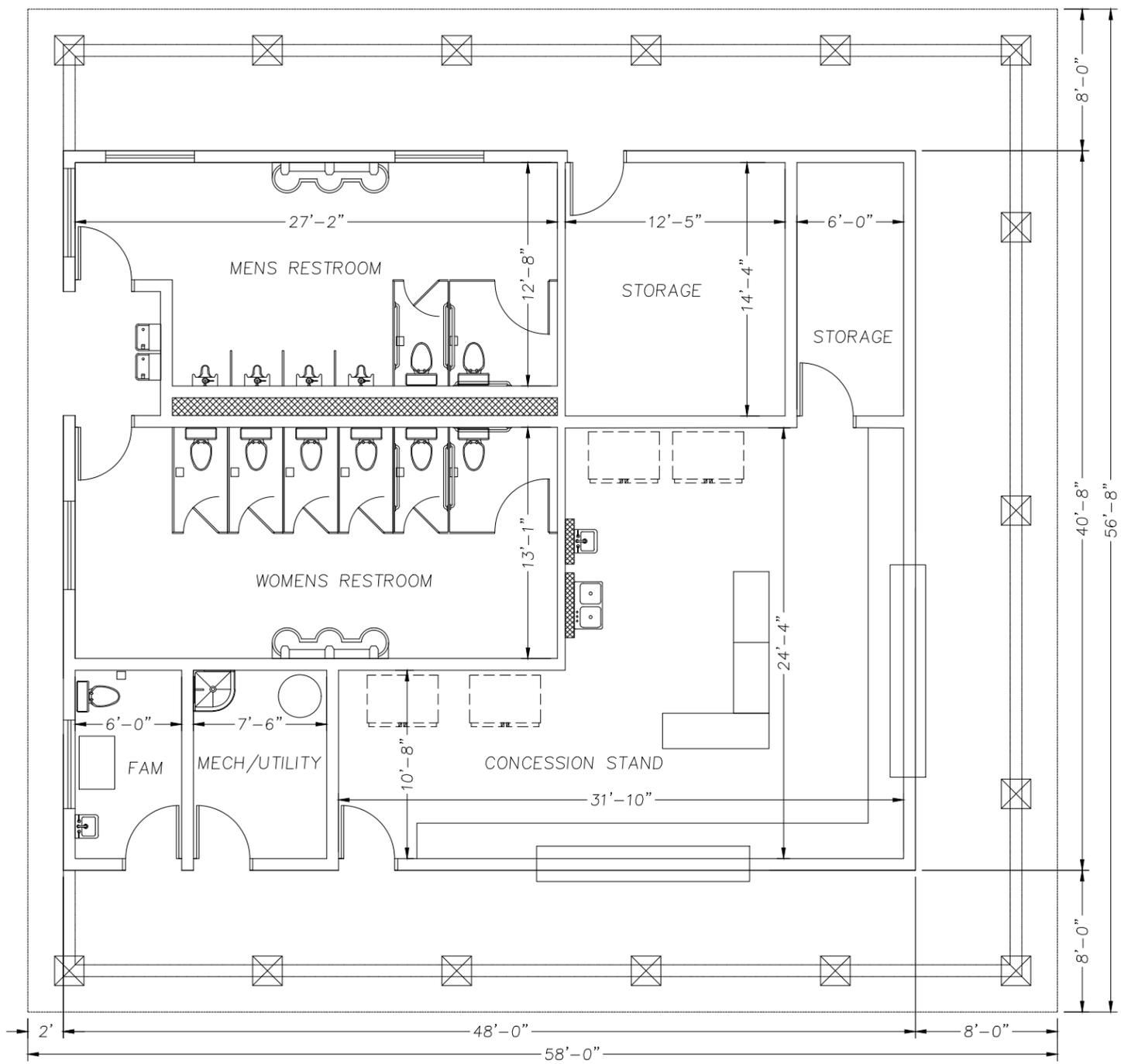
**13** PLAY AREA (SPLASH PAD, PLAYGROUND WITH SAIL COVER AND TURF SURFACING)

**14** SET OF 4 SHADE STRUCTURES WITH PICNIC TABLE AND GRILL

**15** SERVICE AREA (MAINTENANCE BUILDING AND ENCLOSED DUMPSTER PAD)

**16** MUNICIPAL PARK ENTRANCE SIGN

**17** PARKING LOT (288 SPACES)



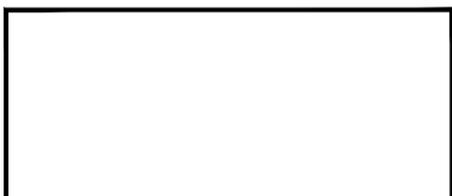
1 CONCESSION/RESTROOMS LAYOUT PLAN

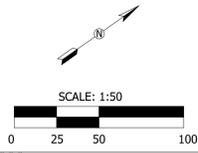
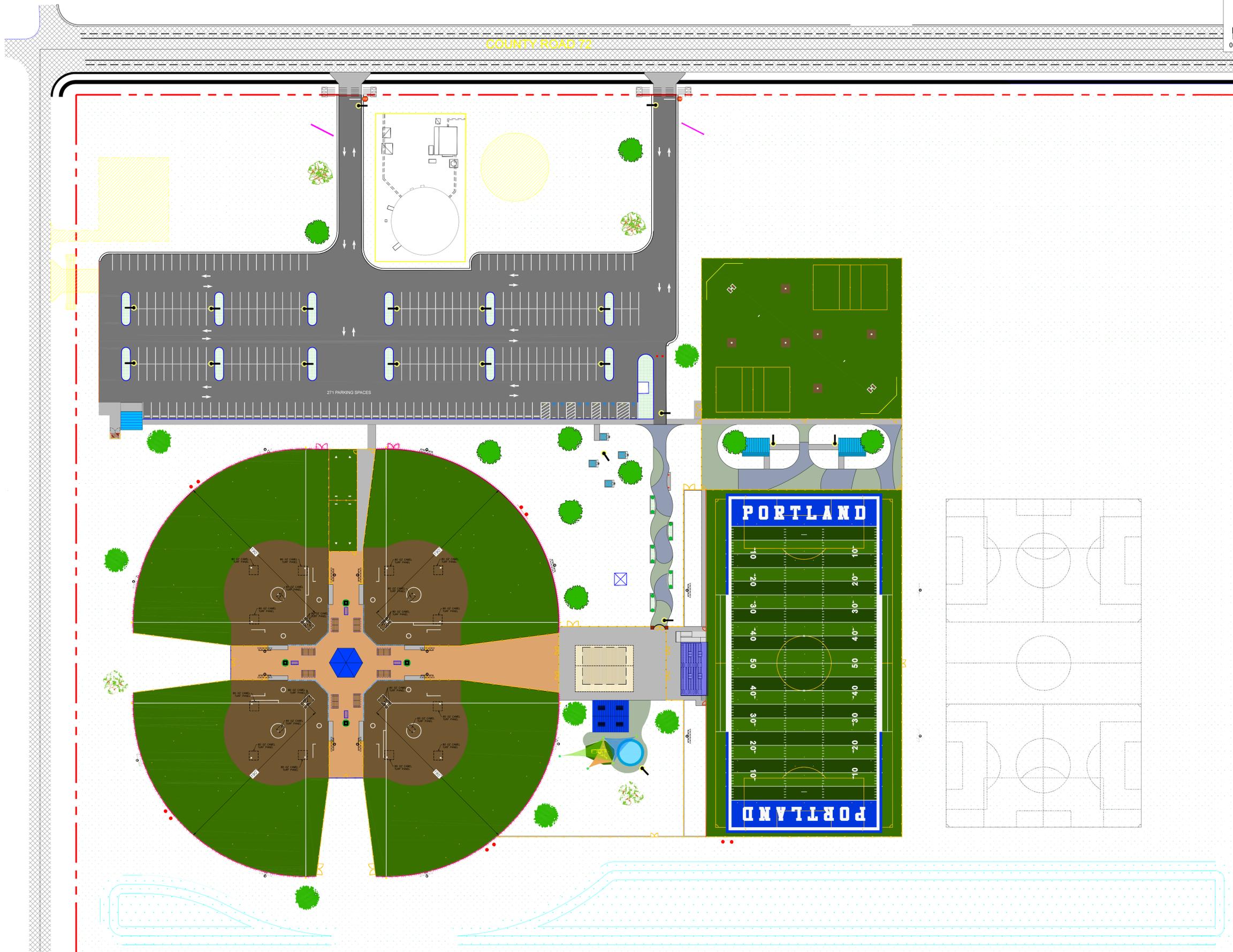
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CITY OF PORTLAND MUNICIPAL 13 ACRE PARK  
 CONCESSION STAND AND RESTROOMS  
 Portland, Texas

DATE: NOVEMBER 28, 2016	ISSUE: PROPOSAL	SHEET: OF
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Hellas Construction, Inc. (P) (512) 250-2910  
 12720 Research Boulevard (F) (512) 250-1960  
 Suite 240 Austin, TX 78759 www.hellasconstruction.com



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OWNER:  
 City of Portland (P) (361) 777-4500  
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PROJECT:  
**CITY OF PORTLAND SPORTS  
 COMPLEX & 13-ACRE/MUNICIPAL  
 PARK IMPROVEMENTS**  
 PROJECT LOCATION:  
 PORTLAND, TEXAS



917 Yellowstone Drive  
 Taylor, Texas 76574  
 (512) 775-4328  
 Texas Firm Registration  
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Approved As Is	
Approved As Noted	
Resubmit As Noted	
Signature:	
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Date:	

COMMENTS:

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DATE:  
**DECEMBER 13, 2016**

REVISION:  
**1**

SHEET TITLE:  
**SPORTS COMPLEX  
 OVERALL SITE LAYOUT**

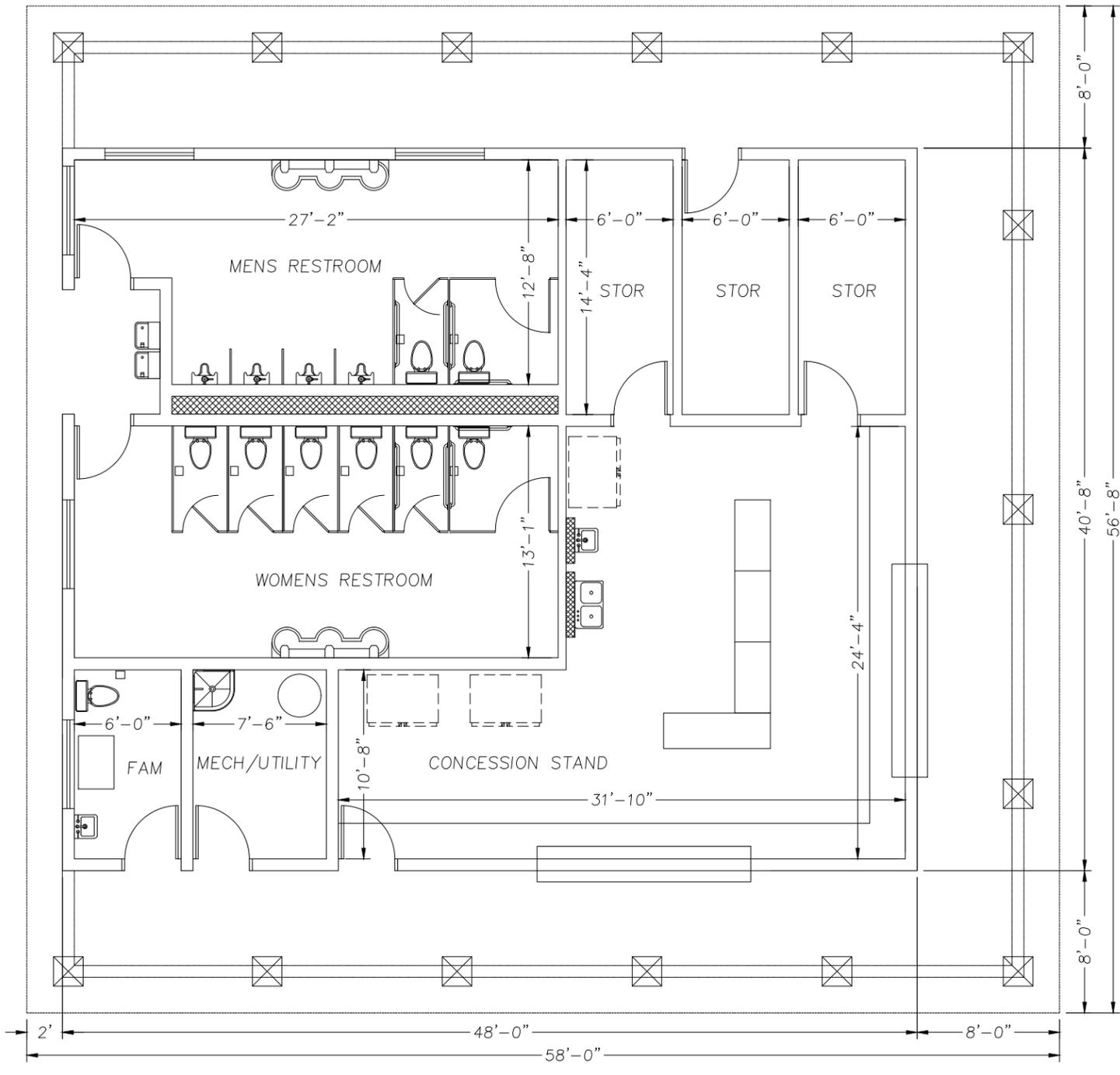
SHEET NUMBER:  
**G1**

# CITY OF PORTLAND SPORTS COMPLEX PROPOSED LAYOUT



- 1 SOFTBALL FIELD (YOUTH SOCCER TICK MARKS AT OUTFIELD, 2 DUGOUTS, SPORTS LIGHTING, 1 SCOREBOARD, 2 FOUL POLES AND 2 SETS OF COVERED BLEACHERS PER FIELD)
- 2 DECOMPOSED GRANITE AT COMMON AREAS
- 3 DUAL LANE BATTING CAGE
- 4 HEXAGONAL SHADE STRUCTURE
- 5 CONCESSION - RESTROOMS BUILDING
- 6 CONCESSION PAVILLION (4 PICNIC TABLES)
- 7 FOOTBALL FIELD (1 FULL SOCCER FIELD, 3 YOUTH SOCCER TICK MARKS, 1 SCOREBOARD, COVERED 300 SEAT BLEACHERS AND SPORTS LIGHTING)
- 8 FOOTBALL SHADE STRUCTURES WITH COLORED CONCRETE PAVILLION AREA (2 PICNIC TABLES EACH)
- 9 PLAY AREA (SPASH PAD AND PLAYGROUND WITH SAIL COVER AND TURF SURFACING)
- 10 SET OF 4 SHADE STRUCTURES WITH PICNIC TABLE AND GRILL
- 11 MULTIPURPOSE TURF FIELD (2 SOFTBALL FIELDS WITH 10' BACKSTOP FENCING, AND 2 MINI SOCCER FIELDS)
- 12 SERVICE AREA (MAINTENANCE BUILDING WITH ENCLOSED DUMPSTER PAD)
- 13 SPORTS COMPLEX ENTRANCE SIGN
- 14 ENTRANCE PLAZA WITH PLANTER SEATWALLS
- 15 PARKING LOT (271 SPACES)
- 16 GRASS PRACTICE AREA
- 17 EXISTING WATER TANK





1 CONCESSION/RESTROOMS LAYOUT PLAN  
 SCALE: 1/8"=1'-0"



CITY OF PORTLAND SPORTS COMPLEX  
 CONCESSION STAND AND RESTROOMS  
 Portland, Texas

DATE: DECEMBER 8, 2016	ISSUE: PROPOSAL	SHEET: OF
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"Attachment D"

December 13, 2016

Mr. Randy L. Wright  
City Manager  
City of Portland  
1900 Billy G. Webb  
Portland, Texas 78374

P (361) 777-4516  
[wright@portlandtx.com](mailto:wright@portlandtx.com)

**RE: City of Portland Municipal 13 Acre Park Design/Build GMP Proposal**

**Hellas Construction, Inc.** is pleased to provide the following Scope of Work outline for the City of Portland Sports Complex Improvements.

*This proposal is developed incorporating the following documents: RFQDB issued by COP dated May 17, 2016, addendum #1&2, Geotechnical report by Rock Engineering & Testing Laboratory, Inc. dated August 27, 201, Hellas overall site layout dated December 13, 2016 and CR&G 30% design documents.*

**Owner to supply and install the following:**

- **Hazardous materials Testing and Abatement of the buildings that are scheduled to be demolished.**
- **Construction Materials inspection and testing.**
- **Water meters and impact fees.**
- **Sanitary sewer connection fees and impact fees.**
- **All long term service contracts (security, phone & data service).**
- **Temporary irrigation water is to be paid for by COP.**

12710 Research Boulevard  
Suite 240  
Austin, Texas 78759



Phone (512) 250-2910  
Fax (512) 250-1960  
[info@hellasconstruction.com](mailto:info@hellasconstruction.com)

[WWW.HELLASCONSTRUCTION.COM](http://WWW.HELLASCONSTRUCTION.COM)



**General Conditions**

**Hellas** will:

1. Provide project Insurance per COP limits, full time supervision and mobilization.
2. Provide necessary permits for work and final approvals.
3. Provide construction surveying, layout and staking.
4. Provide performance and payment bonds.
5. Provide three sets of engineered drawings.
6. Provide T.A.S compliant plans and specifications, register with governing authority and provide final inspection of compliance.
7. Provide submittals and shop drawings.
8. Provide TPDES permits and SWPPP prior to construction commencing.
9. Provide temporary construction fencing around entire construction site.
10. Provide an updated monthly schedule.
11. Provide a trench safety plan as required.
12. Provide necessary safety measures to ensure a safe jobsite for public and workers including but not limited to O.S.H.A. regulations.
13. Conduct a weekly construction site meeting with COP.
14. Provide clean up on a daily basis.
15. Provide final punch-out and clean-up of the completed project.

**Municipal Park Construction:**

**Demolition**

**Hellas** will demolish and properly dispose of all material that COP does not want salvaged and will make efforts to save as many existing trees as possible.

1. Buildings:

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Austin, Texas 78759



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- a. *Hazardous materials survey and abatement by Owner.*
  - b. Remove existing two-story press box/ concession building.
  - c. Restroom building.
  - d. Demolish & cap utilities.
2. Utilities encountered: **Hellas** intends to:
- a. Irrigation cap; or reutilize existing meters.
  - b. Power; reutilize existing power services where applicable/compatible. Remove existing power and make safe if not to be reutilized.
  - c. Sanitary sewer; reutilize or cap and abandon if applicable.
  - d. Water; reutilize existing meter/s and water lines if compatible with new layout and pipe size, cut, cap remove or abandon.
  - e. Storm drainage, remove as necessary.
3. Make safe and salvage the existing sports lighting poles & lights, turn over to COP.
4. Existing parking lots are to be demolished, all asphalt will be pulverized and incorporated into the subgrade of the new parking lots all other debris to be hauled away. Maintain drives for temporary construction entrance and exit.
5. Demolish existing fields, playground, basketball court, pavilion area in their entirety.
6. Any other miscellaneous items that is necessary for removal to facilitate the construction of the new facility.

### **Temporary ball field construction on City Property**

1. Reutilize/salvage any and all materials from demolished ball fields to construct:
  - a. One (1) T-ball Field, one (1) Little League field and two (2) softball fields.
2. We will grade infield areas, spread salvaged infield mix, install backstops, provide base sleeves, reinstall home plates, pitching rubbers and relocate portable bleachers.
3. Remove and dispose of backstops when main project is complete all other restoration is by the City. If necessary, any and all irrigation heads are to be removed and replaced by the City.

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**Site Construction**

**Utilities:**

1. Provide new power service to facility, we will try to utilize existing power if possible.
2. Sanitary Sewer, tie into and utilize existing system/ lines.
3. Water, utilize existing on site water system/ meters, if not adequate make necessary arrangements for new water service.

**Hellas will:**

1. Provide required erosion control measures.
2. Clear and grub entire footprint of new construction, haul off organics.
3. Strip topsoil where applicable stockpile for respreads and reuse.
4. Cut and fill site to design elevations, grade and compact to proper density.
5. Provide swales around the exterior perimeter of the facility to promote positive drainage away from property and tie into existing drainage systems on site.
6. Lime stabilize approximately 37,735 SY of subgrade at: all baseball fields, parking lot and jogging trail. Stabilize to a depth of 8" at an application rate of 6%, grade and compact to proper density.
7. Provide 4' aluminum ornamental iron Ameristar Echelon II black fencing with 1" pickets at the entry walk way.
8. Provide one (1) 12' decorative arched entry gates with masonry columns.
9. Entrances; provide two (2) 25' wide 7" thick reinforced concrete approach per COP details. Reutilize existing approach for the maintenance building entrance.
10. Parking lot and drives 288 spaces:
  - Light Duty drives and parking spaces: 6" flex base material TXDOT 247 Type A, Grade 1-2. 2.0" HMAC Type D.

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- Twelve LED (12) parking lot lights with concrete bases, lights connected to photo cell.
- Concrete curbs 6"x12" at islands and walk way remaining parking lot to have curb and gutter.

ADA compliant parking spaces to be striped with signage and wheel stops, all other spaces to be striped. Provide COP compliant stop signs at exits.

11. Jogging path: Construct approximately 3,500 lineal feet of 8' wide path consisting of 4" flex base material on top of 6" compacted subgrade, we will pave path with 2.0" HMAC Type D, back fill around perimeter with onsite soils.
  - Path lighting: provide eighteen (18) Solar LED path lights by Firstlight technologies.
  - Path to be coated with TPS 5000 acrylic surfacing cobalt blue.
12. Site Concrete: Construct approximately 8,150 S.F of 5" thick 3000 psi concrete reinforced with #4 rebar at 18" o.c.e.w. around concession area, sidewalks and at site amenities.
13. Decomposed granite: Provide approximately 58,000 SF of 3" compacted thickness on top of Airfields 1" stabilization mat on top of Mirafi 500X geotextile fabric on top of 6" compacted subgrade. Provide 8"x8" concrete closure curbs where not adjacent to existing curb or other hardscape.
14. Landscape & Irrigation:
  - Fifteen (15) 3" caliper trees with mulch.
  - Shrubs or small trees at parking islands.
  - Automatic irrigation system for tree bubblers & parking islands.
  - All interior grass areas (inside jogging path loop) to be irrigated and seeded with local Bermuda seed mix. Outside of the jogging path we will provide a single spray head (18'-20' radius +/-) irrigating the perimeter, seeded with local Bermuda seed mix.
  - Four (4) trees with cast iron tree grates 4'x4' and four (4) eight (8') foot benches at the ball fields.
15. Upon completion we will re-spread on site top soil around disturbed areas and hydro-seed. Temporary irrigation until seed is established, **cost of water is by COP.**



**BASEBALL FIELDS**

**PONY/COLT FIELD - 250'RF, 250'LF, 300'CF**

**(2) BRONCO FIELDS - 190'RF, 190'LF, 220'CF**

**PINTO FIELD - 150'RF, 150'LF, 175'CF**

**T-BALL FIELD - 125'RF, 125'LF, 150'CF**

**Concrete & Masonry**

**Hellas will:**

1. Construct 12" x 6" concrete perimeter curb / mow strip, reinforced with two (2) #4 rebar, at perimeter of synthetic turf fields and batting cages.
2. Construct 24" (+/-) high split face CMU masonry backstop wall from outside edge of dug out to outside edge of dug out. Including 20 lineal feet of wall padding on the field side.
3. Construct ten (10) 8'x20' dugout slabs 5" thick 3000 psi concrete reinforced with #4 rebar at 18" o.c.e.w.
4. Construct dumpster pad with matching CMU masonry and black vinyl gates with slats. Approximately 12'x7'x6'.

**Batting Cage**

- Provide two 65'x30' dual lane batting cages
- Install 2" x 4" composite nailer at turf perimeter curb.
- Install geotextile fabric at synthetic turf area.
- Install 6" HDPE collector pipe and connect to field system.
- Install 4" drainage stone mix; graded and compacted to proper planarity and density.
- Provide and install **Matrix® 42 oz.** turf at batting cages including sand infill with white mound and home plate.
- Provide batting cage netting system two lanes 12'x12'x60' & 50' that will be supported by the tube steel poles. The netting will be #36 DuPont nylon, double-treated for superior UV protection.
- The perimeter of the batting cage will have 6' black vinyl fence and one gate each.

12710 Research Boulevard  
Suite 240  
Austin, Texas 78759



Phone (512) 250-2910  
Fax (512) 250-1960  
info@hellasconstruction.com



**Fencing & Backstop Netting systems & Foul Poles**

**Hellas will:**

1. All fencing is to be 6' black vinyl chain link with 2" 9GA fabric and sch. 40 pipe.
2. Provide 6' fencing along the foul lines with four (4) 12' maintenance gates and eight (8) 4' access gates total.
3. Provide 6' fencing along the perimeter of the outfield with slats.
4. All playing ball field fencing is to have a yellow safety cap.
5. Provide back stop netting system with four steel poles. The netting will be #36 DuPont nylon, double-treated for superior UV protection suspended by steel cables. Pony field to have 40' tall system, Bronco & Pinto fields to have 30' netting systems and T-Ball to have 20' netting system.
6. Provide 10 (10) 8'x20'x8' black vinyl chain link fence dugouts with steel shade structure and metal roofing. Including 1 5/8" top, middle and bottom rails.

**Lighting**

**Hellas will:**

- At each field provide and install new **1500W Metal Halide** fixtures sports lighting system –by Techline Sports Lighting. Sixty foot (60') high galvanized steel poles. Average light levels **50 FC at infield and 30 FC at outfield. Includes 25-year maintenance free warranty.** Provide and install new sub-panel, breakers, controllers and EcoLink Wireless Control system and connect to new site 480V main distribution panel.

**Bleachers**

Provide ten (10) two per field; 4 Row x 15' non elevated bleachers, seats approximately 40 each, with 12'x19' fabric shade structure over each.

**PA Infrastructure**

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Austin, Texas 78759



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Sound/ PA system infrastructure at Baseball fields to include:

- Power service to new PA system, location to be below scorer table behind back stop.
- Lockable weather tight connection box with outlets for connection to system.
- Two speakers mounted to fixed pole or object.
- **Portable PA Systems by Leagues/Owner/ Others. NOT INCLUDED.**

### Scoreboard

**Hellas** will:

1. Provide three (no scoreboard at t-ball); Daktronics BA-2518-R-PV-F scoreboard with control console. At the tournament field provide one Daktronics BA-1518-R-PV-F scoreboard with control console.

### Synthetic Turf Baseball Fields

**Hellas** will:

1. Install 2" x 4" composite nailer at turf perimeter curb.
2. Install 20mill impervious liner at synthetic turf area.
3. Install HDPE perimeter collector pipe system.
4. Install 1" x 12" composite flat drain on 30' centers.
5. Install 4" drainage stone mix; graded and compacted to proper planarity and density.
6. Provide and install Limonta ½" drain mat on top of stone subgrade.
7. Provide and install **Matrix® 42 oz.** monofilament synthetic baseball turf with **Geo Plus** infill the following options:
  - Green turf outfield and infields
  - Baseball lines and markings permanently installed in white turf
  - Infield, base paths, home plate circle, warning track and skinned area permanently installed in 'Camel' colored turf
  - Pitching circle permanently installed in camel turf
  - **Geo Plus** infill\*\*\*
  - 1 tow-behind, ground driven sweeper
  - One Kubota BX2370 tractor to pull sweeper

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- 2-hour owner care and maintenance orientation
- Three tons of additional infill
- Hellas emergency repair kit
- Provide 8-year manufacturer warranty
- Provide 8-year 3<sup>rd</sup> party insured warranty

*After synthetic turf installation is complete, Hellas will provide an operation and maintenance orientation for care of the turf field, and all of the supplied equipment quoted above.*

**\*\*\* At the conclusion of the first year, Hellas will take from attic stock Geo Plus material, inspect and groom the field. After year 2 for an annual charge (See maintenance summary at end of proposal.) Hellas will provide Geo Plus material and perform the inspection and grooming operation.**

8. Provide hard set high volume sprinkler system at each field including one pressure pump and control console.
9. Install bases and home plate at field with concrete foundations with sleeves at bases, including up to three different base path layouts with sleeves and plugs.
10. Provide four (4) Porta-Pitch Portable Little League pitchers mounds.
11. Provide and install ~~three~~-four(4) pairs of 20' high aluminum foul poles with wings. (no foul poles at t-ball.)
12. Two 30' flag poles outside of basketball pavilion, satin finish with internal halyard and lights.

**Construction of Concession-Restrooms approximately 3,287 SF per layout of 11.28.16**

- **Construct per I.B.C. 2012/2015 and locally adopted ordinances.**
- Building eave height to be approximately 10'-8".
- See Utilities, provide new water service.
- Construct subgrade and building pad per Geotechnical recommendations.
- Construct reinforced concrete slab-on-grade and foundation as designed by Structural Engineer.
- Exterior walls to be 8" colored or split-face CMU, Two colors, one 4 to 5 course wainscot with the other color above.
- Interior walls to be 4"-8" gray CMU painted.
- All concrete floors, base as needed or necessary.

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- Wood framed roof structure, O.S.B. decking with Mueller Inc. RPN panel metal roofing including underlayment with matching gutters and downspouts.
- Exterior grade sheetrock (green or purple board) ceilings, painted.
- ADA compliant HDPE toilet partitions with toilet paper dispensers and grab bars as required.
- Commercial grade hollow metal doors and frames painted with commercial grade hardware.
- Commercial hollow metal windows.
- Restroom accessories per code.
  - Wall-mount liquid soap dispensers.
  - Wall-mount paper towel dispensers.
  - Wall-mount toilet paper dispensers.
  - ADA grade bars.
  - Commercial grade safety mirrors above sinks.
- Plastic laminate cabinets with stainless steel countertops in concession.
- Roll-up style concession doors, aluminum with locks.
- Plumbing per design and local plumbing code to meet *the 2009/2012/2015 code requirements regarding the number of plumbing fixtures required for open-air bleachers for sports viewing. We are requesting a variance from the City this complex is short 1 women's toilet, this is due to the demolition of the existing restroom building.*
  - Restroom toilets– commercial grade, low flow.
    - Women's 6 stalls
    - Men's 2 stalls, 4 urinals.
  - Men's urinals low flow.
  - One family restroom with one toilet, sink and baby changing station.
  - HDPE low flow sinks at Women's and Men's.
  - Stainless Steel two compartment free standing tub sink in concessions, SST hand wash sinks.
  - Two (2) frost-proof hose bibs located on the building.
  - One (1) hose bib in each restroom and concession for cleaning – locate under sinks.
  - One mop sink and water heater in mechanical/utility room.
  - One pair of high/low drinking fountains.
- Heating/ Air Conditioning, air conditioning to be provided to the restrooms and concession storage rooms only. Restrooms and janitor closet to have conventional exhaust systems. Concession to have thermostat controlled exhaust system. Radiant or electrical heat in each room.

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- Electrical: System per final design and local building code. See above; provide new power service to site. We will tie into new electrical service rack on site:
  - 15 each -20 amp dedicated outlets.
  - Two (2) 20 amp GFCI outlet on exterior of building.
  - Interior and exterior lighting to meet code light levels.
  - Electrical panel and transformer located in electrical room.

### Site amenities

- One 35'x40' concession pavilion with 5" slab on grade and four picnic tables.
- Four (4) 8'x10' picnic shelters with table and grill. (238HS & G632-3) one ash container.
- Eight (8) picnic tables. (238HS & 238PR8)
- Ten Benches. (940S-PR8)
- Sixteen (16) Combination trash & recycle cans. (Dual Lexington LX-72)
- One Tot Spirit playground with sail shade canopy and synthetic turf.
- One large fabric, 5 post Sail shade 58'x56'.
- Ten (10) fabric bleacher shade covers approximately 12'x19'x10'.
- One 30'x30' fabric shade structure with 5 workout stations, Push-up UP255, Joint use pull-up UP261, Sit-Up UP253, Bench Dip UP 253, and Step-Up UP 264 all on top of decomposed granite.

### Basketball Pavilion

- Metal building structure no walls approximately 60'x100'
- Post Tension basketball courts with TPS 5000 acrylic surfacing
- Retractable goals ( 2 each)
- Lights with timer

### Maintenance Building – Pre Engineered Metal building 20'x24'

- Pre Engineered metal building with foundation and slab
- R-Panel walls standard colors
- R-panel roof with gutters and down spouts standard colors
- One 12'x8' rolling door
- One 3'-0" x 7'-0" hollow metal door
- One 3'x5' window
- Interior lights and two exterior wall packs

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- Non-insulated
- No interior finish out
- One exterior hose bib.

Clean up and demobilize.

**Total Municipal 13 Acre Park GMP: \$8,047,653.07**  
**See Attached Summary pricing.**  
**Price includes a \$250,000.00 allowance for a splash pad.**

**See Attachment:** Overall site plan dated December 13, 2016.

**Geo Plus:** Annual cost after year 2 for an annual charge. **Hellas will provide Geo Plus material and perform the inspection and grooming operation.**  
**Per year: \$14,848.00**

Exclusions (but not limited to):

1. Sales Tax Exemption Certificate to be provided.
2. Fire suppression systems, fire alarm systems, fire water lines or fire hydrants.
3. Owner shall provide ingress/egress for ALL personnel, equipment and materials; typical construction traffic shall be expected for the duration of this contract. Contractor NOT responsible for damage due to typical construction traffic ingress/egress to the construction site.
4. Notwithstanding anything to the contrary in any of the Contract documents, under no circumstances shall the Performance bonds, maintenance bonds or the obligations of the Surety be liable for any warranty obligations that exceed one (1) year from the date of substantial completion as defined in the Contract Documents.
5. ***Removal & replacement of existing City sidewalks along streets unless damaged by construction activity.***

Please contact this office should you have any questions regarding this proposal. **Hellas Construction, Inc.** looks forward to the award of this project and is eager to work with you.

Sincerely,

Mario Albini  
V.P Design Build Operations

12710 Research Boulevard  
Suite 240  
Austin, Texas 78759



Phone (512) 250-2910  
Fax (512) 250-1960  
info@hellasconstruction.com



“Attachment E”

December 13, 2016

Mr. Randy L. Wright  
City Manager  
City of Portland  
1900 Billy G. Webb  
Portland, Texas 78374

P (361) 777-4516  
[brian.delatte@portlandtx.com](mailto:brian.delatte@portlandtx.com)

**RE: City of Portland Sports Complex Improvements Design/Build GMP Proposal**

**Hellas Construction, Inc.** is pleased to provide the following Scope of Work outline for the City of Portland Sports Complex Improvements.

*This proposal is developed incorporating the following documents: RFQDB issued by COP dated May 17, 2016, addendum #1&2, Geotechnical report by Rock Engineering & Testing Laboratory, Inc. dated August 27, 201, Hellas overall site layout dated December 13, 2016 and CR&G 30% design documents.*

Owner to supply and install the following:

- **Hazardous materials Testing and Abatement of the buildings that are scheduled to be demolished or remodeled.**
- **Construction Materials inspection and testing.**
- **Water meters and impact fees.**
- **Sanitary sewer connection fees and impact fees.**
- **Existing County Road 72 is in poor condition, we are not responsible for any damage to road and or repairs due to construction traffic. If road is damaged due to contractor negligence then it is contractors responsibility to repair. Contractor is providing pre-construction video of existing conditions prior to construction.**
- **All long term service contracts (security, phone & data service).**

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Austin, Texas 78759



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Fax (512) 250-1960  
[info@hellasconstruction.com](mailto:info@hellasconstruction.com)

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- **Temporary irrigation water is to be paid for by COP.**

**General Conditions**

**Hellas** will:

1. Provide project Insurance per COP limits, full time supervision and mobilization.
2. Provide necessary permits for work and final approvals.
3. Provide construction surveying, layout and staking.
4. Provide performance and payment bonds.
5. Provide three sets of engineered drawings.
6. Provide T.A.S compliant plans and specifications, register with governing authority and provide final inspection of compliance.
7. Provide submittals and shop drawings.
8. Provide TPDES permits and SWPPP prior to construction commencing.
9. Provide temporary construction fencing around entire construction site.
10. Provide an updated monthly schedule.
11. Provide a trench safety plan as required.
12. Provide necessary safety measures to ensure a safe jobsite for public and workers including but not limited to O.S.H.A. regulations.
13. Conduct a weekly construction site meeting with COP.
14. Provide clean up on a daily basis.
15. Provide final punch-out and clean-up of the completed project.

Please see the Municipal 13 acre park proposal regarding the construction of temporary ball fields.

**Sports Complex Construction:**

**Demolition**

**Hellas** will demolish and properly dispose of all material that COP does not want salvaged:

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1. Buildings:
  - a. *Hazardous materials survey and abatement by Owner.*
  - b. Remove existing two-story press box/ concession building.
  - c. Remove existing restroom building.
2. Utilities encountered: **Hellas** intends to:
  - a. Irrigation cap; or reutilize existing meter.
  - b. Power; reutilize existing power services where applicable/compatible. Remove existing power and make safe if not to be reutilized.
  - c. Sanitary sewer; reutilize or cap and abandon if applicable.
  - d. Water; reutilize existing meter/s and water lines if compatible with new layout and pipe size, cut, cap remove or abandon.
3. Make safe and salvage the existing sports lighting poles & lights, turn over to COP.
4. Existing roads and parking lot; salvage material to be re-incorporated into subgrade for new parking lot. Maintain drives for temporary construction entrance and exit.
5. Demolish existing fields in their entirety, softball, baseball & soccer/football.
6. Any other miscellaneous items that are necessary for removal to facilitate the construction of the new facility.

### Site Construction

#### **Utilities:**

1. Provide new power service to facility, we will try to utilize existing power if possible. Power service to restroom building to remain and be reutilized.
2. Sanitary Sewer, tie into/ utilize existing system / lift station on site. Provide 8" SDR 26 from existing lift station to future regional lift station location and cap.
3. Water, utilize existing on site water system/ meters, if not adequate make necessary arrangements for new water service at county road 72.

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**Hellas will:**

1. Provide required erosion control measures.
2. Clear and grub entire footprint of new construction, haul off organics.
3. Strip topsoil where applicable stockpile for respreads and reuse.
4. Cut and fill site to design elevations, grade and compact to proper density.
5. Provide swales around the exterior perimeter of the facility to promote positive drainage away from property and tie into existing drainage system along the county roads.
6. Entrances; provide two 25' wide 7" thick reinforced concrete approach per county details with culverts at approximate existing locations.
7. Parking lot and drives (271 spaces):
  - Heavy Duty drives and parking aisles: 8" flex base material TXDOT 247 Type A, Grade 1-2. 2.5" HMAC Type D.
  - Light Duty parking spaces: 6" flex base material TXDOT 247 Type A, Grade 1-2. 2.0" HMAC Type D.
  - Ten (13) parking lot lights with concrete bases, lights connected to photo cell.
  - Concrete curbs 6"x12" at islands and walk way remaining parking lot to have curb and gutter as shown on overall site plan dated December 12, 2016.

ADA compliant parking spaces to be striped with signage and wheel stops, all other spaces to be striped. Provide county compliant stop signs at exits.
8. Site Concrete: Construct approximately 19,230 S.F of 5" thick 3000 psi concrete reinforced with #4 rebar at 18" o.c.e.w. around concession area, football bleachers, sidewalks and at site amenities.
9. Colored Concrete: Construct approximately 13,200 S.F of 5" thick 3000 psi colored concrete (two colors) reinforced with #4 rebar at 18" o.c.e.w. around football shade shelters area and front entry walk.
10. Decomposed granite: Provide approximately 23,000 SF of 3" compacted thickness on top of Mirafi 500X geotextile fabric on top of 6" compacted subgrade. Provide 8"x8" concrete closure curbs where not adjacent to existing curb or other hardscape.

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#### 11. Landscape & Irrigation:

- Twenty (20) 3" caliper trees with irrigation and mulch.
- Automatic irrigation system for tree bubblers, planter seat walls & parking islands.
- All interior grass areas (south of parking lot and west of football field approximately 184,000 SF) to be irrigated and seeded with local Bermuda seed mix. Along the outside of other hardscapes we will provide a single spray head (18'-20' radius +/-) irrigating the perimeter, seeded with local Bermuda seed mix.
- Four (4) trees with cast iron tree grates 4'x4' and four (4) eight (8') foot benches at the ball fields.
- Five CMU masonry planter seat walls (4'x10'x18") with bushes along entrance.

12. Upon completion we will re-spread on site top soil around disturbed areas and hydro-seed. Temporary irrigation until seed is established, **cost of water is by COP.**

#### Construction of Synthetic Turf Football Field

1. Subgrade preparation: After stripping operations we will improve the subgrade by moisture conditioning top six (6") inches of subgrade and compact to proper density.
2. Provide and install **Hellas'** 8' offset goal posts, with 30' uprights (color to be day-glow yellow). Goal post pads in standard color.
3. **Hellas** will construct 6"X12" continuously reinforced concrete exterior perimeter curbing of the field where sidewalk does not exist.
4. **Hellas** will excavate at the interior of the field for HDPE collector drain system; all excavated material to be utilized on site or spread at open areas.
5. **Hellas** will provide and install Mirafi 500X geotextile fabric liner on the field subgrade and attach to the turf anchor system.
6. **Hellas** will provide and install HDPE perforated collector lines at the interior of the turf field limits. The collector pipes will drain outside of the field per final engineered design.
7. **Hellas** will provide and install Hydraway™ flat drain system in herringbone pattern over the football field at 30' center to center; the flat drains will drain to the exterior perimeter collector lines.

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8. **Hellas** will provide a 2"X4" composite turf anchor system and attach to existing interior concrete perimeter curb.
9. **Hellas** will provide and install 4" (nominal thickness) drain stone mix, laser grade and compact to proper density.
10. **Hellas** will supply and install our Cushdrain® 19mm nominal thickness elastic shock pad system.
11. Supply and install high pressure hard set sprinkler system, pump to be shared with softball fields.
12. **Hellas** will provide and install **Matrix® 46** synthetic turf system with **Geo Plus** infill with the noted installation options:
  - All 5-yard lines permanently installed in white turf
  - All numbers permanently installed in white turf
  - All side lines permanently installed in 36" wide white turf with 36" blue turf around the perimeter except at coach boxes
  - Coaching boxes and team areas permanently installed in white turf
  - All short yard extensions permanently installed in white turf
  - All hash marks permanently installed in white turf
  - 'PORTLAND' letters in both end zones permanently installed in white turf with blue end zones
  - Soccer lines permanently installed in yellow turf
  - All seams to be glued
  - **Geo Plus** infill\*\*\*
  - 1 tow-behind, ground driven sweeper to be shared with Softball fields
  - One Kubota BX2370 tractor to pull sweeper (shared with softball)
  - 2-hour owner care and maintenance orientation
  - Provide 8-year manufacture warranty
  - Provide 8-year 3<sup>rd</sup> party insured warranty
  - Three tons of additional infill
  - Hellas emergency repair kit

*After synthetic turf installation is complete, **Hellas** will provide an operation and maintenance orientation for care of the turf field, and all of the supplied equipment quoted above.*

**\*\*\* (At the conclusion of the first year, **Hellas** will take from attic stock **Geo Plus** material, inspect and groom the field. After year 2 for an annual charge (See maintenance summary at end of proposal.) **Hellas** will provide **Geo Plus** material and perform the inspection and grooming operation.)**

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13. Provide and install new **1500W Metal Halide** sports lighting system – by Techline Sports Lighting. Sixty foot 60’ high galvanized steel poles. **Average light levels 50 FC at field. Includes 25 year maintenance free warranty.** Provide and install new sub-panel, breakers, controllers and EcoLink Wireless Control system (shared with Softball fields) and connect to distribution panel at location TBD.
14. **Hellas** will provide and install one ¾” –water quick connect in a concrete vault at each side line on the 50 yard line. We will connect to the on-site water supply.
15. Provide one Daktronics Football FB-2018-R-PV-F scoreboard.
16. Provide 6’ black vinyl chain link fencing enclosing the facility. Provide three 8’ (pair of 4’) entry gates. Provide two (2) 4’ access gates and one 12’ (pair 6’) maintenance gate. Provide 4’ black vinyl fence surrounding the football shade structure area with two (2) 4’ entry gates.
17. Provide one pair of portable soccer goals with wheel kits and nets.

**Covered Bleachers Football Approximately 300 seats:**

10 Row x 57’, 30” Elevated Bleacher featuring:

- Approx. 304 net seats
- Metal R-Panel and steel structure cover over bleachers
- 6’x8’ section at the top of bleachers including railings and flat open deck area and 18” deep permanent table section (for announcing)
- (6) wheelchair spaces with companion seating included
- Aluminum angle frame understructure
- Bleacher designed to be installed on flat concrete
- 24” tread with 8” rise
- Nominal 2”x10” anodized aluminum seats
- Semi-closed anodized aluminum deck
- Anodized aluminum risers
- (2) aisles, 4’ wide, equipped with 1.66” O.D. mid-aisle handrail and contrasting nosing
- (1) ADA ramp
- (1) Stair at 5’-2” wide front crosswalk
- “R” panel front closure
- 9 gage galvanized 2” mesh chain link guard rail system
- Engineer sealed drawings

**PA Infrastructure**

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Sound/ PA system infrastructure at the top of the bleachers to include:

- Power service to new PA system, location to be below scorer table.
- Lockable weather tight connection box with outlets for connection to system.
- Two speakers mounted to fixed pole or object.

**Portable PA Systems by Leagues/Owner/ Others. NOT INCLUDED.**

### Softball Facility Construction

#### **SOFTBALL FIELDS FOUR (4) – 190' CF, 190' RF, 190' LF**

#### Concrete & Masonry

**Hellas** will:

1. Construct 12" x 18" concrete perimeter curb / mow strip, reinforced with two (2) #4 rebar, at perimeter of synthetic turf and batting cage.
2. Construct 24" (+/-) high split face CMU masonry backstop wall from outside edge of dug out to outside edge of dug out. Including 20 lineal feet of wall padding on the field side.
3. Construct eight (8) 8'x20' dugout slabs 5" thick 3000 psi concrete reinforced with #4 rebar at 18" o.c.e.w.
4. Construct dumpster pad with matching CMU masonry and black vinyl gates with slats. Approximately 12'x7'x6'.

#### Batting Cage Softball

- Provide two 55'x30' dual lane batting cages.
- Install 2" x 4" composite nailer at turf perimeter curb.
- Install geotextile fabric at synthetic turf area.
- Install 6" HDPE collector pipe and connect to field system.
- Install 4" drainage stone mix; graded and compacted to proper planarity and density.
- Provide and install **Matrix® 42 oz.** turf at batting cages including sand infill with white mound and home plate.
- Provide batting cage netting system two lanes 12'x12'x50' that will be supported by the tube steel poles. The netting will be #36 DuPont nylon, double-treated for superior UV protection.

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- The perimeter of the batting cage will have 6' black vinyl fence and one gate each.

### Fencing & Foul Poles

**Hellas** will:

1. All fencing is to be 6' black vinyl chain link with 2" 9GA fabric and sch. 40 pipe.
2. Provide 6' black vinyl chain link fencing along the foul lines with four (4) 12' maintenance gates and eight (8) 4' access gates total.
3. Provide 6' black vinyl chain link fencing along the perimeter of the outfield with slats.
4. All playing ball field fencing is to have a yellow safety cap.
5. Enclose the remainder of the softball facility with 6' black vinyl chain link fence including two (2) eight foot gates and one 12' gate and two four foot (4') access gates.
6. Provide back stop netting system with four steel poles. The netting will be #36 DuPont nylon, double-treated for superior UV protection suspended by steel cables. All fields to have 30' netting systems.
7. Provide eight (8) 8'x20'x8' black vinyl chain link fence dugouts with steel shade structure and metal roofing. Including 1 5/8" top, middle and bottom rails.

### Lighting

**Hellas** will:

- At each softball field provide and install new **1500W Metal Halide** fixtures sports lighting system –by Techline Sports Lighting. Sixty foot 60' high galvanized steel poles. Average light levels **50 FC at infield and 30 FC at outfield. Includes 25-year maintenance free warranty.** Provide and install new sub-panel, breakers, controllers and EcoLink Wireless Control system (shared with football) and connect to new site 480V main distribution panel.

### Softball Bleachers

Provide eight (8) two per field; 4 Row x 15' non elevated bleachers, seats approximately 40 each, with 12'x19' fabric shade structure over each.

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### Scoreboard

#### Hellas will:

1. Provide one per field; Daktronics softball BA-2518-R-PV-F scoreboard with control console.

### PA Infrastructure

Sound/ PA system infrastructure at each field to include:

- Power service to new PA system, location to be below scorer table behind back stop.
- Lockable weather tight connection box with outlets for connection to system.
- Two speakers mounted to fixed pole or object.

**Portable PA Systems by Leagues/ Owner/ Others. NOT INCLUDED.**

### Synthetic Turf Softball Field

#### Hellas will:

1. Install 2" x 4" composite nailer at turf perimeter curb.
2. Install Mirafi 500X geotextile fabric liner at synthetic turf area.
3. Install HDPE perimeter collector pipe system.
4. Install 1" x 12" composite flat drain on 30' centers.
5. Install 4" drainage stone mix; graded and compacted to proper planarity and density.
6. Provide and install Limonta ½" drain mat on top of stone subgrade.
7. Supply and install high pressure hard set sprinkler system, pump to be shared with football field.
8. Provide and install **Matrix® 42 oz.** monofilament synthetic softball turf with **Geo Plus** infill the following options:
  - Green turf outfield
  - Softball lines and markings permanently installed in white turf
  - Infield, base paths, home plate circle and skinned area permanently installed in 'Camel' colored turf

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- Pitching circle permanently installed in camel turf
- **Geo Plus** infill\*\*\*
- Provide 8-year manufacturer warranty
- Provide 8-year 3<sup>rd</sup> party insured warranty

*After synthetic turf installation is complete, **Hellas** will provide an operation and maintenance orientation for care of the turf field, and all of the supplied equipment quoted above.*

**\*\*\* At the conclusion of the first year, **Hellas** will take from attic stock **Geo Plus** material, inspect and groom the field. After year 2 for an annual charge (See maintenance summary at end of proposal.) **Hellas** will provide **Geo Plus** material and perform the inspection and grooming operation.**

9. Install bases and home plate at field with concrete foundations with sleeves at bases, including up to three different base path layouts with sleeves and plugs.
10. Install pitching rubber at the pitching circle, rubber installed in concrete.
11. Provide four (4) Porta-Pitch Portable Little League pitchers mounds.
12. Provide and install eight (8) two per field 20' high aluminum foul poles with wings.

**Construction of Concession-Restrooms approximately 3,287 SF per layout of 12.08.16**

- **Construct per I.B.C. 2012/2015 and locally adopted ordinances.**
- Building eave height to be approximately 10'-8".
- See Utilities, provide new water service.
- Construct subgrade and building pad per Geotechnical recommendations.
- Construct reinforced concrete slab-on-grade and foundation as designed by Structural Engineer.
- Exterior walls to be 8" colored or split-face CMU, Two colors, one 4 to 5 course wainscot with the other color above.
- Interior walls to be 4"-8" gray CMU painted.
- All concrete floors, base as needed or necessary.
- Wood framed roof structure, O.S.B. decking with Mueller Inc. RPN panel metal roofing including underlayment with matching gutters and downspouts.
- Exterior grade sheetrock (green or purple board) ceilings, painted.
- ADA compliant HDPE toilet partitions with toilet paper dispensers and grab bars as required.

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- Commercial grade hollow metal doors and frames painted with commercial grade hardware.
- Commercial hollow metal windows.
- Restroom accessories per code.
  - Wall-mount liquid soap dispensers.
  - Wall-mount paper towel dispensers.
  - Wall-mount toilet paper dispensers.
  - ADA grade bars.
  - Commercial grade safety mirrors above sinks.
- Plastic laminate cabinets with stainless steel countertops in concession.
- Roll-up style concession doors, aluminum with locks.
- Plumbing per design and local plumbing code to meet *the 2009/2012 code requirements regarding the number of plumbing fixtures required for open-air bleachers for sports viewing. We are requesting a variance from the City this complex is short 1 women's toilet, this is due to the demolition of the existing restroom building.*
  - Restroom toilets– commercial grade, low flow.
    - Women's 6 stalls
    - Men's 2 stalls, 4 urinals.
  - Men's urinals low flow.
  - One family restroom with one toilet, sink and baby changing station.
  - HDPE low flow sinks at Women's and Men's.
  - Stainless Steel two compartment free standing tub sink in concessions, SST hand wash sinks.
  - Two (2) frost-proof hose bibs located on the building.
  - One (1) hose bib in each restroom and concession for cleaning – locate under sinks.
  - One mop sink and water heater in mechanical/utility room.
  - One pair of high/low drinking fountains.
- Heating/ Air Conditioning, air conditioning to be provided to the restrooms and concession storage rooms only. Restrooms and janitor closet to have conventional exhaust systems. Concession to have thermostat controlled exhaust system. Radiant or electrical heat in each room.
- Electrical: System per final design and local building code. See above; provide new power service to site. We will tie into new electrical service rack on site:
  - 15 each -20 amps dedicated outlets.
  - Two (2) 20 amp GFCI outlet on exterior of building.

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- Interior and exterior lighting to meet code light levels.
- Electrical panel and transformer located in electrical room.

### ***Maintenance Building – Pre Engineered Metal building 20’x24’***

- Pre Engineered metal building with foundation and slab
- R-Panel walls standard colors
- R-panel roof with gutters and down spouts standard colors
- One 12’x8’ rolling door
- One 3’-0” x 7’-0” hollow metal door
- One 3’x5’ window
- Interior lights and two exterior wall packs
- Non-insulated
- No interior finish out
- One exterior hose bib.

### ***Multi-Use Play field approximately 36,000 SF***

- Provide and install **Matrix® 42 oz.** monofilament synthetic turf with **Geo Plus** infill the following options:
  - Green turf
  - Softball slide boxes permanently installed in ‘Camel’ colored turf
  - Softball bases permanently installed in white
  - Mini Soccer fields permanently installed in yellow colored turf
  - **Geo Plus** infill\*\*\*
  - Provide 8-year manufacturer warranty
  - Provide 8-year 3<sup>rd</sup> party insured warranty
- Supply and install high pressure hard set sprinkler system, pump to be shared with football field.
- Provide 10’ chain link fence back stops.
- Provide 4’ perimeter black vinyl fence with one 12’ gate and one 4’ gate.

### ***Practice Grass Football Field***

- Provide soil amendments/ compost and till into on site soils
- Provide complete irrigation system
- Provide concrete layout monuments for field striping

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Fax (512) 250-1960  
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- Fine grade field to make ready for hydro-seed
- Maintain field for 90 days including reseeding where necessary and one fertilization.
- Cost of irrigation water is to be paid for by COP.
- No goal posts provide as requested by COP.

**Site amenities**

- One 32' double tier Hexagonal Shelter 8000 series by Kraftsman, engineered foundation and structure.
- One 35'x40' concession pavilion with 5" slab on grade and four picnic tables.
- Two 20'x30'x8' eve height shade structures for football by Park & Play.
- Four (4) 8'x10' picnic shelters with table and grill (238HS & G632-3) one ash container.
- Eight (8) picnic tables. (238HS & 238PR8)
- Ten Benches. (940S-PR8)
- Sixteen (16) Combination trash & recycle cans. (Dual Lexington LX-72)
- One Tot Spirit playground with sail shade canopy and synthetic turf.
- Eight (8) fabric bleacher shade covers approximately 12'x19'x10'.

**Total Sports Complex Preliminary GMP: \$8,519,793.18**

**See Attached Summary pricing.**

**Price includes a \$250,000.00 allowance for a splash pad.**

**See Attachment:** Overall site plan dated December 13, 2016.

**Geo Plus:** Annual cost after year 2 for an annual charge. **Hellas will provide Geo Plus material and perform the inspection and grooming operation.**

**Per year: \$16,161.00**

**Exclusions (but not limited to):**

1. Sales Tax Exemption Certificate to be provided.
2. Fire suppression systems, fire alarm systems, fire water lines or fire hydrants.
3. Owner shall provide ingress/egress for ALL personnel, equipment and materials; typical construction traffic shall be expected for the duration of this contract. Contractor NOT

12710 Research Boulevard  
Suite 240  
Austin, Texas 78759



Phone (512) 250-2910  
Fax (512) 250-1960  
info@hellasconstruction.com



responsible for damage due to typical construction traffic ingress/egress to the construction site.

4. Notwithstanding anything to the contrary in any of the Contract documents, under no circumstances shall the Performance bonds, maintenance bonds or the obligations of the Surety be liable for any warranty obligations that exceed one (1) year from the date of substantial completion as defined in the Contract Documents.

Please contact this office should you have any questions regarding this proposal. **Hellas Construction, Inc.** looks forward to the award of this project and is eager to work with you.

Sincerely,

A handwritten signature in blue ink, appearing to be "Mario Albini", enclosed within a blue oval scribble.

Mario Albini  
V.P. Design Build Operations

12710 Research Boulevard  
Suite 240  
Austin, Texas 78759



Phone (512) 250-2910  
Fax (512) 250-1960  
info@hellasconstruction.com

# CITY OF PORTLAND, TEXAS

Financing Plan for the Issuance of  
\$14,000,000 General Obligation Bonds, Series 2017

December 20, 2016

Presented by:  
Victor Quiroga, Jr.  
Financial Advisor

# 2016 BOND PROGRAM – BACKGROUND AND GOALS

- Successful bond election held on May 7, 2016 for \$25,200,000.
- Bond proceeds from the first bond sale will be used for the construction of a Sports Complex and Municipal Park improvements.
- \$25,200,000 bond authorization will be sold in three installments over three years to mitigate and layer the tax impact.
- Based on current construction and drawdown schedules, \$14,000,000 will be sold in February 2017.
- The year-over-year initial I&S tax impact from the Series 2017 bonds will be approximately 2.5¢ to 3.5¢ in the FYE 2018.

# REPAYMENT ILLUSTRATION FOR A \$14,000,000 BOND ISSUE

Fiscal Year Ending 9/30:	Principal	Interest*	Annual Debt Service
9/30/2018	215,000	854,486	1,069,486
9/30/2019	485,000	585,863	1,070,863
9/30/2020	505,000	565,250	1,070,250
9/30/2021	530,000	543,788	1,073,788
9/30/2022	550,000	521,263	1,071,263
9/30/2023	575,000	497,888	1,072,888
9/30/2024	600,000	473,450	1,073,450
9/30/2025	625,000	447,950	1,072,950
9/30/2026	650,000	421,388	1,071,388
9/30/2027	680,000	393,763	1,073,763
9/30/2028	705,000	364,863	1,069,863
9/30/2029	735,000	334,900	1,069,900
9/30/2030	770,000	303,663	1,073,663
9/30/2031	800,000	270,938	1,070,938
9/30/2032	835,000	236,938	1,071,938
9/30/2033	870,000	201,450	1,071,450
9/30/2034	910,000	164,475	1,074,475
9/30/2035	945,000	125,800	1,070,800
9/30/2036	985,000	85,638	1,070,638
9/30/2037	1,030,000	43,775	1,073,775

(\* ) Conservative interest rate of 4.25% for planning purposes.



## NEXT STEPS FOR A SUCCESSFUL BOND SALE

- ❑ December 20, 2016 – Council approves a Financing Plan allowing Administration and Financial Advisor to proceed with document preparation.
- ❑ February 7, 2017 – Enter the bond market and lock-in a fixed interest rate; Council approves the sale of the bonds.
- ❑ March 8, 2017 – Closing of the transaction and receipt of bond proceeds via electronic wire transfer (*no meeting necessary*).

# TERM SHEET FOR THE GENERAL OBLIGATION BONDS, SERIES 2017

- Sale Date: February 7, 2017
- Closing Date: March 8, 2017
- Tax Status: Tax-Exempt
- Purpose: Construction of a Sports Complex and Community Center.
  
- Interest Rate: **Fixed Rate**
- Interest Dates: Semi-annually on (2/15) and (8/15); first payment on 2/15/2018
- Principal Dates: Annually beginning 8/15/2018 through 8/15/2037 (20 years)
- Call Option: 8/15/2016 at Par
- Security: Ad Valorem Property Taxes
- Ratings: Application to be submitted to S&P Ratings
- Sale Type: Negotiated
- Underwriters: Estrada Hinojosa, RBC Capital Markets and BOK Securities.



## PLANNING AND ZONING COMMISSION ACTION ITEM

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**AGENDA TITLE**      **PUBLIC HEARING – SPECIAL USE PERMIT**

THE CITY COUNCIL WILL CONDUCT A PUBLIC HEARING TO SOLICIT COMMENTS FROM CITIZENS AND OTHER INTERESTED PARTIES CONCERNING A REQUEST FROM MOBILITIE, LLC, FOR A SPECIAL USE PERMIT TO CONSTRUCT A 120-FOOT TALL MONOPOLE TELECOMMUNICATIONS TOWER IN THE PUBLIC RIGHT-OF-WAY IN THE 600 BLOCK OF BROADWAY BLVD. – ASSISTANT CITY MANAGER

**SPECIAL USE PERMIT REQUEST**

THE CITY COUNCIL WILL CONSIDER THE FIRST READING OF AN ORDINANCE THAT GRANTS A SPECIAL USE PERMIT TO CONSTRUCT A 120-FOOT TALL MONOPOLE TELECOMMUNICATIONS TOWER IN THE PUBLIC RIGHT-OF-WAY IN THE 600 BLOCK OF BROADWAY BLVD. – ASSISTANT CITY MANAGER

**MEETING DATE**      12/20/2016

**DEPARTMENT**      Administration

**SUBMITTED BY**      Brian DeLatte, P.E., Assistant City Manager

---

**EXECUTIVE SUMMARY**

A Special Use Permit application has been submitted by Mobilitie, LLC, to construct a 120-foot tall monopole telecommunications tower in the public right-of-way in the 600 block of Broadway Blvd. City Staff recommends denial of the application on three grounds: (1) the City's right-of-way is not an appropriate location for private telecommunications towers; (2) this location would likely compromise the City's wastewater system during construction as it is located within several feet of the City's wastewater trunk main; and (3) the adjacent property owner could be detrimentally harmed by the construction. The Planning and Zoning Commission recommended denial of the Special Use Permit.

**SPECIAL USE PERMIT REQUEST**

Mobilitie is a privately-held telecommunications infrastructure company that specializes in installing telecommunications towers throughout the United States for Sprint and other customers. Mobilitie is proposing to install a 120-foot telecommunications tower adjacent to the Dairy Queen within the public right-of-way in the 600 block of Broadway Blvd. Telecommunications towers in Portland are governed by a Special Use Permit Process (UDO Section 315) so that the Planning and Zoning Commission and City Council can review the

merits of the application and enforce any conditions necessary to prevent or minimize adverse effects on other properties in the neighborhood.

### **SPECIAL USE PERMIT APPROVAL CRITERIA**

Section 315 of the UDO outlines the following criteria for which the Planning and Zoning Commission and City Council shall base approval. Mobilitie has provided a response for each criterion via separate letter (mis-dated November 10, 2014).

1. *Impacts Minimized.* Whether and the extent to which the site plan minimizes adverse effects, including adverse visual impacts, on adjacent properties.
2. *Consistent with this Ordinance.* Whether and the extent to which the proposed special use would conflict with any portion of this Ordinance, including the applicable zoning district intent statement.
3. *Compatible with Surrounding Area.* Whether and the extent to which the proposed special use is compatible with existing and anticipated uses surrounding the subject land.
4. *Traffic Circulation.* Whether and the extent to which the proposed special use is likely to result in extraordinarily prolonged or recurrent congestion of surrounding streets, especially minor residential streets.
5. *Effect on Natural Environment.* Whether and the extent to which the proposed special use would result in significant adverse impacts on the natural environment, including but not limited to water or air quality, noise, storm water management, wildlife, vegetation, wetlands and the practical functioning of the natural environment.
6. *Community Need.* Whether and the extent to which the proposed special use addresses a demonstrated community need.
7. *Development Patterns.* Whether and the extent to which the proposed special use would result in a logical and orderly pattern of urban development in the community.

### **CITY STAFF ANALYSIS**

This Special Use Permit application is the first in which a private company has proposed to construct its facility in City of Portland right-of-way. Mobilitie, prior to its application, had informed City Staff that it has been permitted through the Public Utilities Commission of Texas to construct its facilities in public rights-of-way similarly to AEP or Verizon without city approval. City Staff disputed this concept and sought counsel of the City Attorney and the Texas Municipal League. Both have advised us that Mobilitie is misinterpreting their authority granted by the PUC. TML has indicated that “City consent has always been required before any company can use any public property, including use of the public rights-of-way, for private use (e.g., water tower leases for antenna).” Furthermore, the City Attorney has opined that

the City's authority to require Mobilitie to follow the Special Use Permit process as required by the Unified Development Ordinance is applicable in this situation.

There are three primary concerns that City Staff has regarding the application: the construction of a tower in the right-of-way, the construction of a tower in close proximity to critical city infrastructure, and construction that detrimentally impacts adjacent property owners.

First, City Staff recommends that the city's rights-of-way and other property must be preserved and protected. Installation of a 120-foot telecommunications tower in the City right-of-way is detrimental in not only this particular scenario, but also in setting undesired precedent for the installation of private facilities in the public right-of-way city-wide. City Staff is not, however, opposed to the construction of telecommunications towers on private property. Secondly, Mobilitie was informed multiple times that this proposed location, as described by its coordinates, is directly adjacent to the City's wastewater trunk main that delivers wastewater the City's plant from the majority of the City. Mobilitie was asked if a new location was desired and declined. Lastly, Mobilitie has proposed this construction adjacent to the Dairy Queen parking lot without Dairy Queen's prior knowledge or consent. South Texas Dairy Queens, Inc., has filed an objection to the request, stating that the tower would be "damaging to our business (and) unsightly."

City Staff's analysis shows that the Special Use Approval criteria 1, 3, and 5 are not met. City Staff recommends denial of the application.

#### **ADJACENT PROPERTY NOTIFICATIONS AND PUBLIC HEARING NOTICES**

There are 11 adjacent properties within 200 feet of the proposed tower location. Property owners were notified by mail, postmarked November 15, 2016, of Public Hearings at the Planning and Zoning Commission and City Council meetings. Notice was also posted in the Coastal Bend Herald on November 17, 2016, in conformance with UDO Section 302.

#### **PUBLIC HEARING AND RECOMMENDATION BY PLANNING AND ZONING COMMISSION**

The Planning and Zoning Commission conducted a public hearing at is December 13, 2016, regular meeting. One resident spoke in opposition to the request. The Commission votes 7-0 to recommend that the City Council deny the Special Use Permit request.

#### **ATTACHMENTS**

- Attachment #1—Special Use Permit Application and Response Letter
- Attachment #2—Proposed Tower Plans
- Attachment #3—Notice of Public Hearing
- Attachment #4—Location Map
- Attachment #5—Site Pictures
- Attachment #6—South Texas Dairy Queen, Inc., Response Letter
- Attachment #7—Texas Municipal League Legal Analysis
- Attachment #8—Mobilitie PowerPoint Presentation

- Attachment #9—Draft Ordinance

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**RECOMMENDED ACTIONS:**

Adopt one of the following motions:

- A. Approve the first reading of an ordinance that grants the Special Use Permit

**OR**

- B. Approve the first reading of an ordinance that grants the Special Use Permit with conditions

**OR**

- C. Reject the first reading an ordinance that grants the Special Use Permit

Development Services  
1101 Moore Avenue  
Portland, Texas 78374  
Phone: (361) 777-4553  
Fax: (361) 643-5709  
Email: permits@portlandtx.com



### APPLICATION FOR PERMIT

#### APPLICATION FOR:

- Plumbing       Mechanical       Electrical       Accessory Structure
- Sign             Demolition       Roofing           Concrete Only/Flatwork
- Fence             Swimming Pool    Other Utility Pole

License Holder Name: Ciano Thomas Co. Name: Mobility LLC  
~~Interstate Transport & Broadband, LLC~~  
~~data TX Relay Transmission Networks, LLC~~

Type of License/License number NRE Manager Contractor Phone: NA

Property Owner's Name: 925B Peachtree Street NE, Suite 710 Address: NA

City/State/Zip Atlanta, GA 30309 Phone: (678)733-4764

Address of Project: 617-699 W Broadway Ave, Portland, TX 78374

Description of Project: 120'ft Utility Pole. TRTN ID: 9TXX003167

Estimated Cost of Job NA Number of Squares (Roofing Only) \_\_\_\_\_

*I, the applicant for this permit, warrant the truthfulness of all the information provided in this application and understand that if any of the information provided is incorrect, the permit may be revoked by the Building Department. I certify that all work will be in full conformity with the City of Portland ordinances and applicable state laws. An incomplete application may delay the permit.*

Ciano Thomas  
Signature of License Holder or authorized person

3-21-16  
Date



\_\_\_\_\_  
Reviewed by

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved by

\_\_\_\_\_  
Date



Moblittie, LLC  
120 S. Riverside Plaza  
Suite 1800  
Chicago, IL 60606 USA  
Tel: 312.877.3231  
www.moblittie.com

November 10, 2014

Brian DeLatte  
Assistant City Manager  
1900 Billy G. Webb Dr.  
Portland, TX 78374

**RE: MOBILITIE, LLC'S PERMIT APPLICATION SUBMISSION FOR ITS PROPOSED DEPLOYMENT IN THE PUBLIC RIGHTS-OF-WAY IN PORTLAND.**

Mr. DeLatte:

Thank you for your time on September 26<sup>th</sup> to discuss Moblittie's plans within Portland with Katie DeShetler. As discussed, Moblittie is a Texas certificated Competitive Local Exchange Carrier that develops intelligent infrastructure solutions to densify and optimize wireless carriers' services and geographic reach.

Specifically, Moblittie is deploying two types of infrastructure: 1) Small Cell Sites and 2) Transport Sites. This infrastructure works together to form a network that will provide high-speed, high-capacity bandwidth and mobile connectivity to service the residents, businesses and visitors of Portland.

**SMALL CELL SITES**

Moblittie's Small Cell Sites involve the installation of small, low-powered wireless facilities consisting of a transmit-receive antenna that communicates with wireless devices, a wireless backhaul antenna that connects the facility to the carrier's core network, and compact radio equipment mounted on either new or existing utility or light poles. These Small Cells add coverage and capacity to the existing wireless networks, and are designed to blend with existing infrastructure.

**TRANSPORT SITES**

Moblittie's Transport Sites consist of a galvanized-steel utility pole supporting microwave dishes and radios that provide high speed connectivity to connect into wireless carriers' core networks, and ultimately into the internet. These Transport Sites optimize wireless carriers' networks by providing high speed bandwidth with the same speed and performance of fiber optic networks.

**MINIMAL IMPACT**

Moblittie's innovative pole designs minimize both the construction and visual impacts required to extend this type of network. By using monopoles with the necessary equipment attached to the pole there is a minimal footprint and very little land use is required; the visual impact of typical telecommunications towers is also greatly reduced by the use of a single steel pole. Whereas a typical steel lattice tower can have a footprint of over six hundred (600) square feet, not including the necessary guy wires, our largest poles have a forty (40) inch diameter and a total footprint of less than forty (40) square feet.

**CONSISTENT WITH PORTLAND'S ORDINANCES**



Mobilitie, LLC  
120 S. Riverside Plaza  
Suite 1800  
Chicago, IL 60606 USA  
Tel: 312.877.3231  
www.mobilitie.com

Mobilitie's proposed utility pole is also consistent with Portland's Unified Development Ordinance ("UDO"). The extension of data and internet service aids in promoting the public health, safety and general welfare of Portland's citizens by extending 911 and internet access in an ever-expanding technological landscape. As this pole is located in the city's right of way, it is not incompatible with the intended land use, and creates a minimal footprint similar to other utility poles. Its location in the OT-2 district is consistent with the zoning intent expressed in UDO 405(L) because it is necessary to extend telephone and internet access if Portland is interested in encouraging retail, entertainment, commercial, and residential activities to attract both tourists and residents.

### **CONSISTENT WITH SURROUNDING AREA**

Mobilitie is registered with the Texas Public Utility Commission as a Competitive Local Exchange Carrier, and as such it has the authority to place these utility poles in municipal rights of way with a city's permission. Because of the atypical designs employed by Mobilitie, our poles are capable of blending in with other utility poles and with the surrounding buildings. The area Mobilitie is proposing construction in is a commercial area and already contains numerous utility poles; this is one of the few available spaces without overhead lines. With a pole in this location, Mobilitie would be able to greatly extend data and internet connectivity for the citizens of Portland without noticeably changing the area.

### **TRAFFIC CIRCULATION**

Traffic circulation is an important consideration in Mobilitie's site locations; we strive to only place poles where the disruption of traffic will be minimal. At most a single lane closure for two (2) working days would be necessary to place the pole, and Mobilitie can design a traffic control plan that will greatly reduce any possible traffic congestion. The total construction time should not exceed ten (10) days, including the setting of the foundation, and can be accomplished without significant traffic interruptions.

### **EFFECT ON NATURAL ENVIRONMENT**

Mobilitie's poles have no more effect on the natural environment than any other utility pole or large sign. These poles have a much smaller impact than traditional telecommunications poles because they are much smaller and require less anchoring and tree clearing. The pole itself is galvanized steel, and the foundation is typically composed of cement. Neither of these would have any significant effect on the natural environment that does not already occur in the immediate vicinity.

### **COMMUNITY NEED**

In a society with an ever-increasing need for data, Mobilitie is playing ahead of the curve. The fifth generation of telephone service, 5G, will soon replace 4G and will require a much higher data capability to work effectively. To this end, we are extending our network of poles across the country and have already placed many Small Cell Sites in major cities. Our transport sites are much more useful in areas where buildings do not typically exceed five (5) stories because they can provide service to an entire community with the use of just one pole. This pole would allow us to extend data and internet connectivity to thousands of Portland's residents, as well as provide connectivity for emergency services, telephone calls, and any other service requiring connection to a network. Mobilitie can provide the citizens of Portland with the same data speed that will soon be available country-wide, allowing the city to attract more businesses, tourists, and residents.



Mobilitie, LLC  
120 S. Riverside Plaza  
Suite 1800  
Chicago, IL 60606 USA  
Tel: 312.877.3231  
www.mobilitie.com

## **DEVELOPMENT PATTERNS**

Mobilitie's proposed pole would not disrupt the logical and orderly pattern of urban development in the community; on the contrary, it would aid development by providing increased signal strength and connectivity which will soon be required for Portland to grow and thrive in the 21<sup>st</sup> century. As discussed above, this pole would be placed in the city right of way with other utility poles and would not prevent any construction or development that may occur in the future. Our poles are designed to provide the least inhibition to development by carrying all necessary equipment on the pole itself; no other type of telecommunications pole can accomplish this massive increase in connectivity as efficiently.

## **REQUEST FOR APPROVAL**

At this time, Mobilitie is proposing zero (0) Small Cells and one (1) Transport Pole in Portland as reflected in the previously-submitted Special Use Permit Application (the "Application").

Mobilitie respectfully requests that Portland review and approve the attached Applications supplemented with the enclosed information. Mobilitie values Portland's input on our proposal, and will work closely with the city to determine the optimal locations that balance Portland's principles that guide the use and management of its rights-of-way.

We look forward to working with you and will be following up shortly to confirm receipt of this letter and any necessary documents. Please do not hesitate to contact me at 470-240-3187 or [Oren.Ross@Mobilitie.com](mailto:Oren.Ross@Mobilitie.com) or, in the alternative, Permitting Manager Katie DeShetler at 470-240-3187 or [KDeShetler@Mobilitie.com](mailto:KDeShetler@Mobilitie.com).

Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Oren Ross". The signature is written in a cursive, flowing style.

Oren Ross  
Sr. Network Real Estate Specialist











**NOTICE OF PUBLIC HEARING**

Notice is hereby given that a Public Hearing will be held before the Planning and Zoning Commission of the City of Portland on December 13, 2016 (Tuesday) and the City Council of the City of Portland on December 20, 2016 (Tuesday) in the Council Chamber of the City Hall (1900 Billy G. Webb Drive - Daniel P. Moore Community Center Complex) at 7:00 p.m. to solicit comments from citizens and other interested parties concerning a request from Mobilitie, LLC, for a Special Use Permit to construct a 120-foot tall monopole telecommunications tower in the public right-of-way in the 600 block of Broadway Blvd. (adjacent to 911 Dallas Avenue). A map of the request is located at <http://www.portlandtx.com/index.aspx?nid=102>

Any questions concerning this matter should be directed to Brian DeLatte, Assistant City Manager, at (361) 777-4516 or [brian.delatte@portlandtx.com](mailto:brian.delatte@portlandtx.com)

# Special Use Permit Application

Mobilitie Telecommunications Tower



Austin St

W Broadway Ave

Proposed Location

Dallas St

8th Ave  
Google earth

US-18 Front  
N

300 ft



PROPOSED  
TOWER



EXISTING WASTEWATER LINE



SOUTH TEXAS DAIRY QUEENS, INC  
P.O. BOX 1326 Portland, Texas 78374  
(361) 643-5993 Fax (361) 643-1397

RECEIVED

NOV 21 2016

CITY OF PORTLAND

November 16, 2016

City of Portland  
Brian DeLatte, Assistant City Manager  
1900 Bill G. Webb Dr.  
Portland, Texas 78374

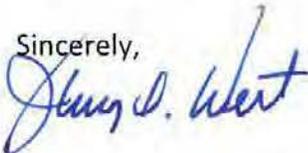
Re: Special Use Permit Application  
Mobilitie Telecommunications Tower Location

Dear Mr. DeLatte,

My name is Jimmy D. West. My wife, Suellen, and I have lived in Portland since January of 1969. We reside at 206 Shore Dr. We own several other properties in Portland, one being the Dairy Queen Restaurant located on the corner of Broadway and Dallas (911 Dallas). We have owned and operated this business since 1976.

Today I received in the mail a notice from the city of Portland stating you are considering granting a Special Use Permit to construct a 120 foot tall monopole telecommunications tower in the public right of way in the 600 block of Broadway Blvd. This is directly in front of the Dairy Queen Restaurant. According to the map, your proposed location is between the two entrances to our restaurant. I would suggest you meet me there and we can look at this together. I cannot understand how the city could even consider this. It is absolutely unacceptable to place any structure between the Dairy Queen and the Street. Not only will this be damaging to our business it will be very unsightly and I would think unacceptable to the city.

Please let me know when you can meet me at the proposed location so you can see what my concerns are.

Sincerely,  




#1 Fun Stop .....for the Good Times.

# DAS Cell Towers in Your Rights-of-Way:

## What You Need to Know

Texas cities of every size are being approached by cell phone providers or their agents about placing a “distributed antenna system (DAS)” in the city’s rights-of-way. Essentially, DAS is a newer technology that is supposed to provide better coverage in urban areas through many “small” cell sites, rather than massive towers. Under current law, a city has complete control over its rights-of-way in relation to these systems. That means a city can allow these facilities, deny them, or regulate them as it sees fit. Moreover, contrary to the assertions of some companies, a city can charge a reasonable rental fee for the use of its rights-of-way.

Some of these companies claim that a 17-year-old law, Chapter 283 of the Texas Local Government Code, gives them the power to move forward with their plans without city consent and without paying a rental for the use of a city’s rights-of-way. In reality, that law has never mandated that a city allow wireless equipment installation in its rights-of-way.

Chapter 283 altered the procedures under which cities collect compensation from local wireline telecommunications providers that use city rights-of-way. It replaced telecommunications franchise agreements for wireline providers with a new system of compensation based on retail, end-user “access lines” of the providers. Essentially, a city is mandated to allow a Public Utility Commission (PUC) certified telecommunications provider (CTP) to use its rights-of-way and the CTP pays access line compensation only in accordance with Chapter 283.

Some cell companies and their agents are now arguing that, because they register a CTP (which is nonsensical because they provide no wireline service), their use of the rights-of-way is governed by Chapter 283, including installation of wireless equipment. However, because they have no retail land line customers, they have no “access lines,” and thus aren’t required to pay an access line fees under Chapter 283 for that installation.

The League has previously reported ([/legis\\_updates/wireless-towers-in-the-rights-of-way](/legis_updates/wireless-towers-in-the-rights-of-way)) on a pending case at the PUC. More recently, a planner from California has prepared a web page (<https://medium.com/@omarmasry/10-key-issues-for-california-cities-counties-on-the-challenges-of-small-cells-not-so-small-c9e966f257a#.9xxidow5c>) that details many of the challenges cities face with regard to these companies. Some of it is specific to California law, but most is very comprehensive information from which Texas city officials can learn a great deal.

**TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.**

**[Back to Legislative Update Index \(/legis\\_updates.asp\)](/legis_updates.asp)**

Texas Municipal League 1821 Rutherford Lane, Suite 400 Austin, Texas 78754 512-231-7400 [Terms &](#)

[Conditions of Use \(/p/TML%20Website%20Terms%20and%20Conditions%20of%20Use\\_7%2030%2013\\_SH.pdf\)](/p/TML%20Website%20Terms%20and%20Conditions%20of%20Use_7%2030%2013_SH.pdf)

[\(/p/10reasonsTMLAssociate.pdf\)](/p/10reasonsTMLAssociate.pdf)



(<http://www.facebook.com/TexasMunicipalLeague>)



([http://www.twitter.com/TML\\_Texas](http://www.twitter.com/TML_Texas))



([https://www.instagram.com/tml\\_texas](https://www.instagram.com/tml_texas))



# City of Portland INFRASTRUCTURE INVESTMENT

June 17, 2016



# Agenda

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- Introduction to Mobilitie
- Project Introduction and City Benefits
- Current Plan for Converse Deployment
- Process proposal

# About Mobilitie



Indoor and outdoor Small Cell networks use Femtocell, Picocell, and Microcell technologies with combined radio heads to provide improved 3G, 4G, LTE, and Wi-Fi service to enterprises and real estate properties



Wireless and Wireline solutions that provide high data bandwidth connectivity to boost throughput and capacity of new and existing networks



High-density Wi-Fi networks that provide ubiquitous internet access to all wireless enable mobile and fixed devices



Indoor and outdoor neutral host Distributed Antenna Systems that provide improved coverage and capacity for all wireless carriers at large venues and in the most challenging locations across the country



Multi-carrier communication towers that enable improved wireless service to carriers across their nationwide macro networks based on our industry leading Lease-to-Suit® model



Our program allows wireless carriers to focus on their core business by having Mobilitie manage third party activity on tower sites

# Mobile Data Trends and Demand Drivers

**84%**

OF TODAY'S SHOPPERS USE THEIR SMARTPHONE TO HELP SHOP IN-STORE

**80%**

MORE THAN OF VOICE CALLS ORIGINATE INDOORS

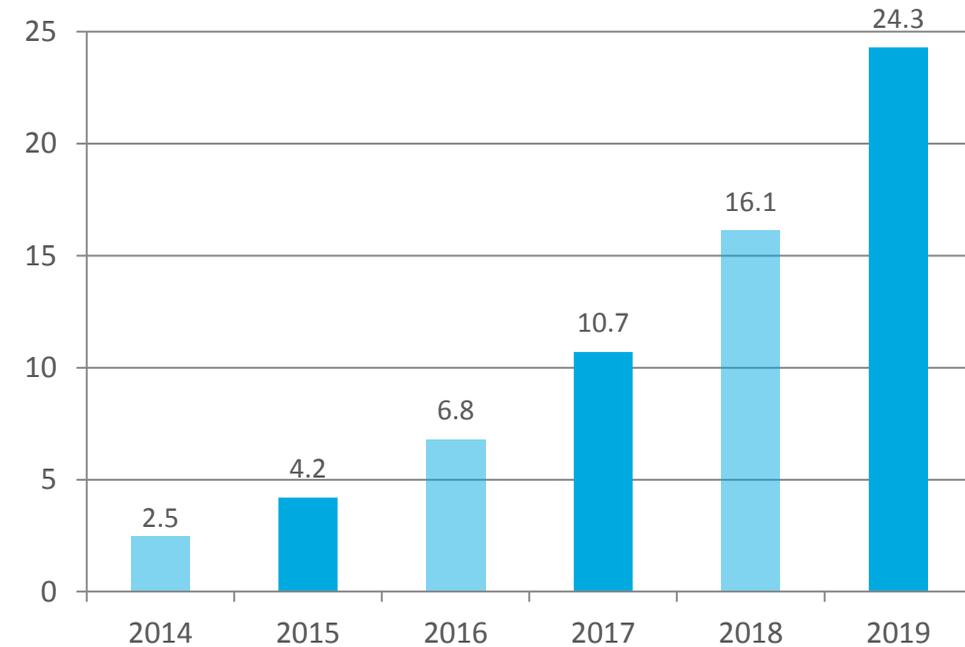
## DATA CONSUMPTION

30 MILLION MB OF DATA ARE USED EVERY 5 MINUTES THROUGH MEDIA STREAMING

**56%**

OF MOBILE DATA IS VIDEO

MOBILE DATA TRAFFIC (EB/MONTH)



U.S. MOBILE DATA USAGE

**90%**

OF HOUSEHOLDS USE WIRELESS SERVICE

**650%**

INCREASE EXPECTANCY OF MOBILE DATA FROM 2014 TO 2018

Source: Cisco VNI Mobile, 2016

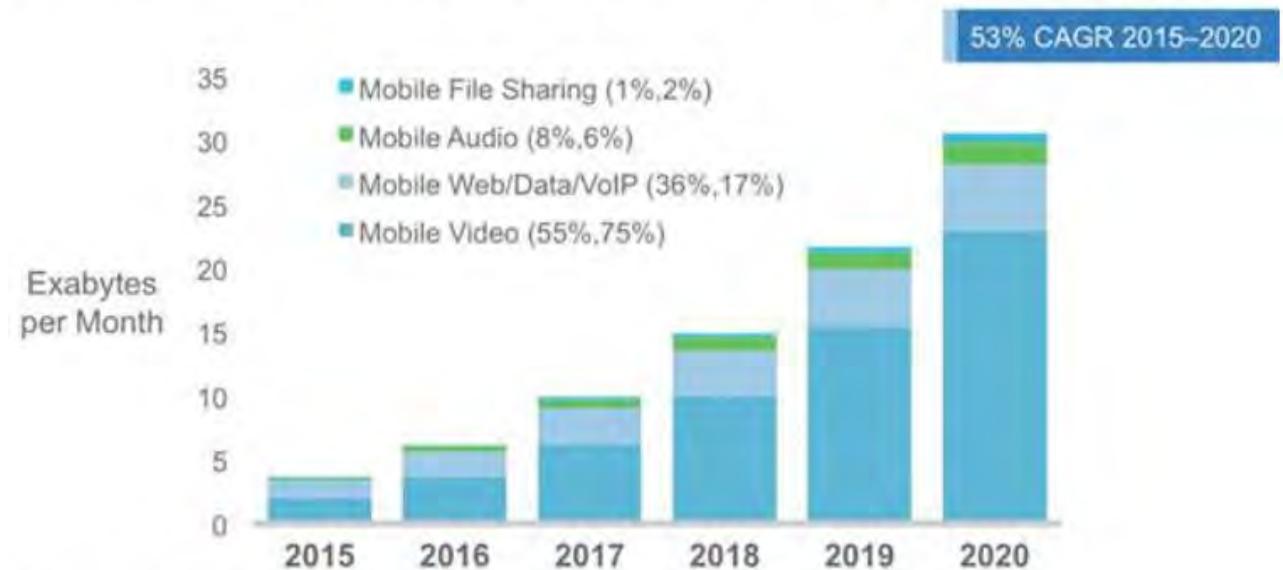
# 2020 Data Use Forecast

Mobile data traffic will grow 6-fold from 2015 to 2020, a compound annual growth rate of 42%.

Mobile data traffic will exceed 2.9 Exabytes per month by 2020 (the equivalent of 725 million DVDs each month), up from 503.9 Petabytes per month in 2015.

100% of mobile data traffic will be 'smart' traffic by 2020, up from 99% in 2015.

Figure 26. Mobile Video Will Generate Three-Quarters of Mobile Data Traffic by 2020



Figures in parentheses refer to 2015 and 2020 traffic share.  
Source: Cisco VNI Mobile, 2016



# About The Effort

## Mobilitie

Fund, deploy and manage wireless infrastructure solutions to meet the needs of the City and its citizens by enabling connectivity.

### Mobilitie to lead largest small cell deployment in US

Enhancing coverage in all 50 US states

- Phased deployment of **~70,000** small cell sites
- All small cell sites to be operational within **14 months**

### Mobilitie's public utility status

Mobilitie is the only wireless infrastructure provider with public utility status in all 50 states

Infrastructure options include:

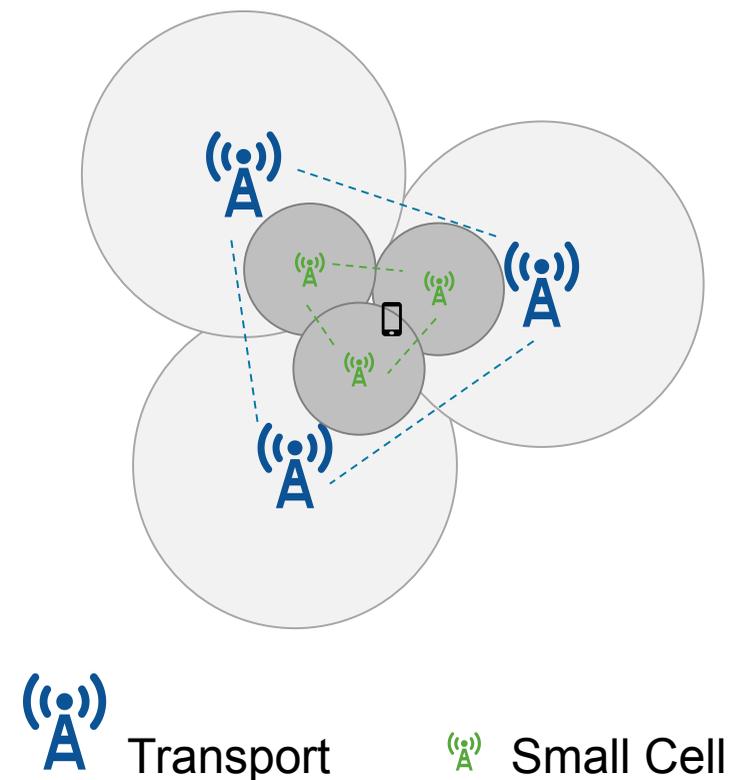
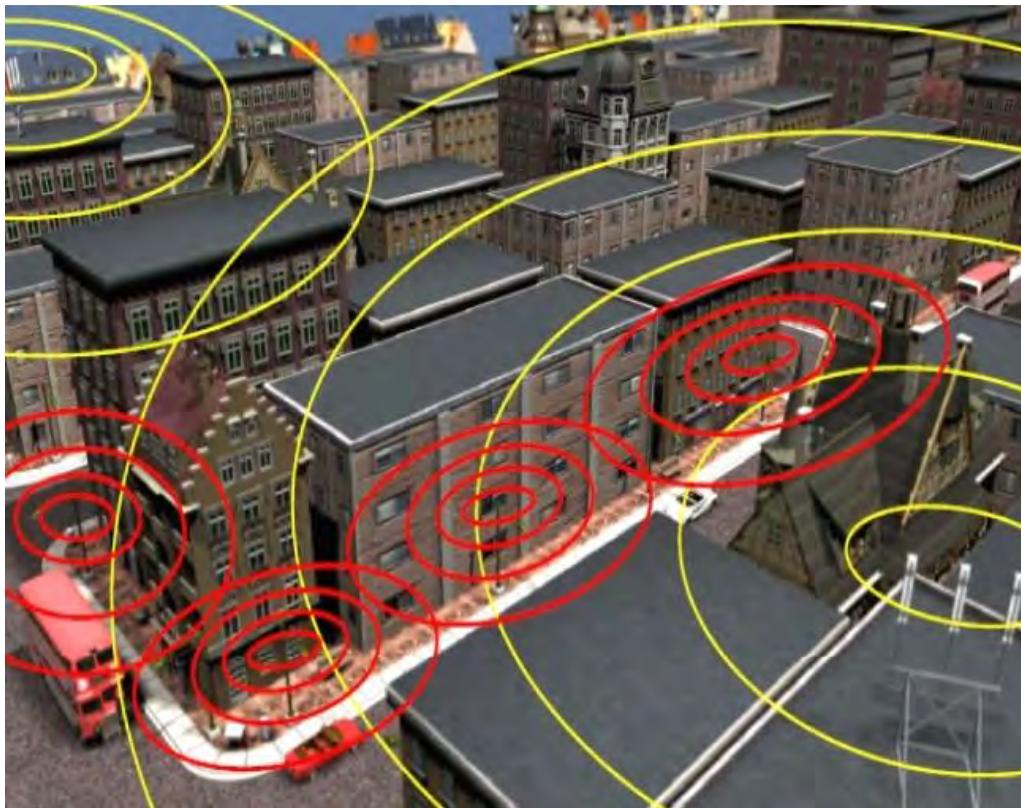
- Utility poles
- Light posts
- Traffic signal posts



Mobilitie is a registered CLEC in the State of Texas

# Holistic Network Design

- Objective is 100% Coverage
- State-of-the-art 4G LTE, 5G ready.
- Designed to address long term data demands



## State – Public Utility Status

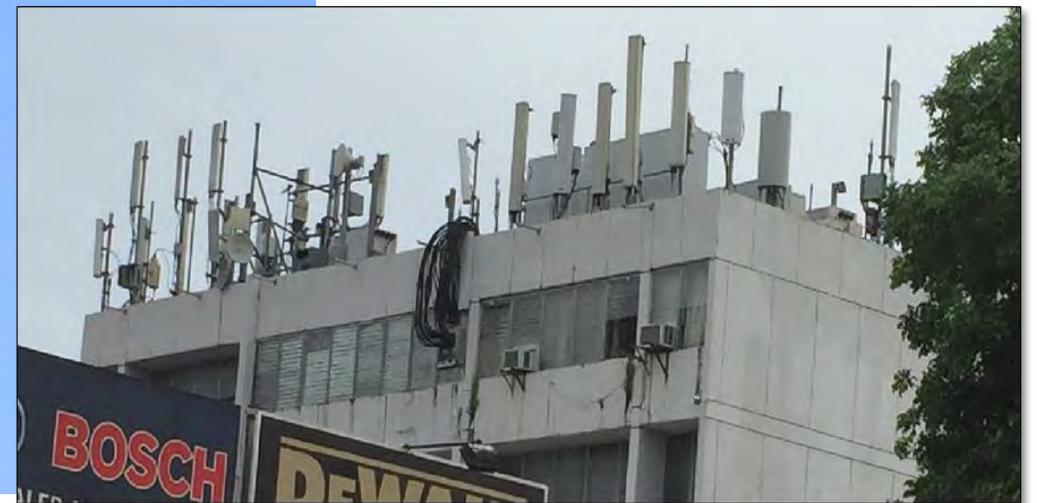
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- As of April 2007, Mobilitie is a “Certificated Telecommunications Provider” (“CTP”) by virtue of its Service Provider Certificate of Operating Authority issued by the Public Utility Commission of Texas
- Under Section 181.082 of Texas’ Public Utility Regulatory Act (“PURA”), “a telephone ... corporation may install a facility of the corporation along, on, or across a public road [or] a public street ... in a manner that does not inconvenience the public in the use of the road [or] street”.
  - Section 181.081(1) defines “facility” to include “a pole, pier, abutment, wire or other fixture related to a telephone ... line”.
- 43 TAC §21.36(a) recognizes that state law entitles entities that transport telephone services the right to “operate, construct and maintain their facilities over, under, across, on or along highways”

# Network Densification - The Carrier Solution

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What we don't want more of...



# The New Solution – Small Cells



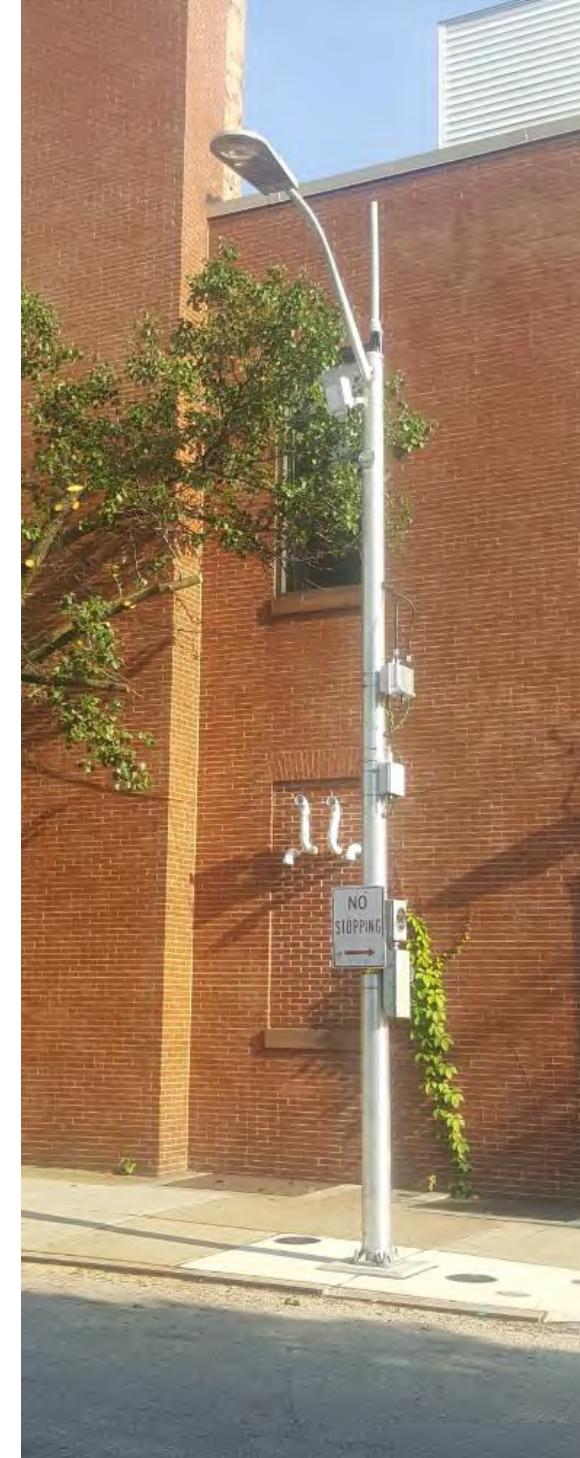
LA, CA



Atlanta, GA

# The New Solution – Small Cells

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# Transport Networks

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# City of Portland Partnership & Process

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- Single Point of Contact for ROW and infrastructure applications and permits
- Approved template that can drive efficiencies
- Design Review to pre-approve locations
- Numerical expectations on bulk submissions
- Jurisdiction permit review timelines
- Staff Augmentation to accommodate spikes
- List of available assets and ROW locations
- List of all other processes, e.g. traffic control, excavation permits, bonds, insurance, etc.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO CONSTRUCT A 120-FOOT TALL MONOPOLE TELECOMMUNICATIONS TOWER IN THE PUBLIC RIGHT-OF-WAY IN THE 600 BLOCK OF BROADWAY BLVD; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; ESTABLISHING A PENALTY AND SPECIFICALLY NEGATING A REQUIREMENT OF A CULPABLE MENTAL STATE; PROVIDING AND ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION

WHEREAS Mobilitie, LLC, has submitted a Special Use Permit application to construct a 120-foot tall monopole telecommunications tower in the public right-of-way in the 600 block of Broadway Blvd.; and

WHEREAS the Planning and Zoning Commission conducted a Public Hearing on December 13, 2016, and recommended that the request be rejected by the City Council; and,

WHEREAS the City Council conducted a Public Hearing on December 20, 2016, to solicit comments from citizens and other interested parties; and,

WHEREAS the City Council deliberated approval of the Special Use Permit on December 20, 2016.

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

SECTION 1: Special Use Permit No. \_\_\_\_\_ is hereby granted with the following conditions as set forth in the Unified Development Ordinance Section 315.

- 1. Mobilitie, LLC, is permitted to construct a 120-foot tall monopole telecommunications tower in the public right-of-way in the 600 block of Broadway Blvd., at the location, height, and nature of construction as described in the attached application.

SECTION 2: If any provision, section, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is, for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof, or provisions or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof, and all provisions of this Ordinance are declared severable for that purpose.





# PLANNING AND ZONING COMMISSION ACTION ITEM

**AGENDA TITLE**      **PUBLIC HEARING – UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS:** THE CITY COUNCIL WILL CONDUCT A PUBLIC HEARING TO SOLICIT COMMENTS FROM CITIZENS AND OTHER INTERESTED PARTIES CONCERNING POSSIBLE UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS. A GENERAL DESCRIPTION OF PROPOSED UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS FOLLOWS:

- REVISIONS TO SECTION 317. SUBDIVISIONS.
- REVISIONS TO SECTION 406. PERMITTED USE TABLE.
- REVISIONS TO SECTION 607. STREET STANDARDS.
- REVISIONS TO SECTION 616. SANITARY SEWER FACILITIES.
- REVISIONS TO SECTION 618. STREET LIGHT STANDARDS.

**UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS:** THE CITY COUNCIL WILL CONSIDER THE FIRST READING OF ORDINANCE NO. 2146 THAT ADOPTS UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS—ASSISTANT CITY MANAGER

**MEETING DATE**      12/20/2016

**DEPARTMENT**      Administration

**SUBMITTED BY**      Brian DeLatte, P.E.

## **EXECUTIVE SUMMARY**

Ordinance No. 2146 proposes several text revisions to the Unified Development Ordinance (UDO). The revisions are necessary for the UDO to address current development trends and to add clarity to conflicting ordinances. The Planning and Zoning Commission recommended adoption of the proposed amendments.

## **PRIOR ACTIONS OR REVIEWS**

- None.

## **PUBLIC HEARING**

It is imperative that a fair, impartial, and legally compliant public hearing be conducted, regardless of the outcome. The Public Hearing Notice was published in *The Coastal Bend Herald* on November 17, 2016. When the Chairperson is satisfied that every person or party in attendance has been given an opportunity to comment, the public hearing should be formally closed.

### **STAFF ANALYSIS**

The proposed revisions to the UDO are required to be address current development trends and clarify conflicting ordinances:

- Revision of Section 317 for the reduction in the maintenance bond value required for subdivision construction.
- Revision of the Permitted Use Table to require Special Use Permits for hotels and allow telecommunications towers in the R-2 zoning district by Special Use Permit.
- Revision of Street Standards to require that cul-de-sacs be constructed of concrete.
- Revision of sanitary sewer construction specifications to require that new lines are inspected utilizing video rather than just mandrel testing.
- Revision of street lighting specifications to require LED street lights.

### **ATTACHMENTS**

- Proposed Ordinance No. 2146

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### **RECOMMENDED ACTION**

Adopt a motion that:

1. Approves the first reading of Ordinance No. 2146.
2. Approves the first reading of Ordinance No. 2146 with modifications.
3. Rejects the first reading of Ordinance No. 2146.



## **NOTICE OF PUBLIC HEARING**

Notice is hereby given that a Public Hearing will be held before the Planning and Zoning Commission of the City of Portland on December 13, 2016 (Tuesday) and the City Council of the City of Portland on December 20, 2016 (Tuesday) in the Council Chamber of the City Hall (1900 Billy G. Webb Drive - Daniel P. Moore Community Center Complex) at 7:00 p.m. to solicit comments from citizens and other interested parties concerning possible Unified Development Ordinance text amendments. A general description of possible Unified Development Ordinance text amendments follows:

- Revisions to Section 317. Subdivisions.
- Revisions to Section 406. Permitted Use Table.
- Revisions to Section 607. Street Standards.
- Revisions to Section 616. Sanitary Sewer Facilities.
- Revisions to Section 618. Street Light Standards.

Any questions concerning this matter should be directed to Brian DeLatte, Assistant City Manager, at (361) 777-4516 or [brian.delatte@portlandtx.com](mailto:brian.delatte@portlandtx.com)

1 **ORDINANCE NO. 2146**

2  
3 **AN ORDINANCE ADOPTING TEXT REVISIONS TO THE UNIFIED**  
4 **DEVELOPMENT ORDINANCE CONCERNING MAINTENANCE BOND**  
5 **REQUIREMENTS, THE PERMITTED USE TABLE, CUL-DE-SAC**  
6 **CONSTRUCTION REQUIREMENTS, WASTEWATER LINE INSPECTIONS,**  
7 **AND STREET LIGHT REQUIREMENTS; PROVIDING FOR THE REPEAL OF**  
8 **ORDINANCES IN CONFLICT HERewith; PROVIDING A SEVERABILITY**  
9 **CLAUSE; ESTABLISHING A PENALTY AND SPECIFICALLY NEGATING A**  
10 **REQUIREMENT OF A CULPABLE MENTAL STATE; ESTABLISHING A**  
11 **PENALTY FOR VIOLATIONS; PROVIDING AND ESTABLISHING AN**  
12 **EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION**

13  
14 **WHEREAS** zoning and subdivision regulations in the Unified Development Ordinance  
15 implement the Comprehensive Plan according to Section 211.004 of the Local Government  
16 Code; and,

17  
18 **WHEREAS** the City of Portland updated the Unified Development Ordinance on February  
19 5, 2013 (Ordinance No. 2065); and,

20  
21 **WHEREAS** the Planning and Zoning Commission conducted a public hearing on  
22 December 13, 2016, to solicit comments concerning revisions to the Unified Development  
23 Ordinance; and,

24  
25 **WHEREAS** the Planning and Zoning Commission, after considering and evaluating  
26 comments presented at the public hearing, recommended approval of Unified Development  
27 Ordinance revisions to the City Council on December 13, 2016; and,

28  
29 **WHEREAS** the City Council conducted public hearing on December 20, 2016, to solicit  
30 comments concerning revisions to the Unified Development Ordinance; and,

31  
32 **WHEREAS** the City Council on December 20, 2016, received a recommendation from the  
33 Planning and Zoning Commission comments concerning revisions to the Unified Development  
34 Ordinance; and,

35  
36 **WHEREAS** the City Council deliberated approval of Unified Development Ordinance  
37 revisions on December 20, 2016; and,

38  
39 **WHEREAS** the City Council has found that the approval of Unified Development  
40 Ordinance revisions will promote the health, safety, and welfare of Portland residents,

41  
42 **NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,**  
43 **TEXAS:**  
44

45 **SECTION 1:** Subsection L. Section 317. Subdivision., Chapter 3, Appendix A of the Code  
 46 of Ordinances is hereby amended to read as follows:

47  
 48 Maintenance Bond and Performance Bond. The contractor or developer shall provide a  
 49 one-year maintenance bond and performance bond (or similar instruments as approved  
 50 by the City Engineer) on all construction required by the final plat and construction  
 51 drawings. The bonds shall be in an amount equal to one hundred (100) percent of the  
 52 construction costs, or a lesser amount set by the Administrative Official. In no event  
 53 shall the maintenance bond be reduced to an amount less than twenty-five (25) percent  
 54 of the construction costs. This one-year period shall begin upon final acceptance of all  
 55 improvements by the City. Any defects in materials or workmanship shall be corrected  
 56 to satisfy the City during this period.

57  
 58 **SECTION 2:** Section 406. Permitted Use Table., Chapter 4, Appendix A of the Code of  
 59 Ordinances is hereby amended to read as follows:  
 60

Use	Residential							Special			Nonresidential				
	R-2	R-6	R-7	R-8	R-8D	R-15	RMH	R-20	RST	OT-1	OT-2	P	C-R	C-G	I
<b>RESIDENTIAL</b>															
Single-Family Dwelling	P	P	P	P	P				P	P	P				
Two-Family Dwelling					P				SP	SP	SP				
Townhouse						P			P	P	P				
Caretaker Quarters											P				
Manufactured Home							P				SP				
Home Occupation Type 1	P	P	P	P				P	SP	P	P	SP			
Home Occupation Type 2								SP		SP	P	SP			
Multifamily Dwelling									P		SP	SP			
Assisted Living Facility	SP	SP	SP	SP	SP	SP			P	SP	SP	P	P	SP	P
Nursing/Convalescent Home									P	SP	SP	P	P	SP	P
Community Home	P	P	P	P	P	P	P	P	P	P	P	SP	SP	SP	
Group Home	SP	SP	SP	SP	SP	SP			SP	SP	SP	P	SP	SP	SP
<b>INSTITUTIONAL/CIVIC/UTILITY</b>															
Agriculture, Farming, Ranching	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Airport, Landing Strip, Helipad, Heliport										SP			SP	SP	SP
Cemetery										P				P	
Civic Organization, Private									SP	SP	SP	P	P	SP	P
Municipal Office or Building	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Hospital									SP	SP		P	P	SP	P
Medical Clinic or Medical Office										SP		P	P	P	P
Recycling Center															P
Religious Institution	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
School, Elementary or Secondary	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
School, College or Vocational	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	P	P	P	P
Telecommunication Tower, Commercial	<u>SP</u>											SP	SP	SP	SP
Wind Turbine															
Telecommunication Tower, Governmental	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Electric Utility Substation	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Water/Wastewater Treatment Facility											SP	SP	SP	SP	P
<b>ENTERTAINMENT/RECREATION</b>															



Use	Residential								Special			Nonresidential			
	R-2	R-6	R-7	R-8	R-8D	R-15	RMH	R-20	RST	OT-1	OT-2	P	C-R	C-G	I
Vehicle Parts Sales											P	SP	P	P	P
Vehicle Service, Limited: when located less than 60' from a residential property line												SP	P	P	P
Vehicle Service, Limited: when located at least 60' from a residential property line											P	SP	P	P	P
Vehicle Service, General: when located less than 60' from a residential property line														P	P
Vehicle Service, General: when located at least 60' from a residential property line											P		P	P	P
Vehicle Sales											P		SP	P	P
Veterinarian/Animal Hospital (with indoor kennels only)									SP		P	P	SP	P	P
Veterinarian/Animal Hospital or Kennel with outdoor kennels									SP		SP	SP	SP	SP	P
<b>INDUSTRIAL</b>															
Manufacturing, Light														SP	P
Manufacturing, Heavy															P
Mining, Excavation															SP
Storage Yard											SP				P
Warehouse, Freight Movement															SP
Wholesale Trade														SP	P

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**SECTION 3:** Subsection J. Section 607. Street Standards., Chapter 6, Appendix A of the Code of Ordinances is hereby amended to read as follows:

J. Surface Improvements. After utilities have been installed, the developer shall construct curbs and gutters and shall surface roadways to the widths prescribed in these regulations. All road pavement, shoulders, drainage improvements and structures, curbs, turnarounds, and sidewalks shall conform to the city construction standards and specifications (which are contained in a separate ordinance), and shall be incorporated into the construction plans to be submitted for plat approval. A geotechnical report with pavement recommendations is required for the construction of road pavement. A boring plan shall be designed by a Professional Engineer licensed by the State of Texas for approval by the Administrative Official. All cul-de-sacs and all streets with residential lot frontage with horizontal curvature exceeding forty-five (45) degrees shall be concrete with a pavement section designed utilizing the geotechnical report's pavement recommendations.

**SECTION 4:** Subsection E. Section 616. Sanitary Sewer Facilities., Chapter 6, Appendix A of the Code of Ordinances is hereby created:

81  
82 E. Sanitary Sewer Line Inspections. All sanitary sewer lines and manholes shall be  
83 cleaned, tested, and inspected prior to project acceptance. The Administrative Official  
84 shall determine whether CCTV (video) testing, air testing, mandrel testing, and/or  
85 vacuum testing shall be utilized. Specifications for the testing methods shall be  
86 determined by the Administrative Official.

87  
88 **SECTION 5:** Section 618. Street Light Standards., Chapter 6, Appendix A of the Code of  
89 Ordinances is hereby amended to read as follows:

90  
91 **Sec. 618. - Street Light Standards.**

92  
93 The subdivision developer shall install street lights at locations approved by the City,  
94 including, but not limited to the following:

- 95  
96 A. Intersections.  
97  
98 B. Approved interior block locations so the distance between street lights is five  
99 hundred (500) feet or less.  
100  
101 C. Curves where the delta angle is greater than 45 degrees or the centerline radius is  
102 less than one thousand (1,000) feet.  
103  
104 D. End of cul-de-sacs in excess of two hundred fifty (250) feet in length.  
105  
106 E. Dead ends when they are located more than two hundred fifty (250) feet from  
107 the nearest street light.  
108

109 Lighting poles shall be constructed of aluminum or City-approved equivalent. Lighting  
110 fixtures shall be light-emitting diode (LED) in a wattage approved by the Administrative  
111 Official. In the interest of public safety, street lighting shall be located at and/or directly  
112 across street right-of-way from fire hydrants (the City may, at its discretion, waive  
113 certain location requirements where a conflict in distance within these parameters  
114 occurs). The developer shall complete installation of said street lighting prior to  
115 acceptance of the subdivision improvements by the City. The developer shall pay for any  
116 additional cost, if any, above the credit allowance that the City receives from the utility  
117 company. The City will energize and pay all monthly charges, after power is available to  
118 the system and the City deems it appropriate.  
119

120 **SECTION 6:** If any provision, section, clause or phrase of this Ordinance, or the  
121 application of same to any person or set of circumstances is, for any reason held to be  
122 unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance shall  
123 not be affected thereby, it being the intent of the City Council in adopting this Ordinance that  
124 no portion hereof, or provisions or regulations contained herein, shall become inoperative or

125 fail by reason of any unconstitutionality of any other portion hereof, and all provisions of this  
126 Ordinance are declared severable for that purpose.

127  
128 **SECTION 7:** Any previously adopted ordinance, resolution, rule, regulation or policy in  
129 conflict with this Ordinance is hereby repealed.

130  
131 **SECTION 8:** Any person who violates this Ordinance shall be guilty of a misdemeanor  
132 and, upon conviction thereof, shall be subject to a fine not exceeding five hundred dollars  
133 (\$500.00). Each and every day that a violation of this Ordinance occurs shall constitute a  
134 separate offense. The culpable mental state required by Chapter 6.02, Texas Penal Code, is  
135 specifically negated and dispensed with and a violation is a strict liability offense.

136  
137 **SECTION 9:** This Ordinance shall be published after second reading hereof by publishing  
138 the caption thereof in the official newspaper with a statement the public may view the  
139 Ordinance in the Office of the City Secretary. This Ordinance shall be effective from and after  
140 the publication provided herein.

141  
142 **PASSED** and **APPROVED** on second reading this \_\_\_ day of \_\_\_\_\_ 2017.

143  
144  
145 **CITY OF PORTLAND**

146  
147  
148 \_\_\_\_\_  
149 **David Krebs**  
150 **Mayor**

151  
152  
153  
154 **ATTEST:**  
155  
156  
157 \_\_\_\_\_  
158 **Annette Hall**  
159 **City Secretary**