

**CONTRACT AGREEMENT FOR PROFESSIONAL SERVICES FOR
THE CITY OF KYLE WASTEWATER TREATMENT PLANT EXPANSION**

STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS IS AN AGREEMENT by and between the CITY OF KYLE, Texas, a Texas home rule City (hereinafter called "CITY"), acting through its duly authorized agent, Travis Mitchell, Mayor, and BLACK & VEATCH CORPORATION, (hereinafter called "ENGINEER") for engineering services (hereinafter called the AGREEMENT") .

WHEREAS, the ENGINEER has provided a detailed scope of services for the construction management and construction inspection for the construction phase of the City of Kyle Wastewater Treatment Plant Expansion, hereinafter called the "PROJECT";

WHEREAS, the CITY desires to obtain professional engineering services in connection with the PROJECT; and

WHEREAS, the ENGINEER is qualified and capable of performing the professional engineering construction management and construction inspection proposed herein, which are acceptable to the CITY, and is willing to enter into an AGREEMENT with the CITY to perform such services.

NOW, THEREFORE, for and in consideration of the payment terms and performance obligations herein described, the parties hereto do mutually CONTRACT and AGREE as follows:

**ARTICLE 1
RETAINER**

The CITY agrees to retain the ENGINEER, and the ENGINEER agrees to perform professional services in connection with the PROJECT as an independent contractor and professional consultant as set forth in the sections following; and CITY agrees to pay, and the ENGINEER agrees to accept fees as specified in the sections following as full and final compensation for the work accomplished.

It is understood and agreed that no professional services of any nature shall be undertaken under this AGREEMENT by the ENGINEER until ENGINEER is instructed in writing by the CITY's representative to commence with the work.

**ARTICLE 2
PROFESSIONAL QUALITY**

ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion and retainage of all inspection reports, assist in coordination of activities between contractor and CITY to minimize conflicts with CITY's operation of the existing wastewater treatment plant, observance of contractors workmanship for compliance with construction plans, timely coordination of red line drawings, review of contractors construction sequencing, and other tasks (collectively the Construction Management and Construction Inspection outlined in the Scope of Services) furnished by the ENGINEER under this AGREEMENT.

Approval by the CITY of PROJECT DOCUMENTS, including construction plans and specifications manuals, services, and incidental engineering services shall not in any way relieve the ENGINEER of

responsibility for the technical accuracy of the engineering services performed. The CITY's review, approval, or acceptance of, or payment for any of the services described herein shall not be construed to operate as a waiver of any rights under this AGREEMENT or of any cause of action arising out of the performance of this AGREEMENT.

ARTICLE 3

CONSTRUCTION MANAGEMENT AND CONSTRUCTION INSPECTION SERVICES

ENGINEER agrees to perform CONSTRUCTION MANAGEMENT AND CONSTRUCTION INSPECTION SERVICES in connection with the PROJECT as hereinafter stated, in accordance with the stipulations in this AGREEMENT. The ENGINEER shall perform CONSTRUCTION MANAGEMENT AND CONSTRUCTION INSPECTION necessary for the PROJECT as follows:

TASK 1000 CONSTRUCTION ADMINISTRATION SUPPORT SERVICES.

Black & Veatch as the Construction Manager (CM) will conduct construction administration support services related to the execution of Black & Veatch's scope of services for the CITY throughout the construction duration. Services provided shall include:

1. Project Kickoff Meeting: Facilitate a project initiation meeting to review CITY's requirements for the project, review pertinent available project data, review project staffing and organization, present initial work plan, and present initial work schedule.
2. Project Documentation: Provide construction management related documentation including monitoring of construction progress and schedule.
3. Progress Review Meetings. Coordinate informal meetings with the CITY to review progress and exchange ideas and information. Prepare and distribute minutes for project meetings. A total of 8 progress meetings are anticipated over the course of construction. Additional meetings for construction phase site visits are covered under those tasks.
4. Invoice Submittals. Prepare and submit monthly invoices. Each submittal will include a summary of activities of which the current invoice is recovering costs incurred for that billing cycle.

Task 1000.1 Web-Based Enterprise Project Management Information System (PMIS):

The CM shall utilize the Engineer of Record's (EOR) provided PMIS for project electronic document storage, retrieval, and archiving. The EOR will provide necessary access to the CM team members, will develop file structures, and will provide for project setup and training. The CM shall administer their services for the project within the PMIS, including posting of project documentation as associated with the CM services provided.

Task 1000.2 Project Management Plan (PMP)

The CM shall develop and implement a PMP that is comprehensive to how Black & Veatch manages their internal processes as well as details the manner in which the CM activities performed by Black & Veatch will be planned, managed, and executed. The PMP must define the approach that the CM will use to deliver the Project and how project related information will be communicated. The CM shall update the PMP, as necessary, to reflect changes in the Project. The PMP shall include the following plans:

- Construction Management Plan – The CM shall develop a Construction Management Plan indicating the roles and responsibilities of the CM’s employees, the CM’s Subconsultants’ employees (if any), and the CM’s Experts, and how they integrate into the delivery of the project in accordance with CITY’s requirements. The plan will include project organization, contacts and lines of communications, filing system, budget, and schedule.
- Health and Safety Plan – The CM shall develop a Health and Safety Plan that will guide the safe execution of the project for the assigned Black & Veatch professionals.
- Quality Management Plan (QMP) - The CM shall develop and/or update a QMP describing how Quality Assurance and Quality Control (QA/QC) will be implemented by the CM and CI (Construction Inspector) based upon the specific requirements of the construction contracts to ensure that all City, design, code, and industry standards are met. The QMP must ensure that the construction management goals are achieved, and all facets of the construction contract requirements are met. The QMP will integrate the roles and responsibilities that the CITY and ENGINEER will be required to fulfill within the overall QA/QC process of plant construction.
- Closeout Plan. In collaboration with the CITY and ENGINEER, a Closeout Plan will be developed to identify all closeout activities, timeline for activities to occur, and responsible party or point of contact.

Task 1000.3 Kick-Off Meeting with CITY

The CM shall attend a kick-off meeting with the CITY to:

- Review the planned roles and responsibilities of the CM, the CI, the Subconsultant’s employees, and Technical Experts; and
- Review the Project’s scope, schedule, budget, project control processes, and deliverables.

TASK 2000 CONSTRUCTION MANAGEMENT

PHASE 2300 CONSTRUCTION MANAGEMENT SERVICES

A full time CM and part-time assistants will observe the Contractor's work and perform the services listed below. The CM and assistants shall not have responsibility for the superintendence of construction site conditions, safety, safe practices or unsafe practices or conditions, operation, equipment, or personnel other than employees of Black & Veatch. The CM will exercise stop work authority as delegated by the CITY in the event of an identified Immediate Danger to Life or Health condition. This service will in no way relieve the Contractor of complete supervision and inspection of the work or the Contractor's obligation for complete compliance with the drawings and specifications. The Contractor shall have sole responsibility for safety and for maintaining safe practices and avoiding unsafe practices or conditions. Specific services performed by the CM are as follows:

A. Site Observations and Liaison with CITY and Contractor

1. The CITY, through the Contractor, will provide a lockable office, furniture, and internet access during the duration of construction.
2. Conduct onsite observations of the general progress of the work to assist CITY and EOR in determining if the work is proceeding in accordance with the construction contract documents.
3. Serve as CITY's liaison with the Contractor, working principally through the Contractor's

superintendent, and assist CITY and EOR in providing interpretation of the construction contract documents. Transmit CM's clarifications and interpretations of the construction contract documents to the Contractor.

4. Assist OWNER in serving as CITY's liaison with the Contractor when the Contractor's operations affect CITY's onsite operation.
5. Report to CITY and EOR, giving opinions and suggestions based on the CM's observations regarding defects or deficiencies in the Contractor's work and relating to compliance with drawings, specifications, and design concepts. These opinions and observations are exclusive of special inspections and structural observation to be conducted by others.
6. Advise CITY, EOR and the Contractor or its superintendent immediately of the commencement of any work requiring a shop drawing or sample submission if the submission has not been accepted by EOR.
7. Observe pertinent site conditions when the Contractor maintains that differing subsurface and physical conditions have been encountered, and document actual site conditions. Review and analysis of the Contractor's claims for differing subsurface and physical conditions are supplemental services.
8. Review the Contractors' construction sequence for all construction work undertaken simultaneously.
9. Verify that the Contractor has contacted utilities in the general construction area and advised them of Contractor's schedule. Assist in coordinating scheduling of utility activities to minimize conflicts with CITY's activities.
10. Visually inspect materials, equipment, and supplies delivered to the worksite. Reject materials, equipment, and supplies that do not conform to the construction contract documents. These inspections are exclusive of special inspection activities performed by others.
11. Coordinate onsite materials testing services, performed by CITY's contracted materials testing firm, during construction. Copies of testing results will be forwarded to CITY and EOR for review and information. Materials testing contained as part of special inspections are the responsibility of the approved agency conducting such work and reporting is made in accordance with the program for special inspections.
12. Observe field tests of equipment, structures, and piping, and review the resulting reports, commenting to CITY and EOR, as appropriate.

B. Outside Liaison and Public Information Services

1. All outside liaison and public information services will be handled by CITY.

C. Meetings, Reports, and Document Review and Maintenance

1. Attend the preconstruction conference and assist ENGINEER in explaining administrative procedures that will be followed during construction. Agenda and meeting minutes will be prepared by CITY and EOR with input from the CM.
2. Schedule and attend monthly progress meetings, and other meetings with CITY and the Contractor when necessary, to review and discuss construction procedures and progress scheduling, engineering management procedures, and other matters concerning the project. Agenda and meeting minutes will be prepared by CITY and EOR with input from the CM.
3. Submit to CITY, a monthly construction progress report containing a summary of the Contractor's

progress, general condition of the work, problems, and resolutions or proposed resolutions to problems. Special inspections reports are submitted by others per schedule and procedures established in the program for special inspections.

4. Review the progress schedule, schedule of shop drawings submissions, and schedule of values prepared by the Contractor, and consult with CITY concerning their acceptability.
5. Review submittals for familiarity with all construction equipment and materials. Receipt and processing of submittals will be administered by the EOR.
6. Report to CITY and EOR regarding work which is known to be defective, or which fails any required inspections, tests, or approvals, or has been damaged prior to final payment; and advise CITY and EOR whether the work should be corrected or rejected, or should be uncovered for observation, or requires additional testing, inspection, or approval. The responsibilities of any special inspector or agent to report deficiencies in accordance with the program of special inspections is not to be amended or altered and may be the basis for the knowledge.
7. Review applications for payment with the Contractor for compliance with the established procedure for their submission and forward them with recommendations to CITY, noting particularly their relation to the schedule of values, work completed, and materials and equipment delivered at the site, but not incorporated into the work.
8. Record date of receipt of shop drawings samples. Receive samples that are furnished at the site by the Contractor and notify CITY and EOR of their availability for examination.
9. During the course of Work, verify that specified certificates, operation and maintenance manuals, and other data required to be assembled and furnished by the Contractor are applicable to the items installed; and deliver this material to EOR for his review and forwarding to CITY prior to final acceptance of the work. This is exclusive of any verifications contained as part of the program of special inspections.
10. Ensure Contractor is maintaining a marked set of drawings and specifications at the jobsite based on changes occurring in the field. This information forms the basis by which the EOR will prepare the conformed to construction records documents.
11. Review certificates of inspections, tests, and related approvals submitted by the Contractor as required by laws, rules, regulations, ordinances, codes, orders, or the Contract Documents (but only to verify that their content complies with the requirements of, and the results certified indicate compliance with, the construction contract documents). This service is limited to a review of items submitted by the Contractor and does not extend to a determination of whether the Contractor has complied with all legal requirements. This is exclusive of items contained in the program of special inspections reviewed or verified by others.
12. Participate in coordinating facility start-up, testing and commissioning services between the CITY, EOR, and Contractor. Development of startup, testing, and commissioning plans will be handled by others.

D. Maintain the following documents at the jobsite.

1. Correspondence files.
2. Reports of jobsite conferences, meetings, and discussions among the EOR, CITY, and Contractor.
3. Submittals of shop drawings and samples.

4. Reproductions of original construction contract documents and addenda.
5. Change orders.
6. Field orders.
7. Additional drawings issued subsequent to execution of the construction contract documents.
8. Progress reports.
9. Names, addresses and telephone numbers of all contractors, subcontractors and major suppliers of materials and equipment.

E. Maintain a daily diary or log book of events at the jobsite.

The diary or log book shall remain the property of CM. It will include the following information:

1. Days the Contractor worked on the jobsite.
2. Contractor and subcontractor personnel on jobsite.
3. Construction equipment on the jobsite.
4. Observed delays and causes.
5. Weather Conditions.
6. Data relative to claims for extras or deductions.
7. Daily activities.
8. Observations pertaining to the progress of the work.
9. Materials received on jobsite.

F. Assistance in Certification of Substantial Completion

1. Before EOR issues a Certificate of Substantial Completion, submit to the Contractor a list of items observed to require completion or correction.
2. Assist EOR in conducting final inspection in the company of CITY and the Contractor and prepare a final list of items to be completed or corrected.
3. Verify that all items on the final list have been completed or corrected and make recommendations to EOR concerning acceptance.

PHASE 4400 MATERIALS TESTING

Assist in coordinating onsite materials testing services during construction. Copies of testing results will be forwarded to City/EOR for review and information. Material testing services will be provided by the CITY.

PHASE 4500 SPECIAL INSPECTIONS

Special Inspections are not anticipated to be performed by the CM. The CM will work collaboratively with the CITY's separately contracted materials testing firm to obtain specified field-testing information required by the construction contract documents. If Special Inspections are required, the CM will obtain written approval to utilize Supplemental Service funds.

ARTICLE 4 COMPENSATION

- A.** For the services covered by this AGREEMENT, the CITY agrees to pay the Engineer an amount not-to-exceed \$1,080,000.00 (One Million Eighty Thousand Dollars).
- B.** The Engineer shall be compensated for the services in accordance with the following billing rates. The indicated rates account for labor, overhead, profit, and expenses.

Labor Category	2020
Construction Manager	\$158.00
Construction Inspector	\$132.00
Project Manager	\$270.00
Civil Engineer	\$156.00
Electrical Engineer	\$193.00
Instrumentation Engineer	\$193.00
Safety Engineer	\$174.00
Project Scheduler	\$117.00
Accounting	\$87.00
Project Administration	\$83.00

The indicated billing rates shall be increased 3% each January 1st throughout the duration of the Project.

ARTICLE 5 SERVICES BY THE CITY

- 5.1** In general, the CITY will render services as follows:

5.1.1 Provide available criteria and full information as to the CITY's requirements for the PROJECT.

5.1.2 Assist the ENGINEER by placing at its disposal all available written data pertinent to the construction management and construction inspection of the PROJECT, and any other data affecting the construction of the PROJECT.

5.1.3 Respond in writing no later than thirty (30) days to requests by the ENGINEER for authorization to proceed with specific activities deemed desirable.

5.1.4 Timely provide to ENGINEER information that is required or necessary for the orderly progress of the work.

- 5.2** The ENGINEER will be entitled to rely upon the CITY's Engineer regarding decisions made by the CITY pertaining to this PROJECT and rely upon the accuracy and completeness of all information and data provided by or through the CITY or its ENGINEER; further, all notices or information will be deemed made when conveyed in writing to the ENGINEER.

ARTICLE 6 PROJECT DOCUMENTS

- 6.1** All documents including, but not limited to, correspondence files, daily diary or log book, copies of materials testing reports, will upon payment of all amounts rightfully owed by the CITY to the ENGINEER herein be the property of the CITY and will be available to the CITY no later than thirty (30) days from the date the CITY makes a verbal or written request to ENGINEER. ENGINEER, its subcontractors, agents and employees will be liable to the CITY for any loss or damage to any such documents while they are in the possession of or while being worked upon by the ENGINEER or anyone connected with it. All documents so lost or damaged will be replaced or restored by ENGINEER without cost to the CITY. Any reuse or modification of such documents for purposes other than those intended by the ENGINEER shall be at the CITY's sole risk and without liability to the ENGINEER unless said unintended reuse or modification occurs as a result of ENGINEER's negligence, malfeasance, or willful misconduct. Upon completion of the PROJECT, all documents shall be transferred to the CITY. ENGINEER shall not be required to maintain the records but may do so in accordance with its Document Retention Policy.

ARTICLE 7 NOTICE TO PROCEED

- 7.1** It is understood and agreed that the ENGINEER will work as an Independent Contractor by the CITY, will have ultimate control of the services to be rendered except as otherwise provided in this Agreement or in the event said control shall be in violation of this Agreement, and that no work will be done under this Agreement until the ENGINEER is instructed in writing to proceed with the work. In the event the ENGINEER does work before it is instructed in writing to proceed, the CITY shall not be obligated or in any way liable for payment of compensation or other reimbursements to the ENGINEER.

ARTICLE 8 ASSIGNMENT

- 8.1** The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party will assign, sublet nor transfer any interest in this Agreement without the written authorization of the other.

ARTICLE 9 TERM & TERMINATION

- 9.1** In connection with the work outlined in this Agreement with a , it is agreed and fully understood by the ENGINEER that the CITY may cancel or indefinitely suspend further work hereunder or terminate this Agreement upon fifteen (15) days written notice to the ENGINEER with the understanding that immediately upon receipt of said notice all work and labor being performed under this contract will cease. As a condition precedent for termination for cause, the ENGINEER shall have the fifteen (15) day notice period to cure such cause and shall have failed to so cure. Before the end of such fifteen (15) day period, ENGINEER will invoice CITY for all work completed satisfactorily to the CITY and will be compensated in accordance with the terms of this Agreement. All correspondence files, daily diary or log book, copies of materials testing reports other data work related to the PROJECT will become the property of the CITY upon termination of the Agreement.
- 9.2** Nothing contained in paragraph 9.1 above will require the CITY to pay for any work which fails to meet the Standard of Care. The CITY will not be required to make any payments to the

ENGINEER when the ENGINEER is in default under this Agreement. The CITY and the ENGINEER retain their respective rights and remedies under law and this Agreement does not, nor shall be interpreted, to waive or otherwise modify said rights.

- 9.3** The ENGINEER understands and agrees that time is of the essence and that any failure of the ENGINEER to complete its services within the time limit established herein solely due to the fault of the ENGINEER will constitute a material breach of this Agreement. However, it is agreed that ENGINEER must use sound professional practices performed in a manner consistent with good practices for the profession, and the standards and skills of the professionals practicing such profession in Hays County, Texas. The ENGINEER will be fully responsible for any delays or for failures to use its professional efforts in developing contractual documents in accordance with the terms of this Agreement. Where damage is caused to the CITY due to the ENGINEER 's failure to perform in this manner, as determined by the governing body of the CITY, the CITY may withhold all or any portion of the ENGINEER's payments hereunder without waiver of any of either Party's additional legal rights or remedies.
- 9.4** The ENGINEER will have the right to terminate this Agreement, upon fifteen (15) days written notice to the CITY should the CITY fail to perform its obligation herein to the satisfaction of the ENGINEER. In the event of termination, the ENGINEER will be paid for all services rendered to date of termination. Nothing contained herein will constitute a waiver of ENGINEER 's right to bring a suit for damages or to enforce specific performances of this Agreement under these circumstances. In the event of termination hereunder, ENGINEER will invoice CITY for all work satisfactorily completed up to the date of this notice of termination and will be compensated in accordance with the terms of the Agreement.
- 9.5** Notwithstanding anything contained herein to the contrary, the CITY will have the right to withdraw from this Agreement in the event of non- appropriation of funds by its governing body, and providing ten (10) days written notice from CITY to ENGINEER.

ARTICLE 10 VENUE

- 10.1** Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement will lie exclusively in a court of competent jurisdiction Hays County, Texas, and such court will interpret this Agreement in accordance with the laws of the State of Texas.

ARTICLE 11 ENTIRE AGREEMENT

- 11.1** This instrument represents the entire understanding between the CITY and the ENGINEER in respect to the PROJECT and may only be modified in writing signed by both parties.

ARTICLE 12 SEVERABILITY

- 12.1** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance therewith. The Parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention

that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

ARTICLE 13 RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- 13.1** Approval by the CITY will not constitute nor be deemed a release of the responsibility and liability of the ENGINEER, its employees, subcontractors, agents and consultants for the accuracy and competency of their designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for the ENGINEER's negligent acts, errors or omissions in the performance of the professional services that are the subject of this Agreement, including the preparation of the designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for ENGINEER's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents prepared by the ENGINEER, its employees, subcontractors, agents and consultants.
- 13.2** The CITY agrees the ENGINEER is not responsible for damages arising from any circumstances beyond the ENGINEER's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; quarantines, epidemics changes in applicable laws, regulations or orders of a government agency, failure of any governmental agency to act in a timely manner; failure of performance by the CITY or the CITY's other subcontractors or consultants; or discovery of any hazardous substances or differing and unforeseeable site conditions.

For clarity the parties acknowledge that this Agreement is being entered into in the context of a pandemic (known as the COVID -19 pandemic); which has the potential to cause disruptions and delays to the work beyond the parties' control. The Parties agree the delays caused by or related to the COVID-19 pandemic (including changes in governmental orders or regulations) will be considered an excusable delay in accordance with section 13.2.

ARTICLE 14 INDEMNIFICATION

- 14.1** The ENGINEER will indemnify and hold the CITY and all of its councilmembers, officers, agents, servants, and employees harmless from any loss, damage, liability or expense, including costs of court, reasonable attorneys' fees, expert witnesses' and consultants' fees, on account of damage to property and injuries, including death, to all persons, whether caused by ENGINEER or its officers, agents, employees, subcontractors, licensees, or invitees to the extent caused by any act of negligence or intentionally wrongful act or material breach of any obligation under this Agreement, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them, or any of them in connection herewith resulting from such act of negligence or intentional act or breach for which ENGINEER is found to be legally liable.

In no event shall either Party be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever. ENGINEER's total aggregate liability to the CITY under this Agreement whether arising under breach of warranty or contract, tort strict inability indemnity, or any other theory of legal liability, shall not exceed the compensation actually received by ENGINEER under this Agreement.

The indemnity obligations herein shall survive the termination of the Agreement for any reason and

shall survive the completion of the work on the PROJECT.

It is understood and agreed that the indemnity and defense obligations contained and described herein shall be interpreted in accordance with Texas law current as of the date of this Agreement and that any indemnity or defense obligation, if at all, shall be claimed, interpreted and enforced on a comparative basis of fault and responsibility. Neither Party to this Agreement will allege, claim, file suit or otherwise demand that the other Party provide any indemnity or defense as such may relate to the negligent acts, errors or omissions of the claiming Party.

ARTICLE 15 INSURANCE

15.1 The ENGINEER will maintain at all times professional liability or errors and omissions insurance covering any claim hereunder occasioned by ENGINEER 's negligent act, or error or omission in an amount of \$250,000 per claim and \$1,000,000 annual aggregate. ENGINEER agrees to maintain professional liability insurance during the term of this agreement and, if the policy is on a claims-made basis, for a period of not less than two (2) years after the PROJECT is complete and provide proof of such continuing coverage providing such coverage is readily available and financially feasible. ENGINEER further agrees to provide proof of coverage as needed for prior acts back to the date of execution of this agreement if ENGINEER changes insurance carriers during this extended indemnity period.

ENGINEER will further maintain general commercial liability coverage with limits for damages resulting from bodily injury or death of \$500,000 per person and \$1,000,000 per occurrence, and \$1,000,000 per occurrence for property damage, or single limit of \$1,000,000. Engineer will maintain Worker's Compensation insurance coverage as required in statutory amount for Coverage A and \$250,000 for Coverage B.

ENGINEER further agrees that with respect to the above required liability insurance, the CITY will:

1. Be named as additional insured for general liability insurance.
2. Be provided with a waiver of subrogation, in favor of CITY (other than on professional liability insurance).
3. Be provided with thirty (30) days advance written notice of cancellation, or nonrenewal (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate).
4. Upon execution of this Agreement by ENGINEER, be provided through the office of the City Secretary with either their original Certificate of Insurance or their insurance policy evidencing the above limits and requirements and subject to approval by the City Attorney, as so requested by the City.

The insurance requirements set out in this section are independent from all other obligations of ENGINEER under this Agreement and apply whether or not required by any other provision of this Agreement.

ARTICLE 16 COMPLIANCE WITH LAWS

16.1 The ENGINEER, its consultants, agents, employees and subcontractors, will comply with all applicable federal and state laws, the Charter and Code of Ordinances of the City of Kyle, and all other applicable rules and regulations promoted by all local, state and national boards, bureaus and agencies.

ARTICLE 17 NOTICES

17.1 This Agreement will be administered on the CITY's behalf by the City Engineer. All notices, documentation, or questions arising under this Agreement should be addressed to the CITY's Engineer at:

Leon Barba, P.E.
City Engineer
Kyle City Hall
100 W. Center Street
Kyle, Texas 78640

All written notices from CITY to ENGINEER will be addressed to the ENGINEER as follows:

Joseph Aillet, P.E. BLACK &
VEATCH CORPORATION
14100 San Pedro Avenue, Suite #570
San Antonio, TX 78232

ARTICLE 18 CAPTIONS

18.1 The captions of this Agreement are for information purposes only and will not in any way affect the substantive terms and conditions of this Agreement.

ARTICLE 19 MEDIATION

19.1 In the event a dispute arises between the CITY and the ENGINEER in the application or interpretation of this Agreement, or one or more of its provisions, the Parties may mutually agree to take such dispute to a mediator mutually agreed upon by both parties to this Agreement for resolution. Neither Party is bound to the mediator's decision.

ARTICLE 20 EXECUTION AND EFFECTIVE DATE OF AGREEMENT

20.1 The execution of this Agreement shall proceed as follows: the Agreement shall be submitted to the City Attorney for review, whereupon signature of the ENGINEER shall be affixed hereto, and then to the City Council for final review and approval. After such approval from the City Council, the Agreement shall then be signed by the Mayor. This Agreement will become effective immediately upon the signature of both parties. An executed original of this Agreement shall be kept on file in the City Secretary's office.

ARTICLE 21 INDEPENDENT CONTRACTOR

ENGINEER shall perform in all respects as an independent contractor and not as an employee, partner, joint venture or agent of the CITY. The Work to be performed by ENGINEER shall be subject to the CITY's review, approval and acceptance but the detailed manner and method of performance shall be under the control of ENGINEER. The accuracy, completeness, and scheduling of the work and the application of proper means and methods for performance of the work are entirely the responsibility of ENGINEER. ENGINEER shall be solely responsible for hiring, supervising and paying its employees. ENGINEER shall

be solely responsible for payment of all (i) compensation, including any employment benefits, to its employees, (ii) taxes, including withholding for federal income tax purposes, employment and unemployment taxes, and (iii) such other expenses as may be owed to ENGINEER's employees. However, because ENGINEER's work may be associated in the minds of the public with CITY, ENGINEER shall ensure that all Work by its employees is performed in an orderly, responsible and courteous manner.

ARTICLE 22

INTERESTED PARTY

ENGINEER acknowledges that Texas Government Code Section 2252.908 ("Section 2252.908") requires disclosure of certain matters by a business entity entering a contract with a local government entity such as the CITY. ENGINEER confirms that it has reviewed Section 2252.908 and will 1) complete Form 1295 and electronically file it with the Texas Ethics Commission ("TEC"); and 2) submit the signed Form 1295, including the certification of filing number of the Form 1295 with the TEC, to the CITY at the same time ENGINEER executes and submits the Contract to CITY. Form 1295 is available at the TEC's website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. This Contract is not effective until the requirements listed above are satisfied and any award of the Contract by CITY is expressly made contingent upon ENGINEER's compliance with such requirements. The signed Form 1295 may be submitted to CITY in an electronic format.

ARTICLE 23

CONFLICTS OF INTEREST

ENGINEER acknowledges that Texas Local Government Code Chapter 176 ("Chapter 176") requires the disclosure of certain matters by vendors doing business with or proposing to do business with local government entities such as CITY. ENGINEER confirms that it has reviewed Chapter 176 and, if it is required to do so, will complete and return FORM CIQ promulgated by the TEC and available on the TEC website at: <https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf> seven (7) days of the date of submitting this Contract to CITY or within seven (7) days of becoming aware of a matter that requires disclosure under Chapter 176, whichever is applicable.

ARTICLE 24

VERIFICATION UNDER CHAPTER 2271, TEXAS GOVERNMENT CODE

For purposes of Chapter 2271 of the Texas Government Code, ENGINEER represents and warrants that, at the time of execution and delivery of this Contract, neither ENGINEER, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of the same, boycotts Israel or will boycott Israel during the term of this Contract. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, "boycotts Israel" and "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. ENGINEER understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with ENGINEER and exists to make a profit.

ARTICLE 25
VERIFICATION UNDER CHAPTER 2252, TEXAS GOVERNMENT CODE

ENGINEER represents and warrants that, neither ENGINEER, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of the same, if any, are companies identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2271.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/publications/divestment.php>

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes ENGINEER and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the same, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. ENGINEER understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with ENGINEER and exists to make a profit.

IN WITNESS WHEREOF, the City of Kyle, Texas has caused these presents to be executed by its Mayor and attested by its City Secretary and executed by Joe Aillet, P.E., Associate Vice President on behalf of BLACK & VEATCH CORPORATION.

Executed to be effective as of the ____ day of _____, 2020.

CITY OF KYLE, TEXAS

**BLACK & VEATCH
CORPORATION**

By: _____

By: Joseph R. Aillet

Name: Travis Mitchell
Title: Mayor

Name: Joseph R Aillet P.E.
Title: Associate Vice President

ATTEST: _____
City Secretary