

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND §

AGREEMENT FOR DESIGN/BUILD SERVICES  
CITY OF KENDLETON SANITARY SEWER IMPROVEMETNS  
SOQ 12-038

THIS AGREEMENT is made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as "County," and BOYER, INC., hereinafter referred to as "DESIGN-BUILDER," authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, County intends to have DESIGN-BUILDER design, construct, rehabilitate, and reconstruct or replace certain sanitary lift stations in the City of Kendleton to improve the overall function of the wastewater treatment system. The project will include but not be limited to inspecting the lift stations, determining the problems with each lift station, rehabilitation, reconstruction or replacement as necessary. The project is located throughout the City of Kendleton at the following sites: 12919 TB Mitchell Rd @ the wastewater treatment plant, 13115 Hwy 59, 419 Lum Road and 331 FM 2919. The project also involves the disconnection of the lift station located at 12910 Loop 541 in a manner according to all applicable codes and permits. The project will allow the City to be in compliance with all TCEQ permits.

WHEREAS, County desires that DESIGN-BUILDER perform design and build services in connection with the Work in compliance with all TCEQ permits ; and

WHEREAS, DESIGN-BUILDER represents that it is qualified and desires to perform such services in response to SOQ 12-038.

NOW, THEREFORE, County and DESIGN-BUILDER, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

SECTION I  
SCOPE OF AGREEMENT

1.01 DESIGN-BUILDER agrees to perform professional design and build services in two (2) phases in connection with the Work, as stated herein and more particularly described in Exhibit "A" attached hereto and incorporated herein, and for having rendered such services, the County agrees to pay to DESIGN-BUILDER compensation as stated herein. In addition, the General Terms attached hereto as Exhibit "B", SOQ 12-038 attached hereto as Exhibit "C", and Community Development Block Grant Requirements attached hereto as Exhibit "E" are incorporated herein as if set forth herein verbatim for all purposes.

1.02 The design and build services rendered by DESIGN-BUILDER, shall be completed in two (2) phases as described further herein:

- A. Phase I – Design
- B. Phase II – Construction

1.03 DESIGN-BUILDER shall not advance from any phase without prior written authorization from County.

1.04 DESIGN-BUILDER warrants that the Work shall be substantially complete on or before March 31, 2013.

## SECTION II CHARACTER AND EXTENT OF SERVICES

2.01 Upon receipt of the County's Purchase Order and this Agreement, DESIGN-BUILDER shall render the following "Basic Services" in connection with the Work:

- A. Develop the plans and specification for the Work that shall be dated and initialed by DESIGN-BUILDER and, after approval, the County ("Plans").
- B. Build the Work according to the Plans only after receipt of notice to proceed is given by the County.
- C. In performing these services, DESIGN-BUILDER will protect the County against defects and deficiencies in the Work.
- D. DESIGN-BUILDER accepts responsibility for the means, methods and workers' safety related to the Work.
- E. DESIGN-BUILDER will Consult with and advise the County during construction.
- F. DESIGN-BUILDER will prepare, sign and issue routine changes in contract for County's approval.
- G. DESIGN-BUILDER will review shop, laboratory and mill tests of material and equipment and promptly advise County of any deficiencies noted.
- H. DESIGN-BUILDER will review submittals and shop drawings requested for compliance with design concepts and specifications and with information given in the contract documents.
- I. DESIGN-BUILDER will prepare meeting notes and distribute copies to all attendees at all meetings related to the Work.
- J. DESIGN-BUILDER will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; receive and forward to the County for County's review and records, written warranties and related documents required by the contract documents and assembled by DESIGN-BUILDER and issue a final Certificate for Payment upon compliance with the requirements of the contract documents.

2.02 Upon completion of the Work, DESIGN-BUILDER shall provide an electronic set in AutoCad (.dfx.) format, reports and specifications concerning the Work after all of the construction changes have been made ("as built") based upon information concerning field changes maintained and provided by DESIGN-BUILDER.

2.03 DESIGN-BUILDER shall compensate all persons employed by DESIGN-BUILDER for the Work as described in Exhibit "D" – Prevailing Wage Rate, attached hereto and incorporated by reference as if set forth herein verbatim for all purposes, and for having rendered such services, the County agrees to pay DESIGN-BUILDER as provided in the Agreement and previous Amendments.

SECTION III  
ADDITIONAL SERVICES AND CHARGES

3.01 It is expressly understood and agreed that DESIGN-BUILDER shall not furnish any additional services without prior written authorization of the Director of Community Development.

3.02 The County shall have no obligation to pay for such additional services that have been rendered without the prior written authorization of the Director of Community Development.

SECTION IV  
PERFORMANCE/PAYMENT BOND

4.01 Upon receipt of notification to proceed with the construction phase of the Work, DESIGN-BUILDER must provide Fort Bend County with a Performance Bond and Payment Bond, each in the amount of 100% of the total construction costs within ten (10) calendar days. Such bonds shall be executed by a corporate surety duly authorized and admitted to do business in the State of Texas and licensed in the State of Texas to issue surety bonds with a Best Rating of "A" or better. Fort Bend County reserves the right to accept or reject any surety company proposed by DESIGN-BUILDER. In the event Fort Bend County rejects the proposed surety company, DESIGN-BUILDER will be afforded five (5) additional days to submit the required bonds issued by a surety company acceptable to Fort Bend County. Upon County's acceptance of the bonds, DESIGN-BUILDER will proceed with the performance of the Work called for in the Construction Phase of this Agreement.

4.02 The foregoing time limits may for good cause be extended by the Director of Community Development as the Work proceeds. Any such extension must be approved in writing.

SECTION V  
COMPENSATION

5.01 For and in consideration of the services rendered by DESIGN-BUILDER, and subject to the limit of appropriation, the County shall pay to DESIGN-BUILDER an amount not to exceed \$299,283.00 for all Work provided by DESIGN-BUILDER as follows:

A.	Design Phase:	\$59,000.00
B.	Construction Phase:	\$240,283.00

5.02 Payments for services rendered for the Work shall be paid monthly in proportion to the percentage of the completion of the Work as evidenced by DESIGN-BUILDER's monthly estimates for payments, less the retainage specified in Exhibit B.

5.03 On or about the last day of each calendar month during the performance of the Work to be provided under this Agreement, DESIGN-BUILDER shall submit a sworn statement to the Director of Community Development in a form acceptable to the Fort Bend County Auditor, setting forth the percentage of the Work provided and which was completed during such calendar month and the compensation which is due plus the amounts payable for any approved additional services which have not been previously billed or paid.

5.04 In the event the statement includes charges based upon direct labor cost of services or any other rates based upon the amount of time worked by an individual or individuals in performing services, whether the charges are being billed directly to the County or whether they are the basis of invoices from subcontractors for which DESIGN-BUILDER seeks reimbursement from the County, the charges shall be accompanied by an affidavit signed by an officer or principal of DESIGN-BUILDER certifying that the work was performed, it was authorized in writing by the Director of Community Development and that all information contained in the invoice being true and correct.

5.05 Furthermore, DESIGN-BUILDER agrees to maintain, for a period of seven years, detailed records that identify each individual performing the services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual, and provide such other details as may be requested by the County Auditor for verification purposes.

5.06 The Director of Community Development shall review the statements within ten (10) business days of receipt and approve them in writing with such modifications, if any, as he deems appropriate. The County shall pay each statement within thirty (30) days after the Director of Community Development's written approval, provided however, that the approval or payment of any statement shall not be considered evidence of performance by DESIGN-BUILDER to the point indicated by such statement or of receipt or acceptance by the County of the services covered by such statement.

## SECTION VI TERMINATION

6.01 The County may terminate this Agreement at any time by providing thirty (30) days written notice to DESIGN-BUILDER. Upon receipt of such notice, DESIGN-BUILDER shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement. Within thirty (30) days after receipt of notice of termination, DESIGN-BUILDER shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.

6.02 The County shall then pay DESIGN-BUILDER that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.

6.03 Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

## SECTION VII NOTICE

7.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a

United States Post Office, addressed to the County or DESIGN-BUILDER at the addresses set forth below.

7.02 If mailed, any notice or communication shall be deemed received three days after date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

- A. If to Design/Builder: Boyer, Inc.  
8904 Fairbanks N Houston Road  
Houston, Texas 77064
  
  - B. If to County, notice must: Robert E. Hebert  
be sent to both County Fort Bend County Judge  
Judge and County Facilities 301 Jackson, Suite 719  
Management & Planning Director Richmond, Texas 77469
- Marilynn Kindell  
Director of Community Development  
301 Jackson  
Richmond, Texas 77469

with copy to: Gilbert Jalomo  
Fort Bend County Purchasing Agent  
301 Jackson  
Richmond, Texas 77469

7.03 Either party may designate a different address by giving the other party ten (10) days written notice.

#### SECTION VIII LIMIT OF APPROPRIATION

8.01 Prior to the execution of this Agreement, DESIGN-BUILDER was advised by County, and DESIGN-BUILDER clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, County shall have available the total maximum sum of \$299,283.00 specifically allocated to fully discharge any and all liabilities, including construction costs, which may be incurred by County in bringing this Work to an absolute conclusion, and that the total of any and all basic construction costs, costs of providing the required furnishing and equipment, all fees and compensation of any sort to DESIGN-BUILDER, and any and all costs for any and all things or purposes enuring under or out of this Agreement, irrespective of the nature thereof, shall not exceed said specifically allocated sum, notwithstanding any word, statement or thing contained in or inferred from the preceding provision of this Agreement which might in any light by any person be interpreted to the contrary.

8.02 DESIGN-BUILDER does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that DESIGN-BUILDER may become entitled to hereunder and the total maximum sum that County shall become liable to pay DESIGN-BUILDER hereunder shall not

under any conditions, circumstances or interpretations thereof exceed the sum of \$299,283.00 for the Work.

## SECTION IX SUCCESSORS AND ASSIGNS

9.01 The County and DESIGN-BUILDER bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.

9.02 Neither the County nor DESIGN-BUILDER shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.

9.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

## SECTION X PUBLIC CONTACT

Contact with the news media, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of the County. Under no circumstances, whatsoever, shall DESIGN-BUILDER release any material or information developed in the performance of its services hereunder without the express written permission of the County, except where required to do so by law.

## SECTION XI COMPLIANCE AND STANDARDS

DESIGN-BUILDER shall provide the Work hereunder in accordance with generally accepted standards for design and construction contractors practicing in Fort Bend County, Texas applicable thereto and shall use that customary degree of care and skill commensurate for buildings similar to the Work to comply with all applicable state, federal and local laws, ordinances, rules and regulations relating to the Work to be rendered hereunder. DESIGN-BUILDER shall provide the County with all MSDS sheets related to the Work and a certification that the material used in the Work is free of asbestos.

## SECTION XII OWNERSHIP OF DOCUMENTS

12.01 The County shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement by DESIGN-BUILDER and its Consultants (deliverables).

12.02 No reuse fees or royalty payments will be paid to DESIGN-BUILDER in connection with future reuse or adaptation of designs derived under this contract.

12.03 Copies of all complete or partially completed mylar reproducible, preliminary layouts, record drawings, digital files, sketches and other documents prepared pursuant to this Agreement shall be delivered to County when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first, as provided in this Agreement.

12.04 DESIGN-BUILDER is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, or from duplicating the appearance of the Work depicted in the deliverables for any without the prior express written permission of the County.

12.05 The documents referenced in this Section are not intended or presented by DESIGN-BUILDER to be suitable for reuse by the County or others on extensions of this Work or on other unrelated projects.

12.06 Any adaptation or use by the County of such documents on extension of this Work or other unrelated projects shall be at the County's sole risk.

### SECTION XIII INDEMNIFICATION

13.01 DESIGN-BUILDER AGREES TO INDEMNIFY, DEFEND AND HOLD THE COUNTY HARMLESS FROM EACH AND EVERY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN OR JUDGMENT CAUSED BY OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH THE ACTS AND OMISSIONS OF DESIGN-BUILDER PURSUANT TO THIS AGREEMENT.

13.02 DESIGN-BUILDER shall timely report all such matters to the County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month, provide the County with a written report on each such matter covered by this paragraph and by paragraph 13.03 below, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of the County required by DESIGN-BUILDER in the defense of each matter.

13.03 The County shall timely forward to DESIGN-BUILDER copies of any and all claims, demands, suits, actions, proceedings or judgments which it may receive and which it may contend is covered by this section. Thereafter, the County shall fully cooperate with DESIGN-BUILDER in its defense of each such matter.

13.04 DESIGN-BUILDER'S DUTY TO DEFEND INDEMNIFY AND HOLD THE COUNTY HARMLESS SHALL BE ABSOLUTE. IT SHALL NOT ABATE OR END BY REASON OF THE EXPIRATION OR TERMINATION OF THIS AGREEMENT UNLESS OTHERWISE AGREED BY THE COUNTY IN WRITING. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ALL SUCH MATTERS NO MATTER WHEN THEY ARISE.

13.05 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of DESIGN-BUILDER, DESIGN-BUILDER shall never-the-less fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of DESIGN-BUILDER are not at issue in the matter. In such event, the County shall promptly reimburse DESIGN-BUILDER for its costs of defense.

13.06 In the event that any such matter being so defended by DESIGN-BUILDER also involves any claim of negligence or wrongful action by the County, the County shall have the obligation to participate in the defense of the matter through separate counsel.

13.07 DESIGN-BUILDER shall have full authority to resolve all matters being defended by it providing such settlement(s) shall not involve any findings adverse to the County or and shall not involve or require any payments or contributions by the County.

13.08 In the event of any final judicial determination or award of any matter covered by this section the County shall be responsible to third parties, pro rata, for any negligence determined to have been caused by the County.

13.09 DESIGN-BUILDER's indemnification shall cover, and DESIGN-BUILDER agrees to indemnify the County, in the manner provided for and to the extent described above, in the event the County is found to have been negligent for having selected DESIGN-BUILDER to perform the work described in this Agreement.

13.10 The provision by DESIGN-BUILDER of insurance shall not limit the liability of DESIGN-BUILDER under this Agreement.

13.11 DESIGN-BUILDER shall cause all Trade Contractors and any other Contractor who may have a contract to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the County and to hold it harmless from all claims for bodily injury and property damage that arise may from said Contractor's operations. Such provisions shall be in form satisfactory to the County.

13.12 Loss Deduction Clause - The County shall be exempt from, and in no way liable, for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of DESIGN-BUILDER and/or Trade Contractor providing such insurance.

SECTION XIV  
FORT BEND COUNTY  
INSURANCE REQUIREMENTS

14.01 DESIGN-BUILDER will provide a certificate of insurance indicating coverage in the amounts stated below.

14.02 DESIGN-BUILDER shall obtain at its sole expense, and shall submit to the Office of the County Purchasing Agent, certificates of insurance satisfactory to the County, naming the County as additional insured to all required coverages except for Worker's Compensation. All liability policies written on behalf of DESIGN-BUILDER shall contain a waiver of subrogation in favor of County and members of Commissioners Court:

- a. Workers Compensation
- b. Employer's Liability: \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease

c. Commercial general liability insurance including:

- (1). Bodily Injury
- (2). Personal Injury
- (3). Property Damage
- (4). Owner's Protective
- (5). Products/Completed Operations

d. Business Automobile Liability:

All owned, non-owned or hired vehicles must be covered. Liability limits shall be greater than or equal to \$1,000,000 each occurrence single limit for Bodily Injury and Property Damage combined

14.03 DESIGN-BUILDER shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by the County.

14.04 No cancellation of or changes to the certificates, or the policies, may be made without sixty (60) days prior, written notification to the County.

14.05 Approval of the insurance by the County shall not relieve or decrease the liability of the DESIGN-BUILDER.

14.06 Workers' Compensation Insurance Coverage:

A. Definitions:

1. Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Work, for the duration of the Work.

2. Duration of the Work - includes the time from the beginning of services on the Work until the services on the Work has been completed and accepted by the County.

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

14.07 DESIGN-BUILDER shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory

requirements of Texas Labor Code, Section 401.011(44) for all employees of DESIGN-BUILDER providing services on the Work, for the duration of the Work.

14.08 DESIGN-BUILDER must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

14.09 If the coverage period shown on DESIGN-BUILDER' current certificate of coverage ends during the duration of the Work, DESIGN-BUILDER must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

14.10 DESIGN-BUILDER shall obtain from each person providing services on the Work, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the Work, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Work; and

(B) no later than seven days after receipt by DESIGN-BUILDER, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Work.

14.11 DESIGN-BUILDER shall retain all required certificates of coverage for the duration of the Work and for one year thereafter.

14.12 DESIGN-BUILDER shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after DESIGN-BUILDER knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Work.

14.13 DESIGN-BUILDER shall post on each Work site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

14.14 DESIGN-BUILDER shall contractually require each person with whom it contracts to provide services on the Work to:

(A) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Work, for the duration of the Work;

(B) provide DESIGN-BUILDER, prior to that person beginning work on the Work, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;

(C) provide DESIGN-BUILDER, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Work;

(D) obtain from each other person with whom it contracts, and provide to DESIGN-BUILDER:

(i) a certificate of coverage, prior to the other person beginning work on the Work; and

(ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Work;

(E) retain all required certificates of coverage on file for the duration of the Work and for one year thereafter;

(F) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the Work; and

(G) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

14.15 By signing this contract or providing or causing to be provided a certificate of coverage, DESIGN-BUILDER is representing to the County that all employees of DESIGN-BUILDER who will provide services on the Work will be covered by workers' compensation coverage for the duration of the Work, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject DESIGN-BUILDER to administrative penalties, criminal penalties, civil penalties, or other civil actions.

14.16 DESIGN-BUILDER'S failure to comply with any of these provisions is a breach of contract by DESIGN-BUILDER which entitles the governmental entity to declare the contract void if DESIGN-BUILDER does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

## SECTION XV MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XVI  
AUTHORITY OF DIRECTOR OF COMMUNITY DEVELOPMENT

16.01 The County Director of Community Development, at her sole discretion, shall decide and determine any and all questions that may arise as to the interpretation of this Agreement and any and all questions as to the acceptable fulfillment of this Agreement by DESIGN-BUILDER. Her decision shall be final.

16.02 It is mutually agreed by both parties that the County Director of Community Development shall act as referee in all questions arising under the terms of this Agreement between the parties hereto and that the decisions of the County Director of Community Development in such shall be final and binding alike on both parties hereto.

16.03 Nothing contained in this Article shall be construed to authorize the County Director of Community Development to alter, vary or amend any of the terms or provisions of this Agreement.

SECTION XVII  
MISCELLANEOUS

17.01 The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof.

17.02 All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

17.03 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.

17.04 This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas, and that venue for any litigation arising out of or related to this Agreement shall lie solely in the court of appropriate jurisdiction located in Fort Bend County, Texas.

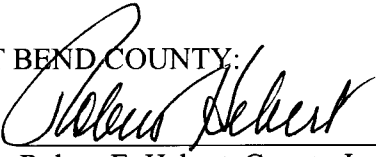
17.05 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.

17.06 DESIGN-BUILDER agrees and understands that, by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. The Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client. The Fort Bend County Attorney's Offices has reviewed this document solely from the legal perspective of its client. DESIGN-BUILDER and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.

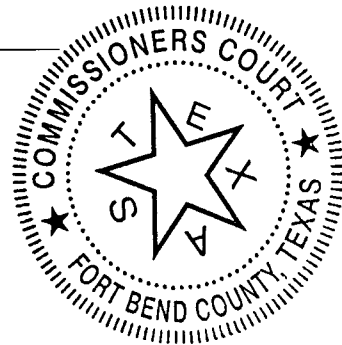
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SECTION XVIII  
EXECUTION

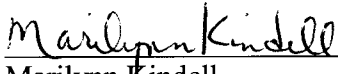
This Agreement shall become effective upon execution by County.

FORT BEND COUNTY:  
By:   
Robert E. Hebert, County Judge


Date: 9-25-2012



ATTEST  
  
Dianne Wilson, County Clerk

REVIEWED:  
By:   
Marilynn Kindell  
Community Development, Director

Date: Sept 20, 2012

BOYER, INC.  
  
Signature

Date: September 18, 2012

Mark L. Boyer, President  
Printed Name/Title

I:MER/DB.Agr.Boyer, Inc.Lift Stations.SOQ 12-038

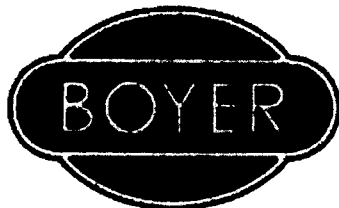
AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$299,283.00 to pay the obligation of Fort Bend County under this Agreement.

  
Ed Sturdivant, County Auditor

- Exhibit A: Design-Builder's Proposal dated September 7, 2012 and Response to SOQ 12-038
- Exhibit B: County's General Terms
- Exhibit C: SOQ 12-038
- Exhibit D: Prevailing Wage Rates
- Exhibit E: Community Development Block Grant Requirements

EXHIBIT "A"



Inc. 8904 Fairbanks N Houston Rd • Houston, Texas 77064

Telephone: (713) 466-5395 • Fax: (713) 466-8198  
www.boyerinc.com

September 7, 2012

Ms. Marilyn Kindell, Project Director  
Fort Bend County  
Community Development Department  
301 Jackson, Suite 602  
Richmond, Texas 77469

Re: Design/Build City of Kendleton – Sanitary Sewer Improvements for Fort Bend County  
SOQ 12-038 Lift Station Rehabilitations

Dear Ms. Kindell:

Please find attached our design build proposal, for the Fort Bend County SOQ 12-038 City of Kendleton Sanitary Sewer Improvements Project. The proposal offers complete rehabilitation of three (3) operational lift stations (Lift Station #1, Lift Station #2 and Lift Station #4) and the demolition and decommissioning of one (1) abandoned Lift Station in Kendleton, Texas. Only plans and specifications will be provided for Lift Station #3 (for future construction).

As requested we have gone with the alternate proposal to stay within the \$300,000.00 budget. The scope is outlined to include the necessary efforts to complete the rehabilitation to three existing Lift Stations complying with the TCEQ requirements, along with making the Lift Stations reliable and functional. The scope will remove all of the old pumps, piping and electrical equipment in the existing Lift Station reusing the structures. Materials will match what is existing. Some minor civil repairs are needed at each site along with the repairs to the security fencing around the locations to comply with the TCEQ requirements.

We look forward to the favor of your reply, as we prepare the contract.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Wachsmann", with a long, sweeping horizontal stroke extending to the right.

Gary Wachsmann  
Project Manager  
Boyer, Inc.  
281-598-1124

Cc: Mark L. Boyer  
Wanda Guerra



Boyer, Inc.  
 8904 Fairbanks N. Houston Rd  
 Houston, TX 77064  
 www.boyerinc.com  
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**CITY OF KENDLETON SANITARY SEWER IMPROVEMENTS  
 LIFT STATION REHABILITATION/REPLACEMENT**

**LIFT STATION REHABILITATION WORK SCOPE**

Item No.	Item Description	Unit Qty	Unit	Unit Price	Price
1	Engineering (Including Flow & Pump Calculations, Civil & Electrical Drawings, Submittal/Approval to TCEQ, O&M Manuals, Record Drawings)	1	EA	\$ 59,000.00	\$ 59,000.00
2	General Conditions Project Set-Up (Includes Design, Support, Site Evaluation, Permits, Bonds, Insurance, Project Records & Close Out Documents)	1	LS	\$ 55,000.00	\$ 55,000.00
					<b>\$ 114,000.00</b>

**Lift Station No. 1 (13115 Highway 59)**

3	Remove/Dispose Pumps, Electrical Components, Piping, Chains Etc.	1	LS	1,500.00	1,500.00
4	Replace Existing Pumps/Motors	2	EA	8,400.00	16,800.00
5	Replace Pump Elbows	2	EA	2,500.00	5,000.00
6	Provide Package Unit Controls	1	LS	6,000.00	6,000.00
7	Replace Float Controls/Weights	1	EA	1,500.00	1,500.00
8	Replace Electrical Service Equipment	1	LS	4,500.00	4,500.00
9	Replace Pump Guide Rails	2	EA	1,500.00	3,000.00
10	Replace Discharge Pipes	2	EA	1,900.00	3,800.00
11	Replace Stainless Steel Brackets	1	LS	600.00	600.00
12	Replace Chains for Motors	2	EA	250.00	500.00
13	Replace SS Cable	2	EA	250.00	500.00
14	Install Safety Nets	1	EA	1,800.00	1,800.00
15	Install Safety Locks	1	EA	450.00	450.00
16	By-Pass Pumping	1	LS	3,400.00	3,400.00
17	Fencing	1	LS	2,500.00	2,500.00
18	Repair Undermined Concrete Deck	1	LS	3,000.00	3,000.00
19	Vacuum Out Wet Well & Pressure Wash	1	LS	4,500.00	4,500.00

**Total Lift Station No. 1 \$ 59,350.00**

**Lift Station No. 2 (331 FM 2912)**

20	Remove/Dispose Pumps, Electrical Components, Piping, Chains Etc.	1	LS	1,500.00	1,500.00
21	Replace Existing Pumps/Motors	2	EA	9,354.00	18,708.00
22	Replace Pump Elbows	2	EA	2,500.00	5,000.00
23	Provide Package Unit Controls	1	LS	6,000.00	6,000.00

**CITY OF KENDLETON SANITARY SEWER IMPROVEMENTS  
LIFT STATION REHABILITATION/REPLACEMENT**

**LIFT STATION REHABILITATION WORK SCOPE**

Item No.	Item Description	Unit Qty	Unit	Unit Price	Price
24	Replace Float Controls/Weights	1	EA	1,500.00	1,500.00
25	Replace Electrical Service Equipment	1	LS	4,500.00	4,500.00
26	Replace Pump Guide Rails	2	EA	1,500.00	3,000.00
27	Replace Discharge Pipes	2	EA	1,900.00	3,800.00
28	Replace Stainless Steel Brackets	1	LS	600.00	600.00
29	Replace Chains for Motors	2	EA	250.00	500.00
30	Replace SS Cable	2	EA	250.00	500.00
31	Install Safety Nets	1	EA	1,800.00	1,800.00
32	Install Safety Locks	1	EA	450.00	450.00
33	By-Pass Pumping	1	LS	3,400.00	3,400.00
34	Fencing	1	LS	2,500.00	2,500.00
35	Repair Undermined Concrete Deck	1	LS	3,000.00	3,000.00
36	Vacuum Out Wet Well & Pressure Wash	1	LS	4,500.00	4,500.00

**Total Lift Station No. 2 \$ 61,258.00**

**Lift Station No. 3 (419 Lum Road)**

37	Plans & Specifications Only (Included in Engineering Costs Above)	0	LS	0.00	0.00
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**Total Lift Station No. 3 \$ -**

**Lift Station No. 4 (12919 T.E. Mitchell Road @ WWTP)**

38	Remove/Dispose Pumps, Electrical Components, Piping, Chains Etc.	1	LS	1,500.00	1,500.00
39	Replace Existing Pumps/Motors	2	EA	8,562.00	17,124.00
40	Replace Pump Elbows	2	EA	2,500.00	5,000.00
41	Provide Package Unit Controls	1	LS	6,001.00	6,001.00
42	Replace Float Controls/Weights	1	EA	1,500.00	1,500.00
43	Replace Electrical Service Equipment	1	LS	4,500.00	4,500.00
44	Replace Pump Guide Rails	2	EA	1,500.00	3,000.00
45	Replace Discharge Pipes	2	EA	1,900.00	3,800.00
46	Replace Stainless Steel Brackets	1	LS	600.00	600.00
47	Replace Chains for Motors	2	EA	250.00	500.00
48	Replace SS Cable	2	EA	250.00	500.00
49	Install Safety Nets	1	EA	1,800.00	1,800.00
50	Install Safety Locks	1	EA	450.00	450.00
51	By-Pass Pumping	1	LS	3,400.00	3,400.00
52	Fencing	1	LS	2,500.00	2,500.00
53	Repair Undermined Concrete Deck	1	LS	3,000.00	3,000.00
54	Vacuum Out Wet Well & Pressure Wash	1	LS	4,500.00	4,500.00

**Total Lift Station No. 4 \$ 59,675.00**

**CITY OF KENDLETON SANITARY SEWER IMPROVEMENTS  
LIFT STATION REHABILITATION/REPLACEMENT**

**LIFT STATION REHABILITATION WORK SCOPE**

<b>Item No.</b>	<b>Item Description</b>	<b>Unit Qty</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Price</b>
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**Lift Station No. 5 (12910 Spur 541)**

55	Demolish Decommissioned Lift Station	1	EA	\$ 5,000.00	\$ 5,000.00
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**Total Lift Station No. 5 \$ 5,000.00**

**Combined Total \$ 299,283.00**





**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED BY CONTRACT OR AGREEMENT -  
OPTION III**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Designated Project(s) or Location(s) Of Covered Operations
ENTITIES AS REQUIRED BY WRITTEN CONTRACT	ALL
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

- A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule above with whom you agreed in a written contract or written agreement to provide insurance such as is afforded under this policy, but only to the extent that such person or organization is liable for "bodily injury", "property damage" or "personal and advertising injury" caused by your acts or omissions or the acts or omissions of those acting on your behalf:
  - 1. In the performance of your ongoing operations for such additional insured at the project(s) or location(s) designated in the Schedule;
  - 2. In connection with your premises owned by or rented to you and shown in the Schedule; or
  - 3. In connection with "your work" for the additional insured at the project(s) or location(s) designated in the Schedule and included within the "products-completed operations hazard", but only if:
    - a. The written contract or agreement requires you to provide such coverage to such additional insured at the project(s) or location(s) designated in the Schedule; and
    - b. This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- B. The insurance afforded to these additional insureds applies only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:
  - 1. During the policy period; and
  - 2. Subsequent to the execution of such written contract or written agreement; and
  - 3. Prior to the expiration of the period of time that the written contract or written agreement requires such insurance be provided to the additional insured.

- C. With respect to the insurance afforded to these additional insureds under this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional architectural, engineering or surveying services by or for you, including:

1. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or specifications; and
2. Supervisory, inspection, architectural or engineering activities.

**D. How Limits Apply To Additional Insureds**

The most we will pay on behalf of the additional insured shown in the Schedule is the lesser of:

1. The limits of insurance specified in the written contract or written agreement; or
2. The Limits of Insurance shown in the Declarations.

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

**E. Duties Of Additional Insureds In The Event Of Occurrence, Offense, Claim Or Suit**

The Duties Condition in **Section IV - Conditions** is replaced by the following and applies to the additional insured shown in the Schedule:

**1. Notice Of Occurrence Or Offense**

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

- a. How, when and where the "occurrence" or offense took place;
- b. The names and addresses of any injured persons and witnesses; and
- c. The nature and location of any injury or damage arising out of the "occurrence" or offense.

**2. Notice Of Claim**

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

- a. Immediately record the specifics of the claim or "suit" and the date received; and
- b. Notify us as soon as practicable.

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

**3. Assistance And Cooperation Of The Insured**

The additional insured must:

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

**4. Obligations At The Additional Insureds Own Cost**

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

**5. Additional Insureds Other Insurance**

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

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

**6. Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs 1. and 2. applies to the additional insured only when such "occurrence", offense, claim or "suit" is known to:

- a. The additional insured that is an individual;
- b. Any partner, if the additional insured is a partnership;
- c. Any manager, if the additional insured is a limited liability company;
- d. Any "executive officer" or insurance manager, if the additional insured is a corporation;
- e. Any trustee, if the additional insured is a trust; or

- f. Any elected or appointed official, if the additional insured is a political subdivision or public entity.

**F. Other Insurance**

With respect to insurance provided to the additional insured shown in the Schedule, the Other Insurance Condition **Section IV - Conditions** is replaced by the following:

**1. Primary Insurance**

**a. Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in 3. below.

**b. Primary And Non-Contributory To Other Insurance When Required By Contract**

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

Paragraphs a. and b. do not apply to other insurance to which the additional insured has been added as an additional insured or to other insurance described in paragraph 2. below.

**2. Excess Insurance**

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

**a. Your Work**

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

**b. Premises Rented To You**

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

**c. Tenant Liability**

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

**d. Aircraft, Auto Or Watercraft**

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to

the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability;

**e. Property Damage to Borrowed Equipment Or Use Of Elevators**

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion J. of Section I - Coverage A - Bodily Injury And Property Damage Liability; or

**f. When You Are Added As An Additional Insured To Other Insurance**

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

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

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

- a. The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- b. The total of all deductible and self-insured amounts under all that other insurance.

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

**3. Method Of Sharing**

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

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

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

#### **1. BROAD FORM INSURED**

##### **A. Subsidiaries and Newly Acquired or Formed Organizations**

The Named Insured shown in the Declarations is amended to include:

- (1) Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
  - (a) That is a partnership, joint venture or limited liability company
  - (b) That is an "insured" under any other policy,
  - (c) That has exhausted its Limit of Insurance under any other policy, or
  - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

##### **B. Employees as Insureds**

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

##### **C. Lessors as Insureds**

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - (1) The agreement requires you to provide direct primary insurance for the lessor and
  - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

##### **D. Additional Insured If Required by Contract**

- (1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:
  - f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

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

(3) Additional Insureds Other Insurance

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

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

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - OF SECTION IV - BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

**E. Primary and Non-Contributory If Required by Contract**

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

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

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

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

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

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

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

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

**2. AUTOS RENTED BY EMPLOYEES**

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

### 3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

### 4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

### 5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

### 6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

### 7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

### 8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

a. Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. \$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph b.(1) above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

#### **9. EXTRA EXPENSE - BROADENED COVERAGE**

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

#### **10. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

#### **11. TWO OR MORE DEDUCTIBLES**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

#### **12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT,

CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

#### **13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

#### **14. HIRED AUTO - COVERAGE TERRITORY**

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

#### **15. WAIVER OF SUBROGATION**

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

#### **16. RESULTANT MENTAL ANGUISH COVERAGE**

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

#### **17. EXTENDED CANCELLATION CONDITION**

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

#### **18. HYBRID PAYMENT COVERAGE**

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

c. Regardless of the number of autos damaged in any one "loss", the most we will pay under this Hybrid Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

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

00368  
\*2100061QT28880101

**Policy Number:** 61 WE QT2888

**Endorsement Number:**

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

**Named Insured and Address:** BOYER, INC.

8904 FAIRBANKS N HOUSTON  
HOUSTON, TX 77064

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

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

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

The premium for this endorsement is shown in the Schedule.

**SCHEDULE**

1.  Specific Waiver

Name of person or organization:

Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

ALL TEXAS OPERATIONS

3. Premium: INCL

The premium charge for this endorsement shall be 2.0 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advanced Premium: INCL

Countersigned by \_\_\_\_\_  
Authorized Representative

Form WC 42 03 04 Printed in U.S.A.  
Process Date: 07/27/11

Policy Expiration Date: 07/26/12



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**VOLUNTARY COMPENSATION AND EMPLOYERS  
LIABILITY COVERAGE ENDORSEMENT**

00359  
\*2100061QT28880101

**Policy Number:** 61 WE QT2888

**Endorsement Number:**

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

**Named Insured and Address:** BOYER, INC.

8904 FAIRBANKS N HOUSTON  
HOUSTON, TX 77064

This endorsement adds Voluntary Compensation Insurance to the policy.

described in Item 1 of the Schedule were subject to the workers compensation law shown in Item 1 of the Schedule. We will pay those amounts to the persons who would be entitled to them under the law.

**A. How This Insurance Applies**

This insurance applies to bodily injury by accident or bodily injury by disease. Bodily Injury includes resulting death.

1. The bodily injury must be sustained by an employee included in the group of employees described in Item 1 of the Schedule.
2. The bodily injury must occur in the course of employment necessary or incidental to work in a state listed in Item 1 of the Schedule.
3. The bodily injury must occur in the United States of America, its territories or possessions or Canada, and may occur elsewhere if the employee is a United States or Canadian citizen temporarily away from those places.
4. Bodily injury by accident must occur during the policy period.
5. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

**C. Exclusions**

This insurance does not cover:

1. any obligation imposed by a workers compensation or occupational disease law, or any similar law.
2. bodily injury intentionally caused or aggravated by you.

**D. Before We Pay**

Before we pay benefits to the persons entitled to them, they must:

1. Release you and us, in writing, of all responsibility for the injury or death.
2. Transfer to us their right to recover from others who may be responsible for the injury or death.
3. Cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits of this insurance fail to do those things, our duty to pay ends at once. If they claim damages from you or from us for the injury or death, our duty to pay ends at once.

**B. We Will Pay**

We will pay an amount equal to the benefits that would be required of you if you and your employees

**E. Recover From Others**

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we paid. We will pay the balance to the persons entitled to it. If the persons entitled to the benefits of this insurance make a recovery from

others, they must reimburse us for the benefits we paid them.

**F. Employers Liability Insurance**

Part Two (Employers Liability Insurance) applies to bodily injury covered by this endorsement as though the State of employment shown in the Schedule were shown in Item 3.A. of the Information Page.

Employees	SCHEDULE	Designated Workers Compensation Law
State of Employment		
ALL EMPLOYEES, INCLUDING DOMESTIC AND FARM LABORERS, WHO ARE NOT SUBJECT TO THE WORKERS' COMPENSATION LAW OR OCCUPATIONAL DISEASE LAW OF ANY STATE OF THE UNITED STATES OF AMERICA, BUT EXCLUDING ANY PERSON SUBJECT TO THE FEDERAL EMPLOYERS LIABILITY ACT OR THE MERCHANT MARINE ACT (JONES) ACT OF 1920.	TX	WORKERS COMPENSATION LAW OR LAWS OF THE STATE OF OPERATIONS

Countersigned by \_\_\_\_\_

Authorized Representative  
Page 2 of 2

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**TEXAS CANCELLATION PROVISION OR  
COVERAGE CHANGE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By:
Named Insured: BOYER, INC.	(Authorized Representative)

**SCHEDULE**

**Number of Days' Notice** 60

**Name Of Person Or Organization** CERTIFICATE HOLDERS ON FILE WITH  
BRADY, CHAPMAN, HOLLAND

**Address**

If this policy is canceled or materially changed to reduce or restrict coverage, we will mail notice of cancellation or change to the person or organization named in the Schedule. We will give the number of day's notice indicated in the Schedule.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **TEXAS CHANGES - AMENDMENT OF CANCELLATION PROVISIONS OR COVERAGE CHANGE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCT WITHDRAWAL COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

In the event of cancellation or material change that reduces or restricts the insurance afforded by this Coverage Part, we agree to mail prior written notice of cancellation or material change to:

### **SCHEDULE**

- 1. Name:** CERTIFICATE HOLDERS ON FILE WITH BRADY, CHAPMAN, HOLLAND
- 2. Address:**
- 3. Number of days advance notice:** 60

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**TEXAS NOTICE OF  
MATERIAL CHANGE ENDORSEMENT**

00357  
\*2100061QT28880101

**Policy Number:** 61 WE QT2888

**Endorsement Number:**

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

**Named Insured and Address:** BOYER, INC.

8904 FAIRBANKS N HOUSTON  
HOUSTON, TX 77064

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

In the event of cancellation or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

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

**SCHEDULE**

1. Number of days advance notice: 30
2. Notice will be mailed to:

CERIFICATE HOLDERS ON FILE WITH BRADY, CHAPMAN, HOLLAND

Countersigned by \_\_\_\_\_  
Authorized Representative

Form WC 42 06 01 Printed in U.S.A.  
Process Date: 07/27/11

Policy Expiration Date: 07/26/12