

Holly Gray, Mayor Pro-Tem
Bryan Moyers, Councilmember
David Brundage, Councilmember



Carl E. Gierisch, Jr., Mayor

Brian Darby, Councilmember
Hogan Page, Councilmember
David Thompson, Councilmember

ROANOKE CITY COUNCIL AGENDA REGULAR MEETING

**JANUARY 28, 2025
7:00 PM
500 S. OAK STREET
ROANOKE, TEXAS 76262**

A. CALL CITY COUNCIL TO ORDER

Invocation and Pledge of Allegiance

B. ANNOUNCEMENTS

C. PUBLIC INPUT

This item is available for citizens to address the City Council on any issues that are not the subject of a public hearing. No action by law may be taken on the topic. The presiding officer reserves the right to impose a time limit on this portion of the agenda. In order to provide the highest quality audio, all speakers need to speak at the podium.

D. CONSENT AGENDA

All items listed below are considered routine and will be enacted with one motion. There will be no separate discussion of items unless a Councilmember or citizen so requests, in which event the item will be removed and considered separately.

1. Consider approval of the minutes from the regular City Council meeting held on January 14, 2025.
2. Consider approval of Resolution No. 2025-100R authorizing continued participation with the Steering Committee of Cities served by Oncor; and authorizing the payment of eleven cents per capita to the Steering Committee to fund regulatory and legal proceedings and activities related to Oncor Electric Delivery Company, LLC.



**AGENDA FOR THE MEETING
OF THE ROANOKE CITY COUNCIL**

**January 28, 2025
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3. Consider approval of Resolution No. 2025-101R authorizing the early redemption of certain outstanding obligations of the City of Roanoke and other related matters.
4. Consider acceptance of the FY2024-2025 Quarterly Financial Report and Investment Report for the period ending December 31, 2024.
5. Consider approval of an agreement between the City of Roanoke and Gallagher Construction Company, LP for a Construction Manager Advisor (CMA) for the proposed Main Street parking garage project.

E. NEW BUSINESS

1. Consideration and action on approval of Ordinance No. 2025-101 amending the FY 2024-2025 Budget.
2. Consideration and action on a Tenant Parking Lease Estoppel between the City of Roanoke and CWS.

F. EXECUTIVE SESSION

The City Council will hold a closed Executive Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:

Section 551.087

To deliberate commercial or financial information the City has received from a business prospect, and to deliberate the offer of a financial or other incentive to a business prospect.

RECONVENE INTO REGULAR SESSION

The City Council will reconvene into Regular Session, pursuant to the provisions of Chapter 551 of the Texas Government Code, to take any action necessary regarding:

Section 551.087

To deliberate commercial or financial information the City has received from a business prospect, and to deliberate the offer of a financial or other incentive to a business prospect.

The City Council reserves the right to adjourn into Executive Session during the course of this meeting to discuss any item on the posted agenda as authorized by Chapter 551 of the Texas Government Code.



AGENDA FOR THE MEETING
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G. ADJOURNMENT

CERTIFICATION

I certify that the above notice was posted at City Hall, 500 South Oak Street, Roanoke, Texas, on Thursday, January 23, 2025, by 5:00 pm, in accordance with Chapter 551, Texas Government Code.

April S. Hill, City Secretary

*Any person planning to attend this meeting that may require auxiliary aids or services should request accommodations two (2) days prior to the meeting by calling (817) 491-8152. **BRILLE IS NOT AVAILABLE.**

A public wireless network is now available in the Council Chambers for use during meetings. It is available from 7am to 11pm Monday thru Friday. The name of the network is: COR-Guests



CITY COUNCIL AGENDA ITEM

TO: Mayor and City Council

SUBJECT: 01/14/2025 - CC Minutes

MEETING DATE: January 28, 2025

DEPARTMENT: City Secretary

ITEM SUMMARY:

Consider approval of the minutes from the regular City Council meeting held on January 14, 2025.

INFORMATION:**STAFF RECOMMENDATION:****SPECIAL CONSIDERATION:****FINANCIAL CONSIDERATION:****ATTACHMENTS:**

1. CCMin 01-14-2025

Holly Gray, Mayor Pro-Tem
Bryan Moyers, Council Member
David Brundage, Council Member



Carl E. Gierisch, Jr., Mayor

Brian Darby, Council Member
Hogan Page, Council Member
David Thompson, Council Member

**MINUTES
ROANOKE CITY COUNCIL
REGULAR MEETING
JANUARY 14, 2025
CITY HALL COUNCIL CHAMBERS
500 S. OAK STREET
7:00 P.M.**

PRESENT: Mayor Carl E. "Scooter" Gierisch, Jr.; Mayor Pro Tem Holly Gray; Council Members: Brian Darby, David Brundage, Bryan Moyers, David Thompson, and Hogan Page; City Manager Cody Petree, City Secretary April S. Hill, and City Attorney Jeff Moore.

DEPT. STAFF: Assistant City Manager Jeriahme Miller; Chief of Police Jeff Williams, Fire Chief Chris Addington, Parks and Recreation Director Ray McDonald, Public Works Director Shawn Wilkinson, Finance Director Kyle Lester, Development Services Manager J.R. Hames, Economic Development Manager Siale Langi, IT Manager Blake Gore, GIS Program Administrator David Allen, Communication and Public Administrator/Marketing Carissa Katekaru, Special Events Supervisor Michael Davenport, Human Resources Manager Jamie Seil, Human Resources Coordinator Melanie Curl, Emergency Management Officer Amanda Meneses, and Executive Assistant Babette Welch.

A. CALL CITY COUNCIL TO ORDER

City Council called to order at 7:01 p.m.
Invocation and Pledge of Allegiance given by Mayor Gierisch.

B. ANNOUNCEMENTS

Council member Brian Darby thanked the Roanoke Fire Department for an incredible awards ceremony, and encouraged City Council to attend when there is an opportunity to do so.

C. PUBLIC INPUT

No one wished to speak.

D. PRESENTATION

1. Mayor Gierisch presented the 2024 recognition of the City of Roanoke "Core Value Keepers" and "Employee of the Year".



**MINUTES FOR THE REGULAR MEETING
OF THE ROANOKE CITY COUNCIL**

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Core Values

Empower – Jennifer Ertle
Creativity – Mariah Tijerina
Dedication – Andrew Davis
Connection – Maria Campos
Service – Evan Lish

Employee of the Year

David Allen

E. CONSENT AGENDA

All items listed below are considered routine and will be enacted with one motion. There will be no separate discussion of items unless a Councilmember or citizen so requests, in which event the item will be removed and considered separately.

1. Consider approval of the minutes from the regular City Council meeting held on December 10, 2024.
2. Consider approval of a service agreement between the City of Roanoke and Motorola Solutions for Radio Maintenance.

Motion made by Holly Gray second by Bryan Moyers to approve Consent Agenda Items 1 and 2.

Motion carried unanimously.

F. NEW BUSINESS

1. Public hearing to determine whether Blazing Hospitality, LLC, located at 1355 U.S. 377, Roanoke, Texas 76262, should be granted a variance to the alcoholic beverage regulations pursuant to Section 4.435 of the Code of Ordinances. (Ordinance No. 2025-100)

Public hearing started at 7:14 p.m.

Daryl Lake, developer, gave an overview of the proposed project and stated he is available for any questions.

Brian Barrowith, engineer of the project stated he is available to answer any questions Mayor of City Council may have.

Public hearing ended at 7:15 p.m.

2. Motion made by Holly Gray second by Bryan Moyers to approve Ordinance No. 2025-100 granting a variance to the distance requirements concerning the sale of alcoholic beverages pursuant to Section 4.435 of the Code of Ordinances of the



**MINUTES FOR THE REGULAR MEETING
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City of Roanoke, Texas for The Blazing Hospitality Establishment. The property having an address of 1355 N Hwy 377 is generally located on the west side of N Hwy 377, approximately 1/8th of a mile north of Marshall Creek Rd.

Motion carried unanimously.

3. Motion made by Holly Gray second by Hogan Page to appoint David Thompson and Jason Kasal to the Roanoke Economic and Industrial Development Corporation Type A for a term expiring January 2027.

Motion carried unanimously.

4. Motion made by Holly Gray second by David Thompson to to appoint Cassi Webb to the Keep Roanoke Beautiful board for a term expiring January 2027.

Motion carried unanimously.

G. EXECUTIVE SESSION

The City Council will hold a closed Executive Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:

CITY COUNCIL DID NOT CONVENE INTO CLOSED SESSION.

Section 551.087

To deliberate commercial or financial information the City has received from a business prospect, and to deliberate the offer of a financial or other incentive to a business prospect

H. ADJOURNMENT

Motion made by Holly Gray second by Brian Darby to adjourn the meeting at 7:18 p.m.

Motion carried unanimously.

Carl E. "Scooter" Gierisch, Jr., Mayor

April S. Hill, City Secretary



AGENDA ITEM

TO: Mayor and City Council

SUBJECT: RES NO 2025-100R - Oncor - Cities Steering Committee Invoice

MEETING DATE: January 28, 2025

DEPARTMENT: City Manager

ITEM SUMMARY:

Consider approval of Resolution No. 2025-100R authorizing continued participation with the Steering Committee of Cities served by Oncor; and authorizing the payment of eleven cents per capita to the Steering Committee to fund regulatory and legal proceedings and activities related to Oncor Electric Delivery Company, LLC.

INFORMATION:

The Steering Committee is the most active consumer group advocating the interests of cities and residential and small commercial customers within the cities to keep electric transmission and distribution (*i.e.*, wires) rates reasonable. Steering Committee activities protect the authority of municipalities over the regulated wires service and rates charged by Oncor Electric Delivery Company, LLC ("Oncor").

The work undertaken by the Steering Committee has saved cities and ratepayers millions of dollars in unreasonable charges. In order to continue to be an effective voice before the Public Utility Commission of Texas ("Commission" or "PUC"), ERCOT, the Legislature, and in the courts, the Steering Committee must have your support. The membership assessment is deposited in an account which funds Steering Committee activities.

On December 12, 2024, the Steering Committee approved the 2025 assessment for Steering Committee membership. Based upon the population-based assessment protocol previously adopted by the Steering Committee, the assessment for 2025 is a per capita fee of \$0.11 based upon the population figures for each city shown in the latest TML Directory of City Officials. The enclosed invoice represents your city's assessment amount.

STAFF RECOMMENDATION:



AGENDA ITEM

SPECIAL CONSIDERATION:

FINANCIAL CONSIDERATION:

ATTACHMENTS:

1. RES NO 2025-100R - Oncor 2025 OCSC Assessment
2. OCSC 2024 Year in Review
3. OCSC MASTER LIST (169 total) (7-25-24)(8350389.1)
4. 2025 OCSC Invoice-Roanoke

RESOLUTION NO. 2025-100R

A RESOLUTION AUTHORIZING CONTINUED PARTICIPATION WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR; AND AUTHORIZING THE PAYMENT OF ELEVEN CENTS PER CAPITA TO THE STEERING COMMITTEE TO FUND REGULATORY AND LEGAL PROCEEDINGS AND ACTIVITIES RELATED TO ONCOR ELECTRIC DELIVERY COMPANY, LLC.

- WHEREAS, the City of Roanoke is a regulatory authority under the Public Utility Regulatory Act (PURA) and has exclusive original jurisdiction over the rates and services of Oncor Electric Delivery Company, LLC (Oncor) within the municipal boundaries of the city; and
- WHEREAS, the Steering Committee of Cities Served By Oncor (Steering Committee) has historically intervened in Oncor rate proceedings and electric utility related rulemakings to protect the interests of municipalities and electric customers residing within municipal boundaries; and
- WHEREAS, the Steering Committee is participating in Public Utility Commission dockets and projects, as well as court proceedings, and legislative activity, affecting transmission and distribution utility rates; and
- WHEREAS, the City is a member of the Steering Committee; and
- WHEREAS, the Steering Committee functions under the direction of an Executive Committee which sets an annual budget and directs interventions before state and federal agencies, courts and legislatures, subject to the right of any member to request and cause its party status to be withdrawn from such activities; and
- WHEREAS, the Steering Committee at its December 2024 meeting set a budget for 2025 that compels an assessment of eleven cents (\$0.11) per capita; and
- WHEREAS, in order for the Steering Committee to continue its participation in these activities which affects the provision of electric utility service and the rates to be charged, it must assess its members for such costs.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS:

I.

That the City is authorized to continue its membership with the Steering Committee of Cities Served by Oncor to protect the interests of the City of Roanoke and protect the interests of the customers of Oncor Electric Delivery Company, LLC residing and conducting business within the City limits.

II.

The City is further authorized to pay its assessment to the Steering Committee of eleven cents (\$0.11) per capita based on the population figures for the City shown in the latest TML Directory of City Officials.

III.

A copy of this Resolution and the assessment payment check made payable to "*Steering Committee of Cities Served by Oncor, c/o City of Arlington*" shall be sent to Brandi Stigler, Steering Committee of Cities Served by Oncor, Mail Stop 63-0300, PO Box 90231, Arlington, Texas 76004.

PRESENTED AND PASSED on this the 28th day of January, 2025, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Roanoke, Texas.

Signature
Carl E. Gierisch, Jr., Mayor

ATTEST:

Signature
April S. Hill, City Secretary

APPROVED AS TO FORM:

Signature
Jeff Moore, City Attorney

2024 OCSC Newsletter

Steering Committee of
Cities Served by
Oncor

2024 YEAR IN REVIEW ISSUE

This past year was an active one for the Steering Committee of Cities Served by Oncor. This Year in Review edition of the OCSC newsletter highlights significant 2024 events and looks ahead to 2025.



ONCOR 2024 YEAR IN REVIEW

PUC Approves Oncor Resiliency Plan in 2024; OCSC Negotiates Improvements

A \$3 billion resiliency plan submitted by Oncor, the north Texas electric utility, received approval Nov. 14 by the Texas Public Utility Commission.

The plan, which includes pro-consumer modifications negotiated by OCSC and other intervenors, marks a first. Several other utilities have also submitted resiliency plans to the PUC as authorized by House Bill 2555, enacted by the Texas Legislature in 2023. The resiliency plans are intended to harden the grid against extreme weather events, wildfires, cybersecurity, and physical threats.

Oncor said its planned upgrades will reduce the impact of severe weather outages and address other physical and cybersecurity risks. Investments include those for overhead and underground lines, smart grid technologies, enhanced wildfire mitigation, additional vegetation management, improved physical security, and improved cybersecurity risk mitigation.

Oncor based its plan on two decades of weather and grid data. The improvements will “substantially reduce outage minutes,” Oncor CEO Allen Nye said in a statement.

However, because the plan was the first of its kind, it lacked some of the technical data common to some other rate filings. As such, OCSC, during settlement talks, focused on obtaining commitments from Oncor to improve its metrics so parties can better evaluate the plan’s success and have a baseline to judge the success of plans in the future.

Oncor’s current plan covers the three-year period from 2025 to 2027. The company will recover implementation costs through interim rate adjustment mechanisms, such as the Distribution Cost Recovery Factor. Details of the settlement agreement, which was reached after multiple meetings between Oncor, the OCSC, and other intervenors, can be found on the PUC website, under PUC Docket No. 56545.

The PUC's approval allows Oncor to begin implementing its resiliency measures and — as specified in House Bill 2555 — allows the utility to recover the costs associated with the improvements through rates applied to their customers' future electric bills.

PUC Adopts Ancillary Services Rules with OCSC Input

On Dec. 19, the Public Utility Commission adopted a new set of rules governing Ancillary Services, a key component of the ERCOT-managed energy market employed to help maintain system reliability.

The rules included considerations of recommendations forwarded by OCSC and other intervenors and were adopted as part of a study of the state's Ancillary Services posture mandated by Texas lawmakers in the aftermath of Winter Storm Uri. In approving the Ancillary Services Study in December, the PUC made two significant AS policy decisions as detailed below.

ERCOT Confirms—and Maintains—Recent “Conservative Operations”

During the AS study process, ERCOT confirmed a recent shift in its operational practices. Before Winter Storm Uri, ERCOT acquired AS quantities necessary to avoid load shed or blackout events. After Winter Storm Uri, ERCOT acquired greater quantities of AS so as also to avoid emergency “Watches.” OCSC and an allied municipal coalition, the Texas Coalition for Affordable Power, argued that this new conservative posture is unnecessary and inflates consumer costs and that ERCOT's AS new acquisition procedures are ambiguous and require supporting cost analysis.

However, the PUC directed ERCOT to continue conservative operations until ERCOT produces the cost analysis necessary to compare competing operating postures. ERCOT will now develop cost analysis related to various operating postures before 2027 when the Commission will update the AS Study. In 2027, cost analysis may compel ERCOT to adjust its operating

posture to a less conservative, more consumer-friendly, approach.

PUC Broadens the Scope of AS Objectives

The Commissioners, in its adopted AS Study, also directed ERCOT to develop the Dispatchable Reliability Reserve Service — that is, ERCOT's newest AS — in a manner that both promotes operational reliability and resource adequacy initiatives. Cities argued that resource adequacy initiatives are outside the scope of AS policy and could possibly inflate DRRS costs. Nonetheless, in large part due to ongoing resource adequacy concerns, the PUC directed ERCOT to develop DRRS in a manner that preserves “optionality”— i.e., the ability to deploy DRRS for operational reliability *and* resource adequacy. ERCOT stakeholders, including Cities, will now determine to what extent DRRS should serve as a resource adequacy initiative.

The rulemaking comes in response to Senate Bill 3 from 2021, under which the PUC, ERCOT, and ERCOT's Independent Market Monitor (IMM) were charged with conducting a top-to-bottom examination of Ancillary Services in the ERCOT region. This examination includes the type, volume, and cost of ancillary services, whether those services continue to meet the needs of the ERCOT region, and whether additional services are needed for reliability, with an emphasis on dispatchable generation.

More information about this rulemaking can be found on the PUC website, under Project No. 55845, *Review of Ancillary Services in ERCOT*. More information about Ancillary Services can be found in the OCSC ERCOT glossary, found online on the OCSC website.



Oncor Receives Approval for Multiple DCRF Increases

On Oct. 24, the PUC adopted another Oncor Distribution Cost Recovery Factor rate increase —the fourth since June 2023 — bringing the total increases over that period to more than \$377 million.

Under the newest increase, the per-customer DCRF charge will increase from .003472 per kilowatt hour approved in its most recent DCRF case to .004553. This new charge amounts to more than \$71 per year for a typical customer consuming 1,300 kWh of power per month.

The repeated rate hikes are a result of state laws adopted in 2011 and 2023 that created and then modified the DCRF ratemaking process. Under it, transmission and distribution utilities can file for rate increases at the Public Utility Commission to recover capital expenditures on their distribution systems in an expedited fashion.

Texas lawmakers initially adopted Senate Bill 1693 in 2011 that laid out initial DCRF guidelines and included rules barring utilities from filing more than one DCRF per year. Then, in 2023, the Texas Legislature adopted Senate Bill 1015 that allowed electric utilities to seek DCRF rates hike twice annually.

However, Oncor has taken advantage of an otherwise trivial semantic distinction— that is, the difference in meaning between “calendar year” and “every 12 months” — to file a total of four rate cases within 14 months. That is, the company filed two rate cases during the 2023 calendar year and two during the 2024 calendar year, making for a total of four rate hikes since the law took effect in June 2023.

Under DCRF rules, the PUC reviews the rate requests in an accelerated fashion, and interested parties, such as the Steering Committee of Cities Served by Oncor, can intervene in those reviews.

Details of Oncor’s four recent rate filings include:

Docket No. 55190

- Application filed on June 29, 2023.
- Distribution revenue requirement increase requested by utility: \$152,777,465.
- Distribution revenue requirement increase granted: \$152,508,937 (\$268,528 decrease from request).

Docket No. 55525

- Application filed on September 15, 2023.
- Distribution revenue requirement increase requested by utility: \$56,536,428.
- Distribution revenue requirement increase granted: \$53,536,428 (\$3 million decrease from request).

Docket No. 56306

- Application filed on March 1, 2024.
- Distribution revenue requirement increase requested by utility: \$81,323,815.
- Distribution revenue requirement increase granted: \$81,323,815.

Docket No. 56963

- Application filed on August 16, 2024.
- Distribution revenue requirement increase requested by utility: \$90,288,143.
- Distribution revenue requirement increase granted: \$90,288,143.



Find out more about ERCOT, the non-profit corporation that oversees the state’s electric power grid, in the glossary and primer from the Steering Committee of Cities Served by Oncor. The 18-page document includes definitions of key ERCOT terms, plus information about the organization’s history, structure and board structure. You can find the publication, “Coming to Terms with ERCOT,” in PDF form on the OCSC Report page at this [link](#).

OCSC Advocates for Consumers in 2024 Securitization Proceeding

Although facing years of Winter Storm Uri-related debt, residential and commercial customers should end up shouldering a smaller portion of it thanks in part to regulatory recommendations made by cities.

Adopted Aug. 29 by the Public Utility Commission as part of a broader set of debt-financing rules, the recommendations should result in indirect benefits for residential and commercial customers. At the same time, certain industrial energy users could end up paying comparatively more.

The Background

In 2021, the Texas Legislature funded several debt-financing programs to soften the short-term pain of spiraling gas and electric energy costs during Winter Storm Uri. Known as “securitized” financing or “securitization,” the programs allow for large fiscal obligations to be retired over time with interest.

As has been widely reported, wholesale prices exceeded a regulatory threshold during Winter Storm Uri because of emergency orders issued by the PUC. One such securitization program is designed to address \$2.1 billion in excess market costs associated with those controversial regulatory decisions. The securitization program would provide short-term relief for retail electric providers and other “Load Serving Entities” (such as electric cooperatives and municipal utilities) affected by those high prices, with the cost of that relief generally borne by market participants.

One of the recommendations from the OCSC adopted by the PUC would increase the relative share of that burden borne by certain industrial customers. This, in turn, would indirectly lessen the burden on retail electric

providers and other LSEs that serve residential and small commercial users.

The Details

In more specific terms, ERCOT, under the program will assess securitization charges to each Load Serving Entity in accordance with their actual, real-time energy usage. However, transmission voltage customers — that is, certain large industrial users — have the option to “opt-out” of the program. Those that do so wouldn’t be eligible to benefit from payments under it nor would they have to make payments to support it.

Under the Aug. 29 PUC ruling, transmission-voltage customers who have had a transfer in ownership will lose the ability to opt-out. All else equal, this should benefit other load serving entities. The OCSC and PUC staff recommended this regulatory interpretation.

Regulatory History

PUC staff earlier filed a petition seeking a declaratory order that transmission-voltage customers, after a transfer in ownership, lose their securitization opt-out status. OCSC also took that position in agency proceedings, arguing that that interpretation was consistent with legislative directives while simultaneously avoiding a disproportionate assessment of securitization charges to residential ratepayers.

Texas Industrial Energy Consumers, a coalition including transmission voltage customers, argued otherwise. Because many transmission voltage customers are owned by the same parent company, TIEC’s interpretation would have almost certainly reduced cost savings for non-industrial customers.

Oncor Loses Appeal in Rate Case

On February 22, a District Court Judge denied “with prejudice” an Oncor legal objection relating to a 2022 rate case, a legal action representing the final determination in the case.

The History and Background

Oncor’s 2022 rate case resulted in a June 2023 PUC Order on Rehearing that set a 6.65 percent rate of return and ordered a reduction to Oncor’s revenues. In September 2023, Oncor filed a petition in District Court in Travis County appealing the PUC’s June Order on Rehearing.

In November 2023, the PUC, represented by attorneys with the Texas Attorney General, filed a “Plea to the Jurisdiction” arguing that Oncor failed to meet the requirements for an administrative appeal. On February 22, 2024, a District Court Judge granted the PUC’s Plea to the Jurisdiction. Oncor’s petition for review of the PUC’s decision was denied with prejudice, meaning this is the final determination in the case and Oncor cannot re-file its appeal.

Oncor Reports Increased Revenues in 2024, Anticipates More Spending Going Forward

Oncor reported year-to-date earnings of \$800 million, as compared to the \$683 million during last year's corresponding nine-month period, according to information released to investors on Nov. 6.

The \$117 million increase was driven by overall higher revenues primarily attributable to updated interim rates and new base rates implemented in May 2023, according to the company.

As of September 30, Oncor had 884 active generation and LC&I transmission points of interconnection requests in queue. Generation customers represented 505 of the active requests, of which 44 percent are solar, 44 percent are storage, 7 percent are wind, 4 percent are gas and 1 percent are other.

Oncor also expects to announce a new five-year

capital expenditure plan for 2025 through 2029 during the first quarter of 2025 that will project a 40-50 percent increase over its previously announced 2024 through 2028 capital plan of \$24.2 billion. The increase is largely driven by the forecasted growth of customer demand within ERCOT, according to Oncor.

About Oncor

Headquartered in Dallas, Oncor Electric Delivery Company operates the largest transmission and distribution system in Texas. The company delivers electricity to more than 4 million homes and businesses and operates more than 143,000 circuit miles of transmission and distribution lines. While Oncor is owned by two investors (indirect majority owner, Sempra, and minority owner, Texas Transmission Investment LLC), it is managed by a separate board of directors.

Arlington City Attorney Molly Shortall Named OCSC Chair



Molly Shortall

OCSC welcomed a new chair in 2024, Arlington City Attorney Molly Shortall. Prior to being named City Attorney in 2022, Ms. Shortall was an assistant city attorney for 15 years. Ms. Shortall has been a licensed attorney since 2006. Congratulations Ms. Shortall!

Ms. Shortall replaced Paige Mims, City Attorney for the City of Plano, who stepped down as OCSC chair at the end of 2023 after serving nine years in the position. Ms. Mims has been a tireless advocate for the organization, and OCSC thanks her for her years of leadership.



Paige Mims

2025 OCSC Meetings
March 6
June 12 (virtual only)
September 11
December 11 (virtual only)

OCSC Officers
Chair—Molly Shortall
Vice Chair—Don Knight
Secretary—Lupe Orozco
Treasurer—David Johnson

For more questions or concerns regarding any ACSC matter or communication, please contact the following representative, who will be happy to provide assistance:



Thomas L. Brocato
(512) 322-5857
tbrocato@lglawfirm.com

Jamie Mauldin
(512) 322-5890
jmauldin@lglawfirm.com

OCSC Master List of Members (169 Total)

1. Addison	57. Forest Hill	112.New Chapel Hill	167.Wilmer
2. Allen	58. Forney	113.North Richland Hills	168.Woodway
3. Alvarado	59. Fort Worth		169.Wylie
4. Andrews	60. Frisco	114. Northlake	
5. Anna	61. Frost	115.Oak Leaf	
6. Archer	62. Gainesville	116.Oak Point	
7. Argyle	63. Garland	117.Odessa	
8. Arlington	64. Garrett	118.O'Donnell	
9. Azle	65. Glenn Heights	119.Ovilla	
10. Bedford	66. Grand Prairie	120.Palestine	
11. Bellmead	67. Granger	121.Pantego	
12. Belton	68. Grapevine	122.Paris	
13. Benbrook	69. Gunter	123.Parker	
14. Beverly Hills	70. Haltom	124.Plano	
15. Big Spring	71. Harker Heights	125.Pottsboro	
16. Breckenridge	72. Haslet	126.Prosper	
17. Bridgeport	73. Henrietta	127.Ranger	
18. Brownwood	74. Hewitt	128.Red Oak	
19. Buffalo	75. Highland Park	129.Rhome	
20. Burkburnett	76. Honey Grove	130.Richardson	
21. Burleson	77. Howe	131.Richland Hills	
22. Caddo Mills	78. Hudson Oaks	132.River Oaks	
23. Cameron	79. Hurst	133.Roanoke	
24. Canton	80. Hutchins	134.Robinson	
25. Carrollton	81. Hutto	135.Rockwall	
26. Cedar Hill	82. Iowa Park	136.Rosser	
27. Celina	83. Irving	137.Rowlett	
28. Centerville	84. Jolly	138.Royse	
29. Cleburne	85. Josephine	139.Sachse	
30. Coahoma	86. Justin	140.Saginaw	
31. Colleyville	87. Kaufman	141.Sansom Park	
32. Collinsville	88. Keene	142.Seagoville	
33. Colorado	89. Keller	143.Seymour	
34. Comanche	90. Kemp	144.Sherman	
35. Commerce	91. Kennedale	145.Snyder	
36. Coppell	92. Kerens	146.Southlake	
37. Copperas Cove	93. Killeen	147.Springtown	
38. Corinth	94. Krum	148.Stephenville	
39. Cross Roads	95. Lake Worth	149.Sulphur Springs	
40. Crowley	96. Lakeside	150.Sunnyvale	
41. Dallas	97. Lamesa	151.Sweetwater	
42. Dalworthington Gardens	98. Lancaster	152.Temple	
43. De Leon	99. Lavon	153.Terrell	
44. Denison	100.Lewisville	154.The Colony	
45. DeSoto	101.Lindale	155.Trophy Club	
46. Duncanville	102.Lindsay	156.Tyler	
47. Early	103.Little River	157.University Park	
48. Eastland	Academy	158.Venus	
49. Edgecliff Village	104.Malakoff	159.Waco	
50. Ennis	105.Mansfield	160.Watauga	
51. Euless	106.McKinney	161.Waxahachie	
52. Everman	107.Mesquite	162.Westover Hills	
53. Fairview	108.Midland	163.Westworth Village	
54. Farmers Branch	109.Midlothian	164.White Settlement	
55. Fate	110.Murchison	165.Wichita Falls	
56. Flower Mound	111.Murphy	166.Willow Park	

Oncor Cities Steering Committee

Invoice

C/O City of Arlington
Attn: Brandi Stigler
PO Box 90231
Arlington, TX 76004

Date	Invoice #
12/30/2024	25-122

Bill To
City of Roanoke

Item	Population	Per Capita	Amount
2025 Membership Assessment	10,798	0.11	1,187.78
Please make check payable to: Oncor Cities Steering Committee and mail to Oncor Cities Steering Committee, C/O City of Arlington, Attn: Brandi Stigler, PO Box 90231, Arlington, Texas 76004		Total	\$1,187.78



AGENDA ITEM

TO: Mayor and City Council

SUBJECT: RES NO 2025-101R - Authorizing the early redemption of certain outstanding obligations

MEETING DATE: January 28, 2025

DEPARTMENT: Finance

ITEM SUMMARY:

Consider approval of Resolution No. 2025-101R authorizing the early redemption of certain outstanding obligations of the City of Roanoke and other related matters.

INFORMATION:

During the FY 2025 budget process, Council approved staff to budget for the usage of \$4.835 million in General and Utility Fund Balance in order to pay off three bond series. This action was discovered and researched as a possible option to help reduce the City's need for a higher tax rate, and the passage of this resolution will formally allow the City to call the bonds as planned on March 5, 2025.

STAFF RECOMMENDATION:

Staff recommends approval.

SPECIAL CONSIDERATION:

FINANCIAL CONSIDERATION:

Approval of this item will allow the City to spend \$4.835 million in General and Utility Fund Balance in order to pay off three bond series (2014 Certificates of Obligation, 2015 General Obligation Bonds, and 2015 Certificates of Obligation). Planned as a part of the FY 2025 budget process, this initiative will reduce the City's overall debt obligation while simultaneously enabling the City to operate with the lower tax rate that was passed in September of 2024. Additionally, this will save the City approximately \$575,000 in future interest payments over the next 6 years. The General and Utility Funds will still remain well within their fund balance reserve requirements.

ATTACHMENTS:



AGENDA ITEM

1. RES NO 2025-101R - Redemption Resolution v1

RESOLUTION NO. 2025-101R

RESOLUTION AUTHORIZING THE EARLY REDEMPTION OF CERTAIN OUTSTANDING OBLIGATIONS OF THE CITY OF ROANOKE AND OTHER RELATED MATTERS

WHEREAS, the City of Roanoke, Texas (the “City”) has duly issued and there is now outstanding the following series of debt, secured by ad valorem taxes, revenues or a combination of such ad valorem taxes and revenues:

City of Roanoke, Texas Combination Tax and Revenue Certificates of Obligation, Series 2014, dated November 15, 2014, currently outstanding in the aggregate principal amount of \$1,745,000 (the “2014 Certificates of Obligation”);

City of Roanoke, Texas General Obligation Refunding Bonds, Series 2015, dated December 1, 2015, currently outstanding in the aggregate principal amount of \$1,385,000 (the “2015 Bonds”); and

City of Roanoke, Texas Combination Tax and Revenue Certificate of Obligation, Series 2015, dated December 1, 2015, currently outstanding in the aggregate principal amount of \$1,705,000 (the “2015 Certificates of Obligation” and, collectively with the 2014 Certificates of Obligation and the 2015 Bonds, the “Redeemed Obligations”);

WHEREAS, the City Council (the “City Council”) of the City deems it to be in the best interest of the City to use lawfully available funds to retire the Redeemed Obligations prior to their maturity on March 5, 2025, which will save the City’s taxpayers by reducing the City’s future principal and interest payments on such debt;

WHEREAS, it is hereby officially found and determined that the meeting at which this Resolution was considered was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS:

Section 1. The City hereby calls for redemption the below Redeemed Obligations, on March 5, 2025 (the “Redemption Date”):

<u>2014 Certificates of Obligation</u>		
Original Maturity Date	Principal Amount Outstanding	Principal Amount Being Redeemed
08/15/2025	\$320,000	\$320,000
08/15/2026	\$335,000	\$335,000
08/15/2027	\$350,000	\$350,000
08/15/2028	\$365,000	\$365,000
08/15/2029	\$375,000	\$375,000
	\$1,745,000	\$1,745,000

<u>2015 Bonds</u>		
<u>Original Maturity Date</u>	<u>Principal Amount Outstanding</u>	<u>Principal Amount Being Redeemed</u>
08/15/2025	\$250,000	\$250,000
08/15/2026	\$870,000	\$870,000
08/15/2027	\$265,000	\$265,000
	<u>\$1,385,000</u>	<u>\$1,385,000</u>

<u>2015 Certificates of Obligation</u>		
<u>Original Maturity Date</u>	<u>Principal Amount Outstanding</u>	<u>Principal Amount Being Redeemed</u>
08/15/2025	\$255,000	\$255,000
08/15/2026	\$265,000	\$265,000
08/15/2027	\$280,000	\$280,000
08/15/2028	\$290,000	\$290,000
08/15/2029	\$300,000	\$300,000
08/15/2030	\$315,000	\$315,000
	<u>\$1,705,000</u>	<u>\$1,705,000</u>

Section 2. On or before March 5, 2025, the City shall deposit with or make available to U.S. Bank Trust Company, National Association, Dallas, Texas or any successor paying agent/registrar (the "Paying Agent/Registrar"), funds in an amount sufficient to pay the redemption price of the Redeemed Obligations called for redemption.

Section 3. The Redeemed Obligations so called for redemption shall be presented for redemption and payment to the Paying Agent/Registrar in accordance with a notice of redemption and shall not bear interest after the Redemption Date. The notice of redemption shall be mailed by the Paying Agent/Registrar at least thirty days prior to the Redemption Date by United States mail, first-class postage prepaid, to the registered owner of each Redeemed Obligation to be redeemed at its address as it appeared on the day such notice of redemption is mailed and to major securities depositories, national bond rating agencies and bond information services.

Section 4. The City Manager and Director of Finance are hereby authorized to transfer lawfully available City funds as necessary to defease and redeem the Redeemed Obligations.

Section 5. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. This Resolution shall be effective immediately upon adoption.

Execution page follows

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
ROANOKE, TEXAS, this 28th day of January, 2025.

Carl E. Gierisch, Jr., Mayor

ATTEST:

April S. Hill, City Secretary

APPROVED AS TO FORM:

Signature
Jeff Moore, City Attorney



AGENDA ITEM

TO: Mayor and City Council

SUBJECT: FY2024-2025 Quarterly Financial Report

MEETING DATE: January 28, 2025

DEPARTMENT: Finance

ITEM SUMMARY:

Consider acceptance of the FY2024-2025 Quarterly Financial Report and Investment Report for the period ending December 31, 2024.

INFORMATION:

General Fund

The General Fund's FY 2025 budget looks strange in that staff has budgeted for a significant deficit. While this appears unnerving, in actuality this deficit represents a strategic use of accumulated fund balance for two primary purposes. The first is to pay off the remaining principle of three bond issues, enabling the City to operate on a lower tax rate while saving over half a million dollars in future interest payments. This payoff will appear as a transfer from the General Fund into the Debt Service Fund and a subsequent payment of \$4.8 million from the Debt Service Fund to the City's paying agent. The second is a payment of \$2.1 million to CitiGroup in order to fulfill the final two payments of an economic development agreement. Finally, the City annually budgets for use of fund balance for non-recurring operating items. When taking these into account, the General Fund budget balances ongoing revenue with ongoing expenses to ensure operational stability.

Sales Tax

The City's has collected two months' worth of sales tax for FY 2025. The first month brought a solid increase of 5% over October of FY24. However, the second month showed a major anomaly in our favor. The Texas Comptroller reported positive audit collections for Roanoke amounting to over \$2.5 million this period, which is roughly 10% of the City's annual sales tax budget. Staff does not currently have any detail on this audit adjustment but we will know more once the State releases its confidential report. While this audit adjustment is clearly a major windfall for the City, November sales tax receipts from current collections (that is, taxes on purchases made in the month of November) were actually down 2%, indicating lower economic activity than the previous November.

Utilities Fund



AGENDA ITEM

FY 2025 represents the second year of rate adjustments for our water and sewer services. While water rates remained static, sewer rates were increased by 26%. This adjustment represents a multi-year effort to make the sewer utility self-supporting instead of relying on water rate revenue to subsidize its costs. Additionally, the Utility Fund as a whole is budgeted to utilize \$192,000 in available cash balance to pay off its portion of the three bond issues the City will defease in this fiscal year. When taking the strategic use of fund balance into account, the Utility Fund is operationally balanced, with ongoing revenues being sufficient enough to cover ongoing expenses. While the water utility continues to subsidize wastewater services in FY 2025, this imbalance will be corrected with future rate adjustments over the next 4-5 years. Currently, the Fund is running a surplus of almost \$865,000.

Debt Service Fund

The City's Debt Service Fund is budgeted to post a surplus of \$62,500 due to higher anticipated interest income and delinquent/penalty property tax revenue. Cash-flow for this fund is very predictable, as most revenues are recognized in December/January and debt service payments occur twice annually, with lease payments also occurring throughout the year. The issuance of debt in November 2024 did result in over \$600,000 in issuance costs posted to this fund, although most of the fund's property tax revenue will hit before any further payments are due in February of 2025. The City has consistently issued debt for capital projects since at least 2014, although a large portion is paid from sales tax revenue instead of our debt service levy. Approximately 62% of the FY25 debt service payments are fully secured by property taxes. The largest recent issue, however, is to finish out the construction of a new public safety and courts building, paid for through CCPD sales taxes.

STAFF RECOMMENDATION:

Staff recommends acceptance.

SPECIAL CONSIDERATION:

FINANCIAL CONSIDERATION:

ATTACHMENTS:

1. 2025 1st Quarterly report

Financial Report - First Q, 2025

% of year Completed 25%

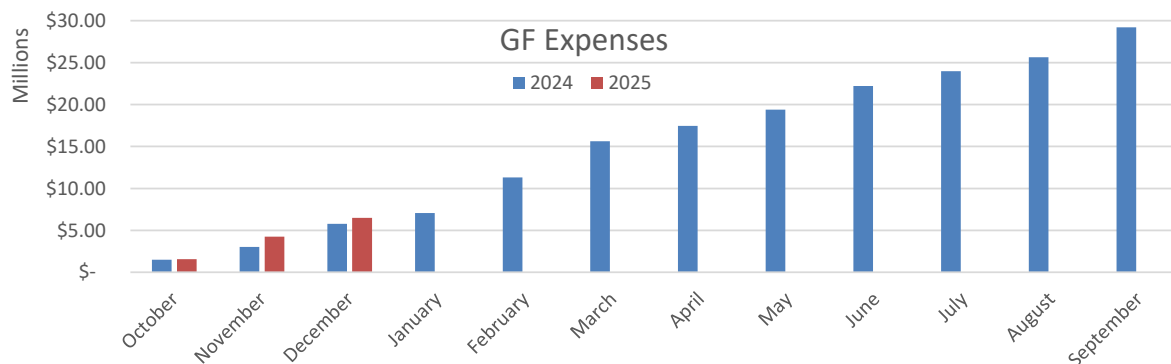
General Fund

% of Budget Spent 16%

	FY25 Budget	FY25 YTD	% of Budget	FY24 YTD	FY24% of Budget
Revenues	\$ 32,993,912	\$ 8,204,099	25%	\$ 5,887,167	22%
Expenditures	\$ 41,206,337	\$ 6,487,668	16%	\$ 5,757,891	20%
	\$ (8,212,425)	\$ 1,716,431		\$ 129,277	

*FY25 includes one-time costs for economic development and debt defeasance.

The General Fund's FY 2025 budget looks strange in that staff has budgeted for a significant deficit. While this appears unnerving, in actuality this deficit represents a strategic use of accumulated fund balance for two primary purposes. The first is to pay off the remaining principle of three bond issues, enabling the City to operate on a lower tax rate while saving over half a million dollars in future interest payments. This payoff will appear as a transfer from the General Fund into the Debt Service Fund and a subsequent payment of \$4.8 million from the Debt Service Fund to the City's paying agent. The second is a payment of \$2.1 million to CitiGroup in order to fulfill the final two payments of an economic development agreement. Finally, the City annually budgets for use of fund balance for non-recurring operating items. When taking these into account, the General Fund budget balances ongoing revenue with ongoing expenses to ensure operational stability.



General Fund Highlights

Revenue (FY25/FY24)

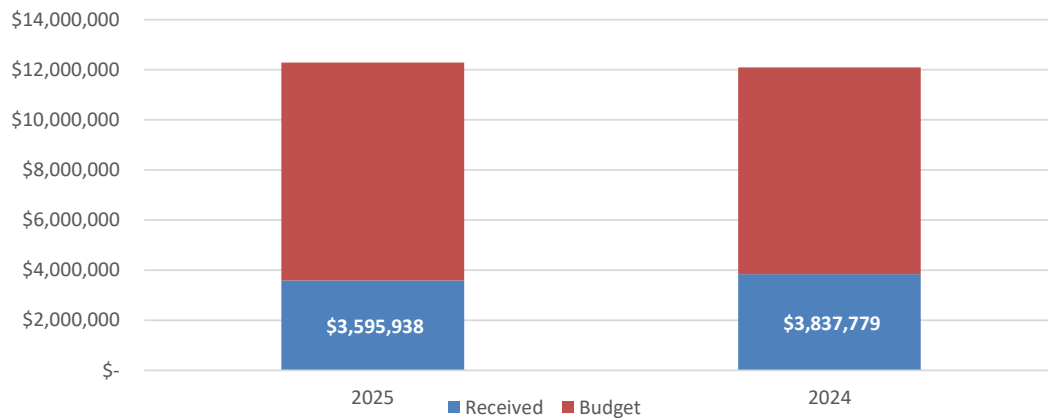
Property Tax	-34k	Sales Tax	\$203k	Franchise Tax	\$69k
	↓		↑		↑
Svc. Charges	-73k	Other Revenue	\$2,153k	Total Rev	\$2,317k
	↓		↑		↑

Expenditures (FY25/24)

Personnel	\$670k	Maint./Utilities	\$36k	Supplies	-\$53k
	↑		↑		↓
Capital	-\$63k	Transfers	\$140k	Total Exp	\$730k
	↓		↑		↑

Financial Report - First Q, 2025

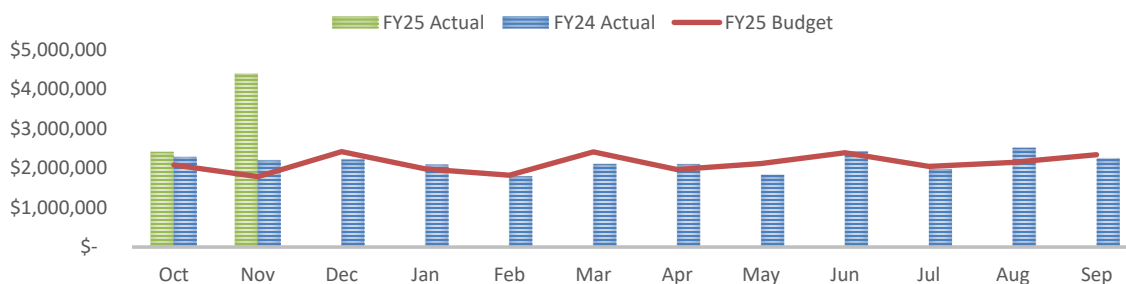
Revenue Highlight: Property Tax



Roanoke anticipates receiving \$12.2m in current property taxes, which is a 4% increase over FY24. This increase amounts to \$500,000 in additional revenue, all of which go toward funding service operations in the General Fund. Because Council has decided to pay off three bond issues early, thereby saving future principle and interest payments, property taxes dedicated to debt service this year will be lower than the City collected in FY 2024. State tax calculations stipulate that cities can only raise 3.5% more in operating revenue over the previous year, not including new development. However, for cities under 30,000 in population, such as Roanoke, a rate that raises an additional \$500,000 in property taxes is permissible. This is the rate Roanoke adopted for FY25.

Revenue Highlight: Sales Tax

FY25 VS. FY24 ACTUALS



MTD Increase

↑ 100.1%

YTD Increase

↑ 52.0%

The City's has collected two months' worth of sales tax for FY 2025. The first month brought a solid increase of 5% over October of FY24. However, the second month showed a major anomaly in our favor. The Texas Comptroller reported positive audit collections for Roanoke amounting to over \$2.5 million this period, which is roughly 10% of the City's annual sales tax budget. Staff does not currently have any detail on this audit adjustment but we will know more once the State releases its confidential report. While this audit adjustment is clearly a major windfall for the City, November sales tax receipts from current collections (that is, taxes on purchases made in the month of November) were actually down 2%, indicating lower economic activity than the previous November.

Financial Report - First Q, 2025

% of year Completed 25%

Water/Sewer Utility Fund

% of Budget Spent 17%

	FY25 Budget	FY25 YTD	% of Budget	FY24 YTD	FY24% of Budget
Revenues	\$ 11,102,020	\$ 2,811,822	25%	\$ 2,157,328	27%
Expenditures	\$ 11,294,296	\$ 1,947,296	17%	\$ 1,274,036	15%
	\$ (192,276)	\$ 864,526		\$ 883,293	

*Planned use of reserves for debt defeasance

Wastewater Summary

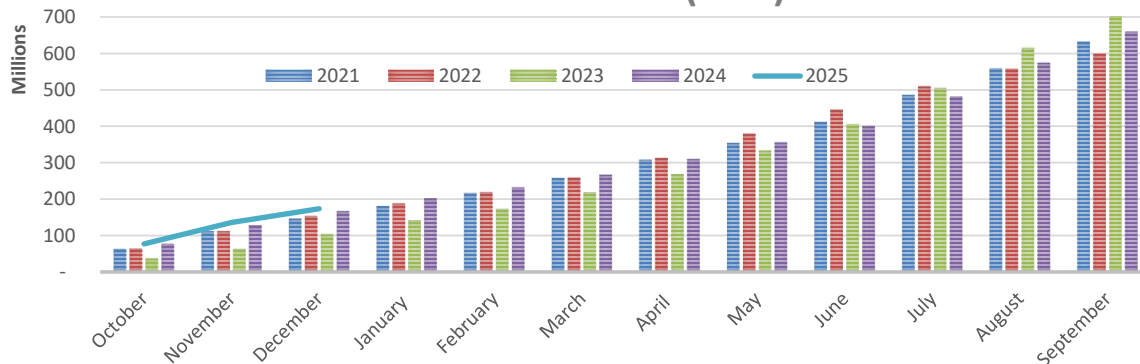
	FY25 Budget	FY25 YTD
Revs	\$ 4,800,851	\$ 990,425
Exps	\$ 4,997,548	\$ 871,087
Net	\$ (196,697)	\$ 119,337

Water Summary

	FY25 Budget	FY25 YTD
Revs	\$ 6,301,169	\$ 1,821,397
Exps	\$ 6,296,748	\$ 1,076,208
Net	\$ 4,421	\$ 745,189

FY 2025 represents the second year of rate adjustments for our water and sewer services. While water rates remained static, sewer rates were increased by 26%. This adjustment represents a multi-year effort to make the sewer utility self-supporting instead of relying on water rate revenue to subsidize its costs. Additionally, the Utility Fund as a whole is budgeted to utilize \$192,000 in available cash balance to pay off its portion of the three bond issues the City will defease in this fiscal year. When taking the strategic use of fund balance into account, the Utility Fund is operationally balanced, with ongoing revenues being sufficient enough to cover ongoing expenses. While the water utility continues to subsidize wastewater services in FY 2025, this imbalance will be corrected with future rate adjustments over the next 4-5 years. Currently, the Fund is running a surplus of almost \$865,000.

WATER USAGE (MG)



Expenditures (FY25/24)

Personnel	- \$115.4k	Maint./Utilities	\$205.5k	Supplies	- \$8.4k
Capital	- \$24.5k	Transfers	\$616.0k	Total Exp	\$673k

Financial Report - First Q, 2025

% of year Completed 25%

% of Budget Spent 22%

Special Revenue Funds

REIDC Fund	FY25 Budget	FY25 YTD	% of Budget	FY24 YTD	FY24% of Budget
Revenues	\$ 6,573,442	\$ 1,836,117	28%	\$ 1,732,872	28%
Expenditures	\$ 9,387,763	\$ 2,079,804	22%	\$ 505,112	6%
	\$ (2,814,321)	\$ (243,686)		\$ 1,227,759	

*Planned use of \$2.8m in reserves for capital projects and other one-time costs

CCPD Fund	FY25 Budget	FY25 YTD	% of Budget	FY24 YTD	FY24% of Budget
Revenues	\$ 6,423,442	\$ 1,749,771	27%	\$ 1,667,410	27%
Expenditures	\$ 8,048,026	\$ 726,390	9%	\$ 940,251	17%
	\$ (1,624,584)	\$ 1,023,381		\$ 727,158	

*Planned use of \$1.6m in reserves for capital projects and other one-time costs

Special Events	FY25 Budget	FY25 YTD	% of Budget	FY24 YTD	FY24% of Budget
Revenues	\$ 1,142,000	\$ 272,650	24%	\$ 43,847	5%
Expenditures	\$ 1,131,908	\$ 436,355	39%	\$ 347,265	29%
	\$ 10,092	\$ (163,705)		\$ (303,418)	

Hotel Tax Fund	FY25 Budget	FY25 YTD	% of Budget	FY24 YTD	FY24% of Budget
Revenues	\$ 151,800	\$ 50,337	33%	\$ 38,571	28%
Expenditures	\$ 148,407	\$ 23,750	16%	\$ -	0%
	\$ 3,393	\$ 26,587		\$ 38,571	

NOTE: The REIDC Fund planned for higher spending on Parks capital and operations in FY24 than was actually expensed. A portion will be spent in FY25, but all other savings will remain in the fund's cash balance for future appropriation.

Special Revenue Funds Highlights

Revenue (FY24/FY23)

Sales Tax	\$206k	Misc. Rev	-\$7.5k	Interfund	\$00.0k
					
Service Charge	-\$21.9k	Licenses	-\$23.7k	Total Rev	\$426k
					

Expenditures (FY24/23)

Personnel	-\$423.6k	Maint./Utilities	-\$299.3k	Supplies	-\$10k
					
Capital	\$489.7k	Transfers	\$1,693.4k	Total Exp	\$1,474k
					

Financial Report - First Q, 2025

Debt Service Fund

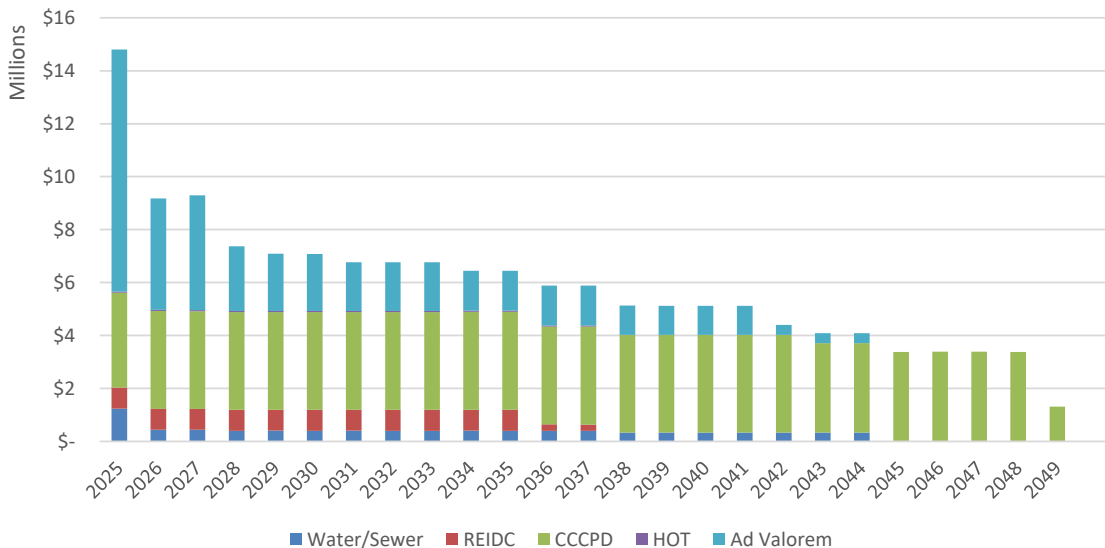
% of year Completed 25%

% of Budget Spent 5%

	FY25 Budget	FY25 YTD	% of Budget	FY24 YTD	FY24% of Budget
Revenues	\$ 12,294,276	\$ 2,140,687	17%	\$ 2,123,242	36%
Expenditures*	\$ 12,231,752	\$ 614,343	5%	\$ 384,962	7%
	\$ 62,524	\$ 1,526,344		\$ 1,738,280	

The City's Debt Service Fund is budgeted to post a surplus of \$62,500 due to higher anticipated interest income and delinquent/penalty property tax revenue. Cash-flow for this fund is very predictable, as most revenues are recognized in December/January and debt service payments occur twice annually, with lease payments also occurring throughout the year. The issuance of debt in November 2024 did result in over \$600,000 in issuance costs posted to this fund, although most of the fund's property tax revenue will hit before any further payments are due in February of 2025. The City has consistently issued debt for capital projects since at least 2014, although a large portion is paid from sales tax revenue instead of our debt service levy. Approximately 62% of the FY25 debt service payments are fully secured by property taxes. The largest recent issue, however, is to finish out the construction of a new public safety and courts building, paid for through CCPD sales taxes. All current bond payments are scheduled as follows:

Debt Service



For any questions or comments regarding this report, please contact:

Kyle Lester
 Finance Director
 City of Roanoke, TX
klester@roanoketexas.com
 817-491-6075



For the Quarter Ended

December 31, 2024

**Prepared by
Valley View Consulting, L.L.C.**

The investment portfolio of the City of Roanoke is in compliance with the Public Funds Investment Act and the Investment Policy and Strategies.

Cody Wayne Petree

Cody Petree - City Manager

Richard Kyle Lester

Kyle Lester - Finance Direction

These reports were compiled using information provided by the City. No procedures were performed to test the accuracy or completeness of this information. The market values included in these reports were obtained by Valley View Consulting, L.L.C. from sources believed to be accurate and represent proprietary valuation. Due to market fluctuations these levels are not necessarily reflective of current liquidation values. Yield calculations are not determined using standard performance formulas, are not representative of total return yields and do not account for investment advisor fees.

Summary

Quarter End Results by Investment Category:

<u>Asset Type</u>	<u>September 30, 2024</u>		<u>December 31, 2024</u>		
	<u>Book Value</u>	<u>Market Value</u>	<u>Book Value</u>	<u>Market Value</u>	<u>Ave. Yield</u>
MMA	\$ 16,666,706	\$ 16,666,706	\$ 13,702,616	\$ 13,702,616	2.26%
Pools	39,560,932	39,560,932	54,767,327	54,767,327	4.67%
CDs/Securities	18,292,275	18,292,275	20,403,233	20,403,233	4.89%
Totals	\$ 74,519,913	\$ 74,519,913	\$ 88,873,177	\$ 88,873,177	4.35%

<u>Average Yield - Current Quarter (1)</u>		<u>Fiscal Year-to-Date Average Yield (2)</u>	
Total Portfolio	4.35%	Total Portfolio	N/A
Rolling Three Month Treasury	4.56%	Rolling Three Month Treasury	4.56%
Rolling Six Month Treasury	4.63%	Rolling Six Month Treasury	4.63%
TexPool	4.56%	TexPool	4.56%

<u>Interest Earnings</u>	
Quarterly Interest Income	\$ 976,335 Approximate
Year-to-date Interest Income	\$ 976,335 Approximate

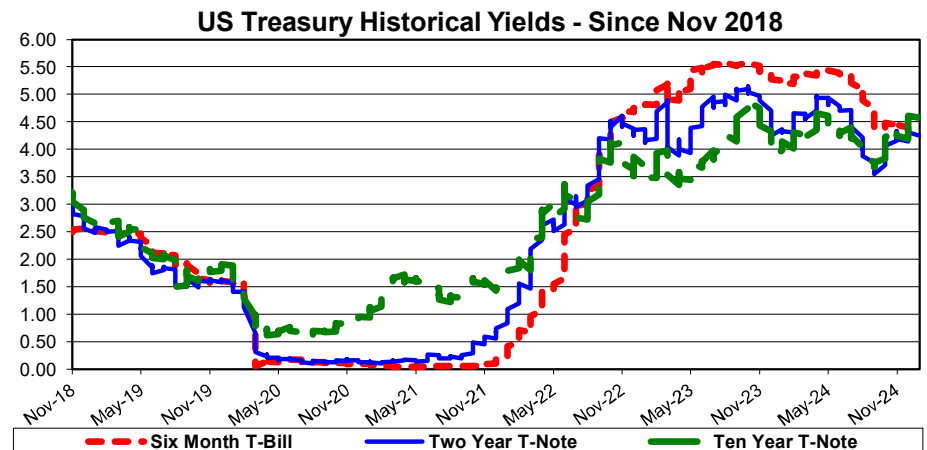
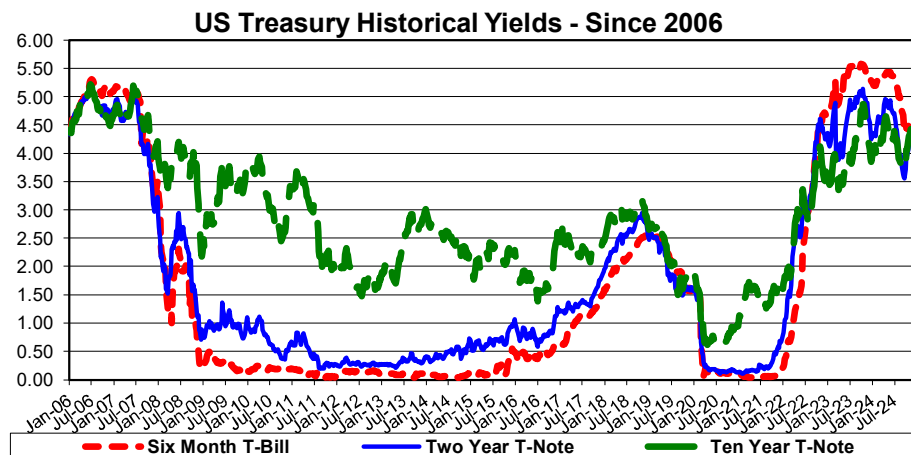
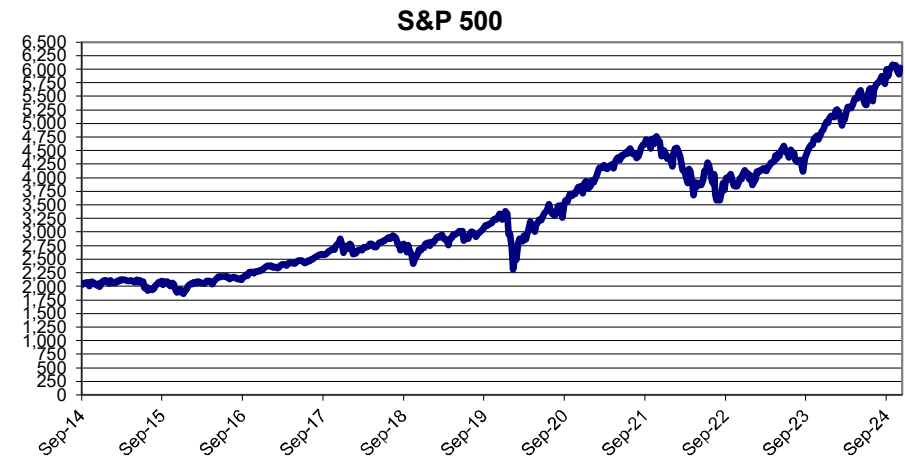
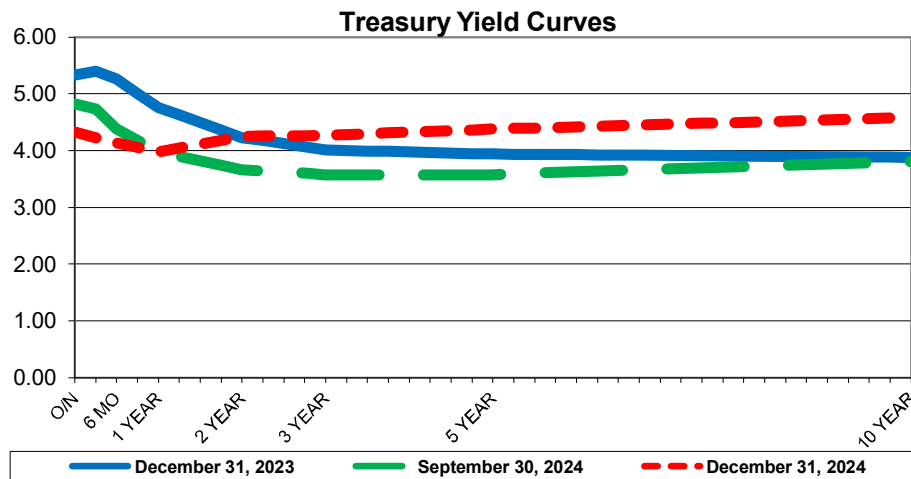
(1) **Average Yield - Current Quarter** - based on adjusted book value, realized and unrealized gains/losses and investment advisory fees are not considered. The yield for the reporting month is used for bank, pool, and money market balances.

(2) **Fiscal Year-to-Date Average Yield** - calculated using quarter end report yields and adjusted book values and does not reflect a total return analysis or account for advisory fees.

Economic Overview

12/31/2024

The Federal Open Market Committee (FOMC) reduced the Fed Funds target range a second time to 4.25% - 4.50% (Effective Fed Funds trade +/-4.33%). Expectations for additional rate cuts have diminished with one 0.25% cut projected in March/May. The next cut might not be until October. December Non-Farm Payroll improved to +256k new jobs, with the Three Month Rolling Average falling slightly to +170k (from the previous +173k). Third Quarter 2024 GDP final number increased to +3.1. The S&P 500 Stock Index experienced some volatility but still exceeds 6,000. The yield curve adjusted to a slight checkmark shape. Crude Oil bounced +/- \$70 per barrel. Inflation remains above the FOMC 2% target (Core PCE +/-2.8% and Core CPI +/-3.3%). Declining global economic outlook and ongoing/expanding international political disruptions increases uncertainty.



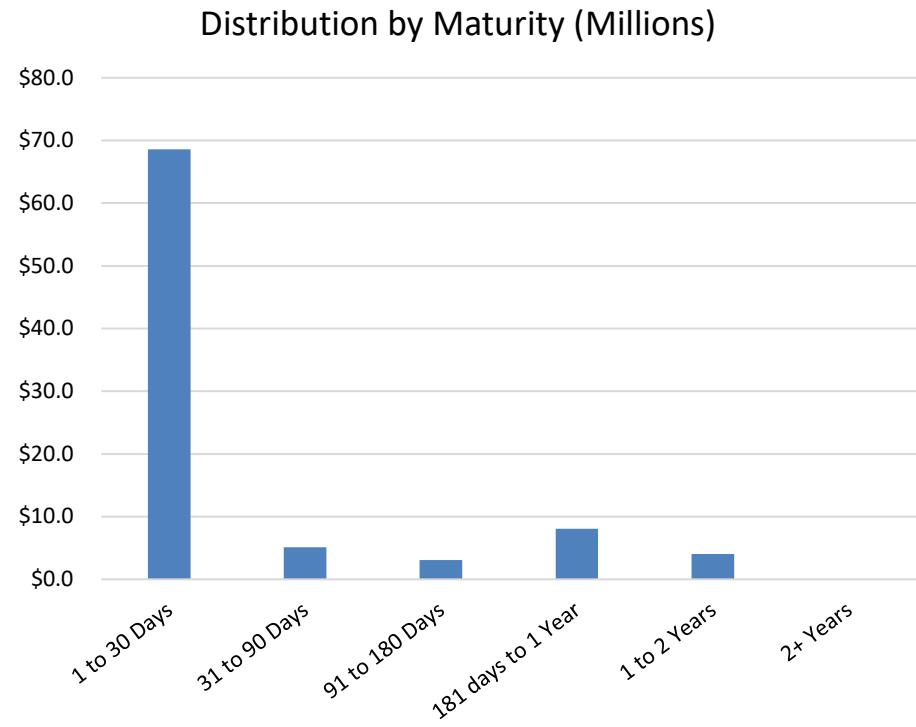
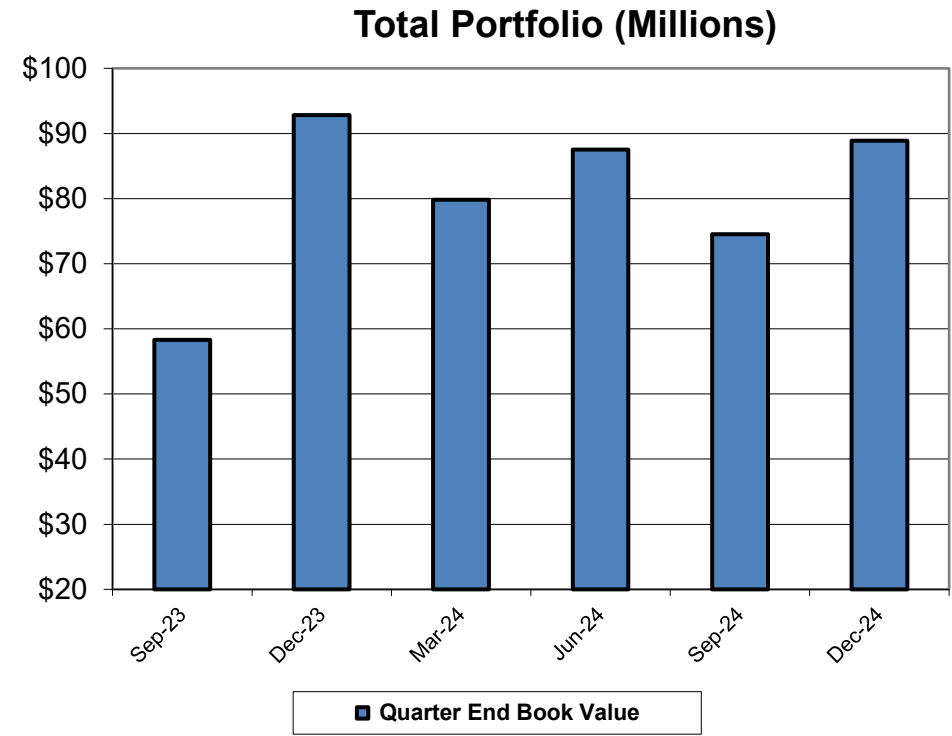
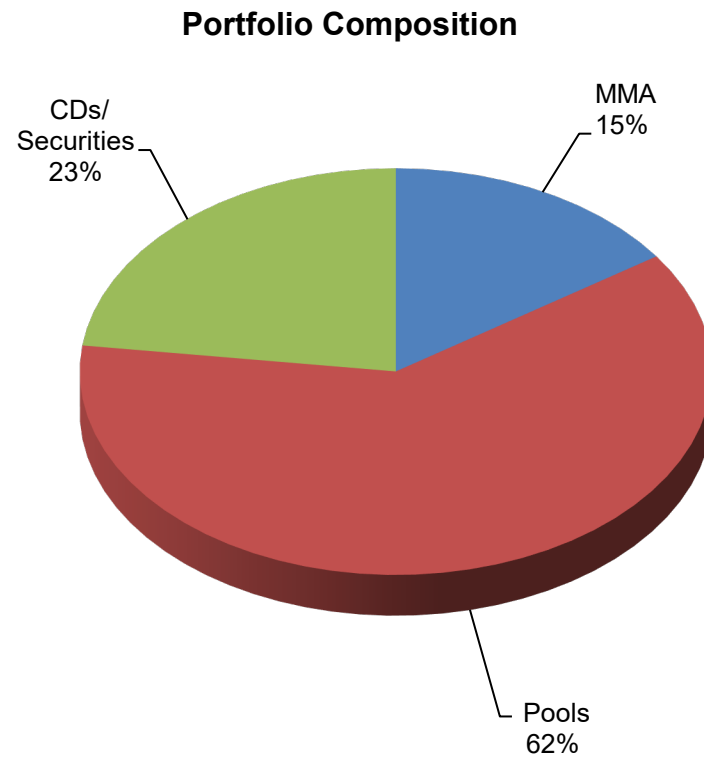
Investment Holdings

December 31, 2024

Description	Ratings	Coupon/ Discount	Maturity Date	Settlement Date	Par Value	Book Value	Market Price	Market Value	Life (days)	Yield
JPMorgan Chase Bank MMA		2.26%	01/01/25	12/31/24	\$ 13,632,993	\$ 13,632,993	1.00	\$ 13,632,993	1	2.26%
Prosperity Bank MMA		1.51%	01/01/25	12/31/24	69,624	69,624	1.00	69,624	1	1.51%
Texas Class LGIP		4.75%	01/01/25	12/31/24	25,028,367	25,028,367	1.00	25,028,367	1	4.75%
LOGIC LGIP		4.69%	01/01/25	12/31/24	9,578,329	9,578,329	1.00	9,578,329	1	4.69%
TexSTAR LGIP		4.56%	01/01/25	12/31/24	20,160,631	20,160,631	1.00	20,160,631	1	4.56%
Prosperity Bank CD		3.90%	01/30/25	06/30/24	89,010	89,010	100.00	89,010	30	3.90%
East West Bank CD		5.30%	02/12/25	08/12/24	3,062,495	3,062,495	100.00	3,062,495	43	5.44%
Prosperity Bank CD		3.75%	03/11/25	08/30/24	50,000	50,000	100.00	50,000	70	3.75%
First Bank Texas CD		4.75%	03/17/25	09/17/24	2,023,779	2,023,779	100.00	2,023,779	76	4.85%
East West Bank CD		5.12%	05/12/25	08/12/24	3,060,352	3,060,352	100.00	3,060,352	132	5.25%
American Nat'l B&T CDARS		5.15%	08/09/25	08/08/24	1,020,812	1,020,812	100.00	1,020,812	221	5.28%
East West Bank CD		4.41%	08/18/25	11/18/24	2,010,660	2,010,660	100.00	2,010,660	230	4.51%
First Bank Texas CD		5.00%	09/17/25	09/17/24	2,025,035	2,025,035	100.00	2,025,035	260	5.12%
East West Bank CD		4.35%	11/12/25	11/12/24	3,017,929	3,017,929	100.00	3,017,929	316	4.45%
First Bank Texas CD		4.50%	03/17/26	09/17/24	2,528,153	2,528,153	100.00	2,528,153	441	4.89%
First Bank Texas CD		4.00%	09/17/26	09/17/24	1,515,009	1,515,009	100.00	1,515,009	625	4.07%
					\$ 88,873,177	\$ 88,873,177		\$ 88,873,177	56	4.35%
									(1)	(2)

(1) **Weighted average life** - For purposes of calculating weighted average life, bank accounts, pools and money market funds are assumed to have an one day maturity.

(2) **Weighted average yield to maturity** - The weighted average yield to maturity is based on adjusted book value, realized and unrealized gains/losses and investment advisory fees are not considered. The yield for the reporting month is used for bank accounts, pools and money market funds.



Book & Market Value Comparison

Issuer/Description	Yield	Maturity Date	Book Value 09/30/24	Increases	Decreases	Book Value 12/31/24	Market Value 09/30/24	Change in Market Value	Market Value 12/31/24
JPMorgan Chase Bank MMA	2.26%	01/01/25	\$ 16,597,666	\$ —	\$ (2,964,673)	\$ 13,632,993	\$ 16,597,666	\$ (2,964,673)	\$ 13,632,993
Prosperity Bank MMA	1.51%	01/01/25	69,040	584	—	69,624	69,040	584	69,624
Texas Class LGIP	4.75%	01/01/25	39,560,932	—	(14,532,566)	25,028,367	39,560,932	(14,532,566)	25,028,367
LOGIC LGIP	4.69%	01/01/25	—	9,578,329	—	9,578,329	—	9,578,329	9,578,329
TexSTAR LGIP	4.56%	01/01/25	—	20,160,631	—	20,160,631	—	20,160,631	20,160,631
Prosperity Bank CD	2.55%	10/19/24	10,000	—	(10,000)	—	10,000	(10,000)	—
Prosperity Bank CD	2.65%	10/19/24	40,000	—	(40,000)	—	40,000	(40,000)	—
East West Bank CD	5.64%	11/12/24	3,022,645	—	(3,022,645)	—	3,022,645	(3,022,645)	—
Prosperity Bank CD	2.55%	11/15/24	20,000	—	(20,000)	—	20,000	(20,000)	—
Prosperity Bank CD	2.55%	11/15/24	10,000	—	(10,000)	—	10,000	(10,000)	—
Prosperity Bank CD	3.90%	01/30/25	89,010	—	—	89,010	89,010	—	89,010
East West Bank CD	5.44%	02/12/25	3,021,858	40,637	—	3,062,495	3,021,858	40,637	3,062,495
Prosperity Bank CD	3.75%	03/11/25	50,000	—	—	50,000	50,000	—	50,000
First Bank Texas CD	4.85%	03/17/25	2,000,000	23,779	—	2,023,779	2,000,000	23,779	2,023,779
East West Bank CD	5.25%	05/12/25	3,021,114	39,238	—	3,060,352	3,021,114	39,238	3,060,352
American Nat'l B&T CDARS	5.28%	08/09/25	1,007,648	13,164	—	1,020,812	1,007,648	13,164	1,020,812
East West Bank CD	4.51%	08/18/25	—	2,010,660	—	2,010,660	—	2,010,660	2,010,660
First Bank Texas CD	5.12%	09/17/25	2,000,000	25,035	—	2,025,035	2,000,000	25,035	2,025,035
East West Bank CD	4.45%	11/12/25	—	3,017,929	—	3,017,929	—	3,017,929	3,017,929
First Bank Texas CD	4.89%	03/17/26	2,500,000	28,153	—	2,528,153	2,500,000	28,153	2,528,153
First Bank Texas CD	4.07%	09/17/26	1,500,000	15,009	—	1,515,009	1,500,000	15,009	1,515,009
TOTAL / AVERAGE	4.35%		\$ 74,519,913	\$ 34,953,148	\$ (20,599,884)	\$ 88,873,177	\$ 74,519,913	\$ 14,353,264	\$ 88,873,177

Fund Allocation - Book & Market Value
December 31, 2024

	Total	General Fund	CCPD Fund	REIDC Fund	Other Special Revenue Funds	Water/Sewer Operating Fund	Capital Funds
JPMorgan Chase Bank MMA	\$ 13,632,993	\$ 2,683,418	\$ 2,633,906	\$ 2,519,460	\$ 1,852,012	\$ 627,209	\$ 2,783,274
Prosperity Bank MMA	69,624	69,624	—	—	—	—	—
Texas Class LGIP	25,028,367	7,393,619	—	6,367,696	—	2,796,887	8,470,166
LOGIC LGIP	9,578,329	—	—	—	—	—	9,578,329
TexSTAR LGIP	20,160,631	—	—	—	—	—	20,160,631
01/30/25-Prosperity Bank CD	89,010	89,010	—	—	—	—	—
02/12/25-East West Bank CD	3,062,495	3,062,495	—	—	—	—	—
03/11/25-Prosperity Bank CD	50,000	50,000	—	—	—	—	—
03/17/25-First Bank Texas CD	2,023,779	1,011,889	—	1,011,889	—	—	—
05/12/25-East West Bank CD	3,060,352	—	—	3,060,352	—	—	—
08/09/25-American Nat'l B&T CDARS	1,020,812	—	1,020,812	—	—	—	—
08/18/25-East West Bank CD	2,010,660	2,010,660	—	—	—	—	—
09/17/25-First Bank Texas CD	2,025,035	1,012,518	—	—	—	1,012,518	—
11/12/25-East West Bank CD	3,017,929	3,017,929	—	—	—	—	—
03/17/26-First Bank Texas CD	2,528,153	2,528,153	—	—	—	—	—
09/17/26-First Bank Texas CD	1,515,009	—	—	—	—	1,515,009	—
Total	\$ 88,873,177	\$ 22,929,315	\$ 3,654,718	\$ 12,959,397	\$ 1,852,012	\$ 5,951,623	\$ 40,992,400

Fund Allocation - Book & Mark
December 31, 2024

Continued

	ARPA Fund	Debt Service Fund
JPMorgan Chase Bank MMA	\$ 319,834	\$ 213,879
Prosperity Bank MMA	—	—
Texas Class LGIP	—	—
LOGIC LGIP	—	—
TexSTAR LGIP	—	—
01/30/25-Prosperity Bank CD	—	—
02/12/25-East West Bank CD	—	—
03/11/25-Prosperity Bank CD	—	—
03/17/25-First Bank Texas CD	—	—
05/12/25-East West Bank CD	—	—
08/09/25-American Nat'l B&T CDARS	—	—
08/18/25-East West Bank CD	—	—
09/17/25-First Bank Texas CD	—	—
11/12/25-East West Bank CD	—	—
03/17/26-First Bank Texas CD	—	—
09/17/26-First Bank Texas CD	—	—
Total	\$ 319,834	\$ 213,879

Fund Allocation - Book & Market Value
September 30, 2024

	Total	General Fund	CCPD Fund	REIDC Fund	Other Special Revenue Funds	Water/Sewer Operating Fund	Capital Funds
JPMorgan Chase Bank MMA	\$ 16,597,666	\$ 1,985,684	\$ 1,803,646	\$ 4,459	\$ 1,773,515	\$ 3,491,350	\$ 8,085,815
Prosperity Bank MMA	69,040	69,040	—	—	—	—	—
Texas Class LGIP	39,560,932	9,114,976	—	7,855,357	—	3,446,312	18,053,841
10/19/24-Prosperity Bank CD	10,000	10,000	—	—	—	—	—
10/19/24-Prosperity Bank CD	40,000	40,000	—	—	—	—	—
11/12/24-East West Bank CD	3,022,645	3,022,645	—	—	—	—	—
11/15/24-Prosperity Bank CD	20,000	—	—	—	—	20,000	—
11/15/24-Prosperity Bank CD	10,000	10,000	—	—	—	—	—
01/30/25-Prosperity Bank CD	89,010	89,010	—	—	—	—	—
02/12/25-East West Bank CD	3,021,858	3,021,858	—	—	—	—	—
03/11/25-Prosperity Bank CD	50,000	50,000	—	—	—	—	—
03/17/25-First Bank Texas CD	2,000,000	1,000,000	—	1,000,000	—	—	—
05/12/25-East West Bank CD	3,021,114	—	—	3,021,114	—	—	—
08/09/25-American Nat'l B&T CDARS	1,007,648	—	1,007,648	—	—	—	—
09/17/25-First Bank Texas CD	2,000,000	1,000,000	—	—	—	1,000,000	—
03/17/26-First Bank Texas CD	2,500,000	2,500,000	—	—	—	—	—
09/17/26-First Bank Texas CD	1,500,000	—	—	—	—	1,500,000	—
Total	\$ 74,519,913	\$ 21,913,214	\$ 2,811,294	\$ 11,880,929	\$ 1,773,515	\$ 9,457,662	\$ 26,139,656

Fund Allocation - Book & Mark
September 30, 2024

Continued

	ARPA Fund	Debt Service Fund
JPMorgan Chase Bank MMA	\$ (711,188)	\$ 164,385
Prosperity Bank MMA	—	—
Texas Class LGIP	1,090,446	—
10/19/24-Prosperity Bank CD	—	—
10/19/24-Prosperity Bank CD	—	—
11/12/24-East West Bank CD	—	—
11/15/24-Prosperity Bank CD	—	—
11/15/24-Prosperity Bank CD	—	—
01/30/25-Prosperity Bank CD	—	—
02/12/25-East West Bank CD	—	—
03/11/25-Prosperity Bank CD	—	—
03/17/25-First Bank Texas CD	—	—
05/12/25-East West Bank CD	—	—
08/09/25-American Nat'l B&T CDARS	—	—
09/17/25-First Bank Texas CD	—	—
03/17/26-First Bank Texas CD	—	—
09/17/26-First Bank Texas CD	—	—
Total	\$ 379,257	\$ 164,385

Investment Policy Compliance
December 31, 2024

Authorized Investments	Maximum %	Actual Market Value	% of Portfolio	Status
Financial Institution Deposits	100%	\$ 63,844,810	71.84%	Pass
Repurchase Agreements	50%	—	0.0%	N/A
U.S. Treasury Notes/Bonds/Bills	100%	—	0.0%	N/A
U.S. Agencies	100%	—	0.0%	N/A
Money Market Mutual Funds	PFIA Limits	—	0.0%	N/A
Local Gov't Investment Pools	100%	25,028,367	28.2%	Pass
State or Municipal Obligations	50%	—	0.0%	N/A
Total		\$ 88,873,177	100.0%	



AGENDA ITEM

TO: Mayor & City Council

SUBJECT: Construction Manager Advisor - Main Street Parking Garage

MEETING DATE: January 28, 2025

DEPARTMENT: City Manager

ITEM SUMMARY:

Consider approval of an agreement between the City of Roanoke and Gallagher Construction Company, LP for a Construction Manager Advisor (CMA) for the proposed Main Street parking garage project.

INFORMATION:

This agreement is for construction management services, similar to other previous large city projects, regarding the proposed parking garage construction project. At this time, we do not have a funding source identified for the construction or a timeline; however, the garage's design is underway. Therefore, the timing is appropriate to get the construction manager on board to finalize plans before the bidding process begins once funds have been identified for this project.

STAFF RECOMMENDATION:

Approve

SPECIAL CONSIDERATION:

FINANCIAL CONSIDERATION:

FEE SCHEDULE BASED ON PERCENT OF TOTAL PROJECT BUDGET:

\$0 to \$5,000,000 7.00% of Total Project Budget
\$5,000,001 to \$15,000,000 6.80% of Total Project Budget
\$15,000,001 and above 6.65% of Total Project Budget

ATTACHMENTS:

1. Gallagher Construction Company LP - Construction Manager Agreement
2. General Conditions A232-2019 City of Roanoke DRAFT 10-28-2024



AGENDA ITEM

DRAFT

AIA® Document C132™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the <> day of <> in the year Two Thousand Twenty-Four
(In words, indicate day, month and year.)

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

City of Roanoke
500 S. Oak Street
Roanoke, TX. 76262

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

Gallagher Construction Company, LP
3501 Token Drive, Suite 100
Richardson, TX 75082

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

City of Roanoke Parking Garage

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

GFF, Inc.
1701 River Run, Suite 800
Fort Worth, TX 76107

The Owner and Construction Manager agree as follows.

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

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

This document is intended to be used in conjunction with AIA Documents A132™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. AIA Document A232™-2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1.9 The Owner identifies the following representative in accordance with Section 5.5 follows (The Owner's Representative may be changed at the discretion of the Owner at any time.):
(List name, address, and other contact information.)

« »
«Cody Petree, City Manager »
«City of Roanoke »
«500 S. Oak Street »
«Roanoke, TX. 76262»
«cpetree@roanoketexas.com »
«817.491.2411»

§ 1.1.11 The Owner shall retain the following consultants and Contractors:
(List name, legal status, address, and other contact information.)

.1 Land Surveyor:

«TBD »« »
« »
« »
« »
« »

.2 Geotechnical Engineer:

«TBD »« »
« »
« »
« »
« »

.3 Civil Engineer:

«TBD »« »

« »

« »

« »

« »

.4 Contractors, as defined in Section 1.4:

«TBD »

.5 Separate Contractors, as defined in Section 1.4:

«TBD »

.6 Other, if any:

(List any other consultants retained by the Owner.)

« »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Section 2.5:
(List name, address, and other contact information.)

Gallagher Construction Company, LP
Jeff Fisher, President (jeff.fisher@gallaghertx.com)
3501 Token Drive, Suite 100
Richardson, TX 75082
972.633.0564

§ 1.2 The Owner and Construction Manager recognize that the Initial Information may materially change, but such changes will not affect the Construction Manager's services, and the Construction Manager's compensation

§ 1.3 As used herein, the terms "bids", "bidding", and "bidders" shall include "proposal", "proposals", and "proposers" as applicable

§ 1.4 The term "Contractors" or "Multiple Prime Contractors" shall refer and have the meaning of any person or entity who perform Work under contracts with the Owner that are administered by the Construction Manager and Architect. The term "Contractors" or "Multiple Prime Contractors" are used to refer to such persons or entities, whether singular or plural. The terms do not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Construction Manager and Architect.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set and/or described forth in this Agreement and as set forth and/or described in any documents attached to this Agreement or incorporated into this Agreement.

§ 2.2 The Construction Manager shall perform its services in a good and workmanlike manner, consistent with industry standards, and consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project. The Construction Manager shall provide sufficient organization, personnel, and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Owner.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect retained by Owner. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall coordinate its services with those services provided by the Owner, the Architect, the Contractors, and the Owner's other consultants and Separate Contractors. The Construction Manager shall be entitled to rely on, and shall not be responsible for, the accuracy and completeness of services and information furnished by the Owner, the Architect, and the Owner's other consultants and Separate Contractors. The Construction Manager shall provide prompt written notice to the Owner if the Construction Manager becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.5 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.6 The Construction Manager, as soon as practicable after execution of the Agreement, shall notify the Owner in writing of the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Construction Manager's proposed key staff members, the Owner may reply to the Construction Manager in writing, stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. The Construction Manager shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Construction Manager shall not change its key staff members without the Owner's consent, which shall not be unreasonably withheld or delayed.

§ 2.7 Except with the Owner's knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment with respect to this Project.

§ 2.8 The Construction Manager shall, at its own expense, purchase from and maintain (or cause to be maintained in the case of consultants to the Construction Manager or other professionals employed or used by Construction Manager) the following insurance in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located for not less than the limits stated below, or greater if required by law, for the duration of this Agreement or for such longer periods as may be required herein:

TYPE OF INSURANCE	LIMIT OF LIABILITY	
<u>Commercial General Liability (CGL)</u>	\$1,000,000.00	Each Occurrence
	\$300,000.00	Damage to Rented Premises – each occurrence
	\$10,000.00	Medical Expense (any one person)
	\$1,000,000.00	Personal and Adv. Injury
	\$2,000,000.00	General Aggregate
	\$2,000,000.00	Products and Completed Operations
	CGL coverage shall include liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract.	
<u>Automobile Liability</u>	\$1,000,000.00	Combined Single Limit (ea. accident)
<u>Professional Liability</u>	\$1,000,000.00	Per Claim
	\$1,000,000.00	Annual Aggregate
<u>Excess/Umbrella Liability</u>	\$5,000,000.00	Each Occurrence
	\$5,000,000.00	Aggregate
<u>Workers Compensation</u>	Statutory	
	\$1,000,000.00	E.L. Each Accident
	\$1,000,000.00	E.L. Disease – Ea. Employee
	\$1,000,000.00	E.L. Disease – Policy Limit

2.8.1 The provisions of this Section 2.8 are intended by the parties to be read in conjunction with Article 11 of the AIA A232-2019 of the General Conditions of the Contract for Construction. Each shall supplement the other on any

detail of insurance coverage. However, the foregoing types and limits of insurance in this section 2.8 shall apply if in direct conflict with the requirements set forth in Article 11 of the AIA A232-2019. The required insurance policies, except for professional liability insurance and worker's compensation insurance, shall and must name the Owner, its officials, employees, and officers as additional insureds. The required insurance policies shall contain no specific limitations on the coverage afforded the Additional Insureds

2.8.2 All insurance and limits of liability required herein shall be in effect as of the earlier of the effective date of this Agreement or the date of the commencement of Construction Manager's services in relation to the Project and shall remain in effect continuously throughout the term of this Agreement or for such longer periods as are required herein. In the case of Professional Liability insurance, the required coverage and limits of liability shall remain in effect for a minimum period of three (3) years following the completion of the Construction Manager's services hereunder.

2.8.3 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6 and Article 11 of the AIA A232-2009 of the General Conditions of the Contract for Construction. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella and excess policies.

2.8.4 The Workers' Compensation, General Liability, Auto, and Umbrella insurance policies required herein shall contain a waiver of subrogation in favor of Owner, its officials, employees, and officers, whether by way of an approved endorsement or otherwise.

2.8.5 Except as otherwise provided in this Agreement, insurance provided pursuant to this Section shall be considered a part of the Construction Manager's basic services and shall not be a Reimbursable Expense.

§ 2.8.6 The Construction Manager shall notify Owner in writing and by certified mail or personal delivery, within ten (10) days after the Construction Manager knew or should have known of any change that materially affects the provision of the required insurance coverages of any person providing services on the Project.

§ 2.8.7 Because the Construction Manager will be performing on-site services and observations, a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, or TWCC-84), showing statutory worker's compensation coverage for the Construction Manager and its employees providing services on the Project is required for the duration of the Project.

§ 2.9 Upon the written request of the Owner, the Construction Manager shall remove from the Project any employee of the Construction Manager to whom the Owner makes a reasonable objection. The Construction Manager shall replace any such employee with an equally qualified employee in a timely manner.

§ 2.10 Notwithstanding any provision of this Agreement to the contrary, services made necessary as a result of the Construction Manager's failure to timely provide accurate or complete information, approvals, or clarifications, or to timely render a recommendation/decision, shall be considered Basic Services.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in this Article 3 of this Agreement, any other duties described as Basic Services of the Construction Manager in this Agreement or in other attachments or exhibits to this Agreement, and further include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

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

§ 3.2.3 Based on early schematic designs and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of Construction Cost for program requirements using area, volume or similar conceptual estimating techniques. The Construction Manager shall provide cost evaluations of alternative materials and systems.

§ 3.2.4 The Construction Manager shall expeditiously review design documents during their development and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. The Construction Manager shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.

§ 3.2.5 The Construction Manager shall prepare and periodically update the Project Schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.

§ 3.2.6 The Construction Manager shall review recommendations for systems, materials, or equipment for the impact upon cost, schedule, sequencing, constructability, and coordination among the Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, and coordinate resolution, as necessary, of any such impacts.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for further development of the design, bidding or negotiating, price escalation, and market conditions. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.2.8 The Construction Manager shall consult with the Owner and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost, or schedules.

§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide information to the Owner regarding the safety programs among the Contractors.

§ 3.2.11 The Construction Manager shall advise on the division of the Project into individual Contracts for various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

§ 3.2.12 The Construction Manager shall make recommendations about, and coordinate the ordering and delivery of, materials in support of the schedule, including those that must be ordered in advance of construction.

§ 3.2.13 The Construction Manager shall assist the Owner in selecting, retaining, and coordinating the professional services of surveyors, geotechnical engineers, special consultants, and construction materials testing required for the Project.

§ 3.2.14 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.15 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and quasi- governmental authorities for inclusion in the Contract Documents.

§ 3.2.16 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.17 The Construction Manager, in consultation with the Owner, shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager shall assist the Owner and the Architect with the development of the Bidding Documents, which consist of bidding requirements and proposed Contract Documents. The Construction Manager, with the assistance of the Architect, shall issue Bidding Documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the proposed Project schedule with each set of Bidding Documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.18 The Construction Manager shall submit a list of prospective bidders for the Architect's review and the Owner's approval.

§ 3.2.19 The Construction Manager, with the assistance of the Architect, shall review bids, and prepare for the Owner bid analyses, and make recommendations to the Owner for the Owner's award of Contracts for Construction or rejection of bids.

§ 3.2.20 The Construction Manager, with the assistance of the Architect, shall assist the Owner in preparing Contracts for Construction. The Construction Manager shall advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

§ 3.2.21 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.3 Construction Phase

§ 3.3.1 The Construction Manager shall provide on-site administration of the Multiple Prime Contractors who have Contracts for Construction with the Owner in cooperation with the Architect as set forth below and in AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

§ 3.3.2 The Construction Phase will commence with the award of the initial Construction Contract or purchase order and, together with the Construction Manager's obligation to provide Basic Services under this Agreement, will end 30 days after final payment to all Contractors is due.

§ 3.3.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 The Construction Manager shall review and analyze the construction schedules provided by the Contractors to update the Project schedule, incorporating the activities of the Owner, Architect, and Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product

Data and Samples, and delivery and procurement of products, including those that must be ordered in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss matters such as procedures, progress, coordination, and scheduling of the Work, and to develop solutions to issues identified. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Contractors.

§ 3.3.7 Consistent with the various bidding documents, and utilizing information from the Contractors, the Construction Manager shall coordinate the sequence of construction and assignment of space in areas where the Contractors are performing Work.

§ 3.3.8 The Construction Manager shall coordinate all tests and inspections required by the Contract Documents or governmental authorities, observe the on-site testing and inspections, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager shall monitor the approved estimate of Construction Cost. The Construction Manager shall show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project and advise the Owner and Architect as to variances between actual and budgeted or estimated costs.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall prepare a Project Application for Payment based on the Contractors' Certificates of Payment.

§ 3.3.12.2 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) results of subsequent tests and inspections; (3) correction of minor deviations from the Contract Documents prior to completion; and (4) specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.3 The issuance of a Certificate for Payment shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The issuance of a Certificate for Payment by the Construction Manager constitutes a recommendation for payment and is not legally binding on the Owner.

§ 3.3.13 The Construction Manager shall obtain and review the safety programs developed by each Contractor for purposes of coordinating the safety programs with those of the other Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or

omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents endeavoring to guard the Owner against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed, or completed. The Construction Manager, in consultation with the Architect and subject to the ultimate authority of the Owner, may reject Work which does not confirm to the requirements of the Contract Documents.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations, and requests for information of the meaning and intent of the Drawings and Specifications, and provide its written recommendation. The Construction Manager shall assist in the resolution of questions that may arise. Nevertheless, Construction Manager maintains that it has and possesses specialized expertise, has inspected the job site, and has reviewed the contract documents, including the plans, Drawings and Specifications.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if the proposed changes are accepted or required by the Owner, prepare Change Orders or Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.2.2.7.

§ 3.3.19 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Contractors. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Architect those which have been reviewed by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Contractors. **The Architect shall have the responsibility for approval of the shop drawings. Time is of the essence in completing the Project. Therefore, the Construction Manager will not use regular mail to send shop drawings and submittals to the Architect. The Construction Manager will use electronic delivery or a courier service, UPS, Federal Express, Airborne, or one of the other next day delivery services for this purpose. Likewise the Owner, shall instruct the Architect to return all shop drawings and submittals to the Construction Manager in the same manner.**

§ 3.3.20 The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples, and other submittals from the Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractors, the Owner, or the Architect.

§ 3.3.20.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractors by the Contract Documents, the Construction Manager shall review those submittals for sequencing, constructability, and coordination impacts on the other Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, and coordinate resolution, as necessary, of any such impacts.

§ 3.3.21 The Construction Manager shall record the progress of the Project. The Construction Manager shall submit written progress reports to the Owner and Architect including information on each Contractor and each Contractor's Work, as well as the entire Project, showing percentages of completion. The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.21.1 The Construction Manager shall collect, review for accuracy, and compile the Contractors' daily logs; and include them in the Construction Manager's reports to the Owner.

§ 3.3.22 Utilizing the documents provided by the Contractors, the Construction Manager shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Owner, Architect, and Contractors. Upon completion of the Project, the Construction Manager shall deliver them to the Owner.

§ 3.3.23 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.24 With the Owner's maintenance personnel, the Construction Manager shall observe the Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.25 When the Construction Manager considers each Contractor's Work or a designated portion thereof substantially complete, the Construction Manager shall, jointly with that Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.26 The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.27 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractors: (1) certificates of insurance ; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractors under the Contract Documents, including warranties and similar submittals.

§ 3.3.28 The Construction Manager shall secure and transmit to the Owner warranties and similar submittals required by the Contract Documents and deliver all keys, manuals, record drawings and maintenance bonds to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment, or a final Application for Payment and final Certificate for Payment, upon the Contractors' compliance with the requirements of the Contract Documents.

§ 3.3.29 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Architect, and Contractors. Consent shall not be unreasonably withheld.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 The services described in this Article 4 are not included in Basic Services unless so identified in Article 11 and/or Exhibit "A" to this Agreement, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The Optional Additional Services described under this Section shall only be provided if authorized or confirmed in writing by the Owner. The Owner shall not be liable to compensate the Construction Manager for any Services described in this Article 4 or for any other additional services for which there was no written authorization. If services described under Contingent Additional Services in this Section are required due to circumstances beyond the Construction Manager's control, the Construction Manager shall notify the Owner prior to commencing such services. If the Owner deems that such services described under this Section are not required, the Owner shall give prompt written notice to the Construction Manager. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Construction Manager shall have no obligation to provide those services.

§ 4.2 CONTINGENT ADDITIONAL SERVICES

§ 4.2.1 Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity or the Owner's schedule.

§ 4.2.2 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 4.2.3 Providing services made necessary by the termination or default of the Architect or a Contractor, by major defects or deficiencies in the Work of a Contractor, except those defects or deficiencies that should have been identified by the Construction Manager through the Construction Manager's evaluations of the Work as provided by §§3.3.12.2 and 3.3.12.3 above, or by failure of performance of either the Owner or Contractor under a Contract for Construction.

§ 4.2.4 Providing services in evaluating an extensive number of claims submitted by a Contractor or others in connection with the Work.

§ 4.2.5 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Construction Manager is party thereto.

§ 4.3 OPTIONAL ADDITIONAL SERVICES

§ 4.3.1 Providing services relative to future facilities, systems and equipment.

§ 4.3.2 Providing services to investigate existing conditions or facilities or to provide measured drawings thereof.

§ 4.3.3 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

§ 4.3.4 Providing services required for or in connection with the Owner's selection, procurement or installation of furniture, furnishings and related equipment.

§ 4.3.5 Providing services for tenant improvements.

§ 4.3.6 Providing any other services not otherwise included in this Agreement.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

§ 5.2 The Owner shall establish and update an overall budget for the Project based on consultation with the Construction Manager and Architect, which shall include the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

§ 5.3 If requested by the Construction Manager, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

§ 5.4 The Owner shall retain an architect whose services, duties and responsibilities are described in the **Agreement Between Architect and Owner**, current as of the date of this Agreement. The Terms and Conditions of the Agreement Between the Owner and Architect shall be furnished to the Construction Manager and incorporate the provisions of the A232-2019 that is applicable to this Project.

§ 5.5 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

§ 5.6 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

§ 5.7 At the Owner's absolute and sole discretion, the Owner may furnish legal, accounting and insurance counseling services as may be deemed necessary by the Owner, at its sole discretion, at any time for the Project, including auditing services the Owner may require to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by or on behalf of the Owner.

§ 5.8 The Owner shall furnish the Construction Manager with a sufficient quantity of Construction Documents, not to exceed five (5) copies.

§ 5.9 The services, information and reports required by this Article 5 shall be furnished at the Owner's expense.

§ 5.10 Prompt written notice shall be given by the Owner to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents. It is specifically understood that Owner shall have no obligation to investigate for the purpose of becoming aware of any faults or defects. The duty of the Owner is limited only to such faults or defects that come to the knowledge of the Owner.

§ 5.11 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement.

§ 5.12 Information or services under the Owner's control that are not equally available to the Construction Manager and are necessary for the progression of the Project shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Construction Manager's services and the progress of the Work.

ARTICLE 6 COST OF THE WORK

§ 6.1 DEFINITION

§ 6.1.1 **Construction Cost shall be the total and final contract sum of all separate contracts for construction for the Project that are approved, accepted, and executed by the Owner, and that has actually been paid by the Owner. Construction Cost shall not include the contract sums of any contracts that have been cancelled or otherwise terminated.**

§ 6.1.2 Construction Cost does not include the compensation of the Architect and Architect's consultants, costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner. If any portion of the Construction Manager's compensation is based upon a percentage of Construction Cost, then Construction Cost, for the purpose of determining such portion, shall not include the compensation of the Construction Manager or Construction Manager's consultants.

§ 6.2 RESPONSIBILITY FOR CONSTRUCTION COST

§ 6.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Construction Manager represent the Construction Manager's best judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of

determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

§ 6.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Construction Manager shall be permitted to include contingencies for design, bidding and price escalation, and shall consult with the Architect to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest inclusion of alternate bids in the Construction Documents to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of any increase in the Contract Sums occurring after execution of the Contracts for Construction.

§ 6.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after submittal of the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

§ 6.2.4 If a fixed limit of Construction Cost (adjusted as provided in Section 6.2.3) is exceeded by the sum of the lowest bona fide bids or negotiated proposals plus the Construction Manager's estimate of other elements of Construction Cost for the Project, the Owner shall:

1. give written approval of an increase in such fixed limit;
2. authorize rebidding or renegotiating of the Project within a reasonable time;
3. if the Project is abandoned, terminate in accordance with Section 9.3; or
4. cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

§ 6.2.5 If the Owner chooses to proceed under Section 6.2.4.4, the Construction Manager, without additional charge, shall cooperate with the Owner and Architect as necessary to bring the Construction Cost within the fixed limit, if established as a condition of this Agreement.

§ 6.2.6 Construction support activities, if provided by the Construction Manager, shall be governed by separate contractual agreements unless otherwise provided in Article 11 or 12.

§ 6.2.7 Reimbursable expenses listed in Article 11 and 12 for construction support activities may be subject to trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment which shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractors is described. The Construction Manager may retain one record set. The Construction Manager shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall, as to the Construction Manager only, be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of the Instruments of Service, except the Construction Manager's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Project. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Construction Manager is granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the performance of the Construction Manager's services under this Agreement.

§ 7.1.1 All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other and arising out of or related to this Agreement, within the period specified by applicable law.

§ 8.1.2 INDEMNIFICATION

THE CONSTRUCTION MANAGER SHALL INDEMNIFY, DEFEND AND HOLD THE OWNER AND THE OWNER'S OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL DAMAGES, LOSSES AND JUDGMENTS ARISING OUT OF OR RESULTING FROM THE CONSTRUCTION MANAGER'S PERFORMANCE OF ITS WORK UNDER THIS AGREEMENT, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES RECOVERABLE UNDER APPLICABLE LAW, BUT ONLY TO THE EXTENT THEY ARE CAUSED BY OR RESULT FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE CONSTRUCTION MANAGER, ITS EMPLOYEES AND/OR ITS CONSULTANTS OR RESULT FROM AN INTENTIONAL ACT OR OMISSION, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A CONSULTANT COMMITTED BY THE CONSTRUCTION MANAGER, ITS EMPLOYEES AND/OR ITS CONSULTANTS. THE CONSTRUCTION MANAGER SHALL PROVIDE THE OWNER WITH WRITTEN NOTIFICATION AS TO ANY CIRCUMSTANCES THAT MAY GIVE RISE TO THE CONSTRUCTION MANAGER'S DUTIES OF INDEMNIFICATION PROMPTLY UPON THE CONSTRUCTION MANAGER BECOMING AWARE OF SUCH CIRCUMSTANCES. THE PROVISIONS OF THIS SECTION 8.1.2 SHALL SURVIVE THE COMPLETION OF THE WORK AND/OR THE TERMINATION OF THIS AGREEMENT.

§ 8.1.3 The Construction Manager waives consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. The Owner waives consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement to the extent covered by insurance as required herein. This waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement, other than those relating to Construction Manager's duty to indemnify the Owner, shall be subject to mediation as a condition precedent to the initiation of litigation.

§ 8.2.2 Unless the parties mutually agree otherwise, mediation shall be administered in accordance with the following:

- .1 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.
- .2 In the event the Owner and the Construction Manager are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent to the initiation of litigation shall be deemed to have occurred.
- .3 At all times during the course of any dispute resolution process, the Construction Manager shall continue diligently and without delay to perform the services and obligations of this Agreement.

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

§ 8.3 If the parties do not resolve a dispute through mediation pursuant to Section 8.2, the method of binding dispute resolution shall be litigation in the state district courts of Denton County, Texas

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. If this Agreement is so terminated, the compensation due to the Construction Manager, if any, shall be limited to the compensation for services actually performed and Reimbursable Expenses actually incurred prior to said termination.

§ 9.2 If the Project is suspended by the Owner for more than 60 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services.

§ 9.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Construction Manager in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Construction Manager may terminate this Agreement by giving written notice. Should this Agreement be terminated in accordance with this § 9.3, the compensation due to the Construction Manager shall be limited to compensation for services actually performed and Reimbursable Expenses actually incurred prior to notice of such termination.

§ 9.4 Failure of the Owner to make payments to the Construction Manager in accordance with this Agreement shall be considered substantial nonperformance and cause for termination. Should the Construction Manager elect to so terminate this Agreement, the compensation due to the Construction Manager shall be limited to compensation for services actually performed and Reimbursable Expenses actually incurred prior to notice of such termination.

§ 9.5 If the Owner fails to make payment of undisputed amounts when due the Construction Manager for services and expenses, the Construction Manager may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full of undisputed amounts is received by the Construction Manager within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services for this reason, the Construction Manager shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of services.

§ 9.6 The Owner, at its discretion, may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause. In the event of termination for the Owner's convenience, the Construction Manager's compensation shall be limited to compensation for services actually performed and for Reimbursable Expenses actually incurred prior to termination.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 GOVERNING LAW AND VENUE

§ 10.1.1 Governing Law.

This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Texas, without taking into account and without reference to its conflict of laws or choice of law principles, Texas law being the choice of law for the Agreement, the Contract, and all Contract Documents.

§ 10.1.2 Venue.

The parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, this Agreement, or any of the Contract Documents shall be in the state district courts of Denton County, Texas, and the parties hereby waive any and all objections to the agreed-upon venue as stated herein. The Contract, including but not limited to the Agreement and all other Contract Documents, is performable entirely in Denton County, Texas.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232–2019, General Conditions of the Contract for Construction, as modified by the Owner for this Project, except for purposes of this Agreement, the term “Work” shall include the work of all Contractors under the administration of the Construction Manager and the Architect.

§ 10.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run on either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Project Certificate for Payment for acts or failures to act occurring after Substantial Completion.

§ 10.4 INTENTIONALLY OMITTED.

§ 10.5 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Agreement.

§ 10.6 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

§ 10.7 Unless otherwise provided in this Agreement, the Construction Manager and the Construction Manager's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

§ 10.8 Any notice required by or permitted under this Agreement must be in writing unless otherwise provided herein. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement or addressed to the last known address of the intended recipient. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email to the designated representative of each Party, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

§ 10.9 If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.

§ 10.10 The Owner shall have the right to examine, copy, and/or audit the books and other records of the Construction Manager relating solely to this Agreement upon reasonable request to the Construction Manager.

§ 10.11 All references to "arbitration" in this Agreement, the General Conditions document that pertains this Project, as amended by the Owner, or in any other Contract Document shall be considered as deleted, rendered null and void, and shall be given no effect.

§ 10.12 The Construction Manager shall comply with all policies, regulations and rules of the Owner, including, but not limited to, those related to employee conduct and fraud and financial impropriety.

§ 10.13 The parties hereby agree that 1) if an order for relief is entered on behalf of the Construction Manager, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Construction Manager makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of one or more of its creditors; 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Construction Manager's performance. Accordingly, it is agreed that upon occurrence of any such event, Owner may, at its discretion, (a) request the Construction Manager to provide adequate assurance of future performance in accordance with the terms and conditions of this Agreement, or (b) terminate this Agreement. In the event that Owner elects to request adequate assurance, the Construction Manager's failure to comply with such request within ten (10) days of delivery of the request to the Owner's satisfaction shall entitle Owner to terminate this Agreement and the Construction Manager's services.

§ 10.14 In the event of any suit or action arising out of or in connection with this Agreement is brought by either Party, whether to enforce the terms hereof, declare rights hereunder, or otherwise, the prevailing party in such action shall be entitled to recover its attorney's fees and court costs from the non-prevailing party.

§ 10.15 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the term "including" is not limiting and the terms "hereof," "herein," "hereunder" and similar terms in this Agreement or in any of the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto regardless of who is responsible for its preparation.

ARTICLE 11 COMPENSATION

§ 11.1 Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 11.2 PAYMENTS ON ACCOUNT OF BASIC SERVICES

§ 11.2.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service.

§ 11.2.3 If and to the extent that the time initially established in Section 11.9 of this Agreement is exceeded or extended, or if the project duration exceeds **twenty-four** (24) months for each individual project in 11.6.1 for Notice to Proceed, through no fault of the Construction Manager, compensation for any services rendered in excess of the projected number of months shall be the total fee divided by anticipated duration in months established at the beginning of each project, (which will include all basic services, the CM fee, and General Conditions) plus the Reimbursables set forth in Article 12.

§ 11.3 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

§ 11.3.1 Payments on account of the Construction Manager's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Construction Manager's statement of services rendered or expenses incurred.

§ 11.4 PAYMENTS WITHHELD

§ 11.4.1 No deductions shall be made from the Construction Manager's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in Work other than those for which the Construction Manager has been found to be liable.

§ 11.5 CONSTRUCTION MANAGER'S ACCOUNTING RECORDS

§ 11.5.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§11.6 BASIC SERVICES COMPENSATION

§ 11.6.1 FOR BASIC SERVICES, as described in Article 3 of this Agreement, for any other duties described as Basic Services in this Agreement, for all duties and services described in other attachments or exhibits hereto as Basic Services, and for all usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors, and any other services included in Article 11 as part of Basic Services, the Owner shall compensate the Construction Manager as follows:

FEE SCHEDULE BASED ON PERCENT OF TOTAL PROJECT BUDGET:

\$0 to \$5,000,000	7.00% of Total Project Budget
\$5,000,001 to \$15,000,000	6.80% of Total Project Budget
\$15,000,001 and above	6.65% of Total Project Budget

PROJECT TIMELINE AND FEE PAYMENT SCHEDULE FOR EACH PROJECT TO BE DETERMINED UPON MUTUAL AGREEMENT OF THIS PARTIES HERETO.

*note – once the Owner has approved the project for construction to begin the fee will be fixed, based on the percentages above, at that time.

Payment will be billed accordingly as follows:

3% of the projected fee – Issuing of Schematic Drawings

5% of the projected fee – issuing of Design Development Drawings

7% of the projected fee – Issuing of stamped and sealed contract documents for bid

Upon approval for construction by the City of Roanoke City council, the remaining 85% will be adjusted to the actual fixed fee and divided in equal monthly payments for the duration of the project.

If more than one payment remains after reaching Substantial Completion of any Project, the Owner shall make all remaining payments for that Project in one payment.

§ 11.7 COMPENSATION FOR ADDITIONAL SERVICES

§ 11.7.1 FOR ADDITIONAL SERVICES OF THE CONSTRUCTION MANAGER, as described in Article 4, and any other services included in Article 12 as Additional Services, compensation shall be computed as follows: *(Insert basis of compensation, including rates and/or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)*

1. All direct and indirect expenses with a markup of 5%.

§ 11.8 REIMBURSABLE EXPENSES

§ 11.8.1 FOR REIMBURSABLE EXPENSES, as listed in Section 12.4 and Exhibit “A” to this Agreement as Reimbursable Costs, these costs will have a markup of 5% of the expenses incurred by the Construction Manager and the Construction Manager's employees and consultants in the interest of the Project.

§ 11.9 ADDITIONAL PROVISIONS

§ 11.9.1 To the extent a significant increase in scope requires services, equipment and personnel not contemplated by Construction Manager for the Original Project Budget, Construction Manager shall be entitled to a further equitable adjustment to the Contract Sum to be agreed upon between the parties.

§ 11.9.2 Payments are due and payable fifteen (15) days from the date of the Construction Manager's invoice. Amounts unpaid ~~thirty~~ (30) days after the invoice date shall bear interest at the rate determined in accordance with the Texas Prompt Payment Act, Chapter 2251 *et seq.*, Texas Government Code.

§ 11.9.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Construction Manager.

§ 11.10 BUILDERS RISK INSURANCE

Construction Manager will provide Builders Risk Insurance for the duration of each project. Owner will reimburse Construction Manager for the premiums for the Builders Risk Insurance. In addition, Owner will be responsible for the deductible on a Builders' Risk claim (\$5,000 per claim all other perils / \$25,000 per claim Flood & Earthquake / \$100,000 per claim Wind & Hail).

§11.11 Non-Reimbursable Costs are the following:

1. Preconstruction Services.
2. All Project Management Staff and On-Site Supervision.
3. Administration staff to manage project's accounting system.
4. Warranty coordination.
5. Vehicle Expenses.
6. On-site office provisions.
7. Mobilization/Demobilization Costs.
8. Telephone Services.
9. Mobile Telephone Services.
10. Office Supplies.
11. On-Site Office Equipment (computers, fax machines, copy machines, etc.).
12. Safety observations.
13. Mechanical, electrical, plumbing quality control provisions.

§11.12 Costs to be paid directly by Owner (with no fee or mark-up to Construction Manager) are the following:

1. All electrical, gas, sewer, and water utility costs consumed by the project activities.
2. Fees paid for securing approval of authorities having jurisdiction over the project (impact fees, building permit, inspection fees, etc.).
3. Waste removal costs (*ie.* dumpsters).
4. Plan and addenda printing expenses.

5. Plan and addenda distribution expenses.
6. Material testing and special testing services.
7. Special consulting services.
8. Storm Water Pollution Prevention Plan Permits, preparation costs, and monitoring (EPA/SWPPP).
9. TAS Inspections and Reviews.
10. Public Notices.
11. Security Provisions (if required).
12. Owner shall secure items 2 and 3 above from the appropriate public utility or public entity in the normal manner.

§11.13 Reimbursable Costs (paid by Owner) with a 5% mark-up from the Construction Manager, *ie.* Reimbursable Expenses are the following:

1. Temporary Construction Fencing.
2. Temporary Toilets.
3. Builders Risk Insurance.
4. Project Clean-up provisions.
5. Storage Trailers.
6. Clean-up Equipment.
7. Mailing/Shipping provisions.
8. Building protection provisions.
9. Other items necessary for the project not outlined in Sections 12.11 or 12.12 of this Contract.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§12.1 ISRAEL/TERRORIST ORGANIZATION

§12.1.1 Pursuant to Texas Government Code, Chapter 2270, as amended, if Construction Manager is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Consultant represents and warrants to the Owner that the Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

Note: On April 25, 2019, the U.S. District Court for the Western District of Texas entered a preliminary injunction enjoining the enforcement of the above clause in any state contract. Texas Government Code, Chapter 2270 has been amended since the date of the injunction and the requirement of the statute is included above in its amended form. As the statute may not cure the entire breadth of issues addressed by injunction, the Client does not intend to seek enforcement of this statute until further order of this or higher court having jurisdiction over the issue

§12.1.2 Prohibition of Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign terrorist Organizations. Contractor certifies that it is not a company identified by the Texas Comptroller as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

§12.2 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§12.2.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by City of Roanoke or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by City of Roanoke in a fiscal year of the City of Roanoke. If City of Roanoke receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of City of Roanoke, City of Roanoke shall send, not later than the third business day after the date City of Roanoke receives the written request, a written request to the Contractor that Contractor provide that information to City of Roanoke.

§12.2.2 The Contractor must:

- .1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract;
- .2 Promptly, within four business days, provide to the Owner any requested contracting information that is in the custody or possession of the Contractor upon request of the Owner; and,
- .3 On completion of the Contract, either:
 - .1 Provide to the Owner at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or
 - .2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.
- .4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.
- .5 Further, under Texas Government Code Chapter 552.372(c), the Owner may not accept a bid for or awarding of a contract to an entity that the Owner has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the Owner determines and documents that the entity has taken adequate steps to ensure future compliance.
- .6 If a Contractor fails to provide to The Owner with the requested information, Texas Government Code Chapter 552.373 requires The Owner to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. The Owner may terminate the Contract if Contractor fails to remedy the failure, The Owner determines if the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

§ 12.3 Pursuant to the requirements of HB 89 and Tex. Govt. Code § 2270.002, Construction Manager affirms that it does not boycott and will not boycott Israel during the term of this Contract.

§ 12.4 Construction Manager affirms that it is not identified on a list prepared and maintained under Tex. Govt. Code §§ 806.051, 807.051 or 2252.153.

§ 12.5 CERTIFICATION OF SENATE BILL 13, SECTIONS 809 and 2274 TEXAS GOVERNMENT CODE Prohibition of Boycott Energy Companies

12.5.1 In accordance with Texas Government Code Chapter 2274, Contractor verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended. This section does not apply if Contractor is a sole proprietor, a nonprofit entity, or a governmental entity; and only applies if: (i) Contractor has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement

§ 12.6 CERTIFICATION OF SENATE BILL 19, SECTION 2274 TEXAS GOVERNMENT CODE

12.6.1 In accordance with Texas Government Code Chapter 2274, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association. This section only applies if: (i) Contractor has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement; and does not apply: (i) if Contractor is a sole proprietor, a non-profit entity, or a governmental entity; (ii) to a contract with a sole-source provider; or (iii) to a contract for which none of the bids from a company were able to provide the required certification.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document C132-2019, Standard Form Agreement Between Owner and Construction Manager as Adviser, as modified.
- .2 AIA Document A232-2019 General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified by Owner.
- .3 Certificates of Insurance required of the Construction Manager.
- .4 Any modifications to this Agreement approved by the Parties.
- .5 Any documents stated in this Agreement as being a part of or incorporated into this Agreement or the Contract.

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

OWNER *(Signature)*

Cody Petree, City Manager
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Jeff Fisher, President
(Printed name and title)

DRAFT

DRAFT AIA® Document A232™ – 2019

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:

(Name, and location or address)

«City of Roanoke Parking Garage »

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Gallagher Construction Company, LP
3501 Token Drive, Suite 100
Richardson, TX 75082

THE OWNER:

(Name, legal status, and address)

City of Roanoke
500 S. Oak Street
Roanoke, TX. 76262

THE ARCHITECT:

(Name, legal status, and address)

GFF, Inc.
1701 River Run, Suite 800
Fort Worth, TX 76107

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

This document is intended to be used in conjunction with AIA Documents A132™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Performance Bond, Labor and Material Bond, the Drawings, the Specifications, all Addenda issued prior to execution of the Contract and all Modifications thereto, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Budget Allocation, (4) a Construction Change Directive, or (5) a written order for a minor change in the Work issued by the Architect.

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

§ 1.1.3 The Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. It also includes all supplies, skills, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

§ 1.1.5 Contractors or Multiple Prime Contractors. The term Contractor(s) or Multiple Prime Contractor(s) shall refer to and mean those persons or entities who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 Separate Contractors. Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.8 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.9 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.10 Initial Decision Maker. The Initial Decision Maker is the Architect unless otherwise identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.11 Description of the Parties.

The following definitions apply to the parties named in the Contract Documents:

Owner	City of Roanoke 500 S. Oak Street Roanoke, TX. 76262
Architect	GFF, Inc. 1701 River Run, Suite 800 Fort Worth, TX. 76107
Construction Manager	Gallagher Construction Company, LP 3501 Token Dr. Suite 100 Richardson, TX. 75082
Contractor	

§1.1.12 Addenda

Addenda are written or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding documents, including Drawings and Specifications, by additions, deletions, clarifications or corrections. Addenda will become part of the Contract Documents when the Construction Agreement is executed.

§1.1.13 Approved, Approved Equal, Approved Equivalent, or Equal

The terms Approved and Approved Equal relate to the substitution of materials, equipment or procedure in writing by the Architect prior to receipt of bids.

§1.1.14 Abbreviations

N.I.C.	Not in contract. Indicates work not to be done by this Contractor; by Others; By Owner; Existing
AIA	American Institute of Architects
ACI	American Concrete Institute
AIEE	American Institute of Steel Construction
AISC	American Iron and Steel Institute
ASTM	American Society of Testing Materials
AWSC	American Welding Society Code
FS	Federal Specification
NES	National Electrical Code
SPR	Simplified Practice Recommendations
UL	Underwriters Laboratories, Inc.
AISI	American Iron and Steel Institute

§1.1.15 Bidding Documents

The terms “Bid” or “Bidding” shall include Competitive Sealed Proposals, when appropriate. Bidding Documents consist of all documents bound into or referenced in the Project Manual, the Drawings, and Addenda related thereto. The Project Manual contains the Bidding Requirements, Sample Forms, Conditions of the Contract, the Specifications, and a list of Drawings, and Schedules, some of which are bound into the Project Manual (Other Drawings and Schedules are bound separately).

§1.1.16 Miscellaneous Other Words

Provide: Whenever the word “provide” is used in these documents, it shall mean the same as “furnish and install”.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Should drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by the Architect or Construction Manager in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small-scale drawings. Specifications determine nature and setting, workmanship, and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

§1.2.3 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 1.2.4 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.5 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.6 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§1.2.7 Precedence of the Contract Documents: The most recently issued Document takes precedence over previously issued forms of the same Document. The order of precedence is as follows with the highest authority listed first:

- .1 The Agreement
- .2 The Addenda
- .3 Conditions of the Contract, Drawings, and Specifications shall have equal authority. Should these documents disagree among themselves, the Architect and Construction Manager will select the appropriate method for performing the work at no additional increase in the Contract Cost.

§1.2.8 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect prior to proceeding with the Work. If discrepancies appear, Contractor shall request interpretation from the Architect through the Construction Manager prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

§1.2.9 Optional Materials, Brands and Processes: When more than one is specified for a particular item of Work, the choice shall be the Contractor's. The final selection of color and pattern will be made from the range available within the option selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where particular items are specified only products of those named manufacturers are acceptable. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment but shall be provided by the manufacturer as required for the proper functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable; however, indicated and specified performance and material requirements are minimum, and will be required in addition to standard accessories. The Architect reserves the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect’s consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§1.8 Miscellaneous Definitions

§1.8.1 Addenda, Addendum

Documents issued by the Architect prior to execution of the Owner Contractor Agreement that modify or clarify the Bidding Documents. The addenda become a part of the Contract Documents.

§1.8.2 Alternate Bid(s)

A separate amount stated on the Bid Form that, if accepted by the Owner, will be added to or deducted from the Base Bid. If accepted, the work that corresponds to the alternate bid will become part of the Agreement between Owner and Contractor. Alternative bids shall remain valid for a period of 60 days after receipt of bids, regardless of whether an Owner Contractor Agreement has been executed, unless indicated otherwise herein.

§1.8.3 Base Bid

The Contractor's bid for the Work, not including any Alternatives.

§1.8.4 Contract Time

The period of time established in the Contract Documents for Substantial Completion of the Work. This period of time is not subject to adjustment for weather days. Refer to the Scope of Work Section for specific time for completion of work, providing all contract documents, submittals and other required information.

§1.8.5 Date of Agreement

The date the Owner formally awards a Contract for Construction of the Work. This date will be inserted on the first page of the Agreement Between Owner and Contractor and shall be referenced in Performance Bond and Payment Bond forms. See also Date of Commencement of the Work.

§1.8.6 Date of Commencement of the Work

The date of the fully executed Agreement Between Owner and Contractor, or, if agreed to by the Owner in writing, the date a written Notice to Proceed is delivered to the Contractor.

§1.8.7 Date of Final Completion

The end of construction. See paragraph 9.10.

§1.8.8 Date of Substantial Completion

See paragraph 8.1.3.

§1.8.9 Day

See paragraph 8.1.4.

§1.8.10 Notice to Proceed

A notice that may be given by the Owner through the Construction Manager to the Contractor that directs the Contractor to start the Work. It may also establish the Date of Commencement of the Work.

§1.8.11 Punchlist

A comprehensive list prepared by the Contractor prior to Substantial Completion to establish all items to be completed or corrected; this list may be supplemented by the Architect, Construction Manager or Owner. See paragraph 9.8.2.

§1.8.12 Unit Prices

A cost for a unit of work as described in the Contract Documents. If accepted, the Owner may add or deduct Unit Price work at the amounts stated on the Bid Form and such amounts shall not be subject to additional mark up by the Contractor or his subcontractors. Unit prices accepted by the Owner shall be valid through the completion of the Contract. The Owner may elect to reject unit prices prior to executing the Contract. If the unit prices are accepted, they will be incorporated into the Contract. The Owner may elect to reject the unit prices bid without precluding the right to request Changes in the work as described in Article 7 of the General and Supplementary Conditions.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The City of Roanoke City Council, by majority vote, is the only representative of the Owner, a county government, having the power to enter into a Contract, to execute a change order requiring an increase in the Contract Sum of not more than \$15,000, or agree to an extension to the contractual completion date. The Court shall designate, as appropriate, an authorized representative or representatives to act on its behalf during the course of construction. Any such change shall be confirmed in writing between the Construction Manager and the City Council's authorized representatives and notice of such approved changes shall be given to the City Council at its next regular meeting. The City Council will act as soon as reasonably possible to avoid undue delays in the construction completion date.

§ 2.1.2 It is distinctly understood that by virtue of this Contract, no mechanic, contractor, material men, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Architect shall endeavor to guard the Owner against defects and deficiencies in the Work.

§ 2.3.3 The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 2.3.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Notwithstanding the preceding sentences and the delivery of a survey of the documents by the Owner, Contractor shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for any damage done to such lines, cables, pipes, and pipelines during its construction work resulting from its negligent conduct.

§ 2.3.6 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.7 The Contractor will be furnished, free of charge, 2 copies of the Drawings and Specifications for the execution of the work, unless the Owner and Construction Manager agree that additional copies are appropriate for the proper completion of the Contractor's Work. In that event, Contractor shall be provided with the additional number of copies as determined by Owner and Construction Manager. Contractor can purchase additional sets for the cost of reproduction, postage and handling.

§ 2.3.8 The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent

reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§2.6 Owner's Right to Occupy the Project

§2.6.1 The Owner shall have the right to occupy or use, without prejudice to the right of either party, any completed or largely completed portions of the project, notwithstanding the time for completing the entire work or such portions may not have expired. Such occupancy and use shall not constitute acceptance of any work not in accordance with the Contract Documents.

§2.6.2 If such prior use delays completion of the project, the Contractor shall be entitled to extension of time, which claim shall be in writing with supporting data attached.

§2.6.3 Refer to Article 11 - Insurance and Bonds regarding property insurance requirements in the event of such occupancy.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§3.2.2.1 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his warranty, he shall promptly notify the Architect through the Construction Manager in writing, providing substantiation for his position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate modification.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303, and Texas Health and Safety Code, Subchapter C, Section 756.021, et. seq.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol free, drug free, and weapon free policies and zones, which will require compliance with those policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall also require adequate and appropriate dress of Contractor's employees, Subcontractors, and all other persons carrying out the Contract.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall be responsible for the correct laying out of the Work according to the Contract Documents and written modifications of the Architect and Construction Manager including all necessary leveling and checking. The Contractor shall check the established grades and bench marks, and shall lay out all partition lines and other significant reference lines or points which will enable Contractor to accurately place Contractor's boxes, openings, sleeves, conduits, pipe duct, controls, hangers, inserts and other devices. Subcontractors shall be responsible for laying out Subcontractor's Work from these reference points. Datum reference and control lines for the project will be established by a professional civil engineer engaged by the Owner and coordinated by the Construction Manager. From this reference each Contractor shall be responsible for the Contractor's own layout and dimensions. Any problems occurring between the separate Contractors shall be directed to the Construction Manager. If required, the Architect shall be consulted by the Construction Manager for a decision. Disputes shall be resolved as they occur by the Construction Manager and Architect as applicable.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor, as a requirement of the Contract Documents, may be required to provide installation of materials, systems and equipment furnished F.O.B. by other Contractors on the Project. The Contractor shall accept delivery, unload, store, protect, provide security, distribute and install such materials, systems and equipment and shall document receipt on forms acceptable to the Construction Manager.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, unless such maintenance is Contractor's responsibility, improper operation, or normal wear and tear and normal usage. If required by the Owner, Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants to the Owner, Construction Manager and the Architect that the Work will be performed and completed in a good and workmanlike manner and in accordance with the Contract Documents, all applicable building codes and good engineering and construction practices befitting the Work as specified. The Contractor shall perform all work reasonably required, to correct Work with errors, omissions, defects or deviations from what is required by the Contract Documents, at no cost to Owner. The warranties set out in this subparagraph are not exclusive of any other warranties, remedies or guarantees set out in other places in the Contract Documents or implied under applicable law, but are in addition to and not in limitation of any other such warranties, remedies, or guarantees.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 Except where otherwise stipulated in the Contract Documents and in addition to but without limiting any other warranties that might be contained § 3.5.1 above or in other parts of the Contract Documents, the Contractor shall, as per its Contract, warranty all materials and workmanship furnished under the Contract for a period of one (1) year after the date of Substantial Completion and shall repair and make good, without expense to the Owner, any and all defects in his work which may develop within that time.

§ 3.5.4 All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms at the time of Substantial Completion.

§ 3.5.5 Approximately 11 months after Substantial Completion on each phase or building, the Contractor shall, if requested by the Owner to do so, accompany the Owner, the Construction Manager and the Architect on a complete re-inspection of the Project. The Contractor shall be responsible for correcting of any additional deficiencies observed or reported.

§ 3.5.6 Contractor shall certify, on form(s) provided by the Owner through the Construction Manager, that the project has been constructed in general accordance with the Contract Documents.

§ 3.6 Taxes

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 The Owner is exempt from the Texas Sales Tax on any purchase of tangible personal property and will issue Certificates of Exemption from the Texas Sales Tax on materials furnished by Contractors on School Construction projects. Failure of the Contractor to obtain Certificates of Resale from their suppliers shall make the Contractor responsible for absorbing the tax.

§ 3.6.3 The Owner shall provide a tax exemption certificate to the Construction Manager and Contractor.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Owner shall obtain all permits and approvals, and pay all fees and expenses, including engineering costs, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.8.4 The Contractor shall be authorized to expend allowance funds only as directed by the Construction Manager and Owner.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Superintendent shall be available on job site during working hours throughout the progress of the Contractor's Work until completion. The Superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Construction Manager and the Architect, unless the Superintendent leaves the employment of the Contractor. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner, Construction Manager, or Architect objects to any nominated superintendent.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors. The Contractor shall coordinate the letting of subcontracts, material purchases, shop drawing, product data and sample submissions, delivery of materials and sequence of operations, to conform to the requirements of the Construction Manager's Construction Schedule and shall furnish proof of same as may be required by the Construction Manager. The Contractor shall bring any possible means of shortening the schedule, at no additional costs, to the attention of the Construction Manager. The comprehensive progress schedule for the Project will be a Critical Path Method (CPM) network. The Contractor's Construction Schedule shall indicate the dates for the starting and completion of the various stages, including the placing of material orders, delivery of materials and equipment, submission of shop drawings, product data and samples, processing of shop drawings, product data and samples, and all Work activities, and, shall provide estimates of labor hours, crew sizes, and proposed number of crews to accomplish the Work. The Contractor's Construction Schedule shall be used as the Construction Manager determines in preparation of the Construction Manager's Construction Schedule for the entire project. The sequencing and duration of Contractor activities indicated on the Construction Manager's Construction Schedule may be adjusted by the Construction Manager after a joint review and by mutual agreement.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule. The Contractor shall attend coordination and progress meetings scheduled and conducted by the Construction Manager to discuss progress, scheduling, coordination requirements, and problems. When required, the Contractor shall furnish information in regard to the Contractor's proposed effort to overcome any incurred delay. This information shall be in a form acceptable to the Construction Manager.

§ 3.10.5 The Contractor shall provide the Owner with such schedules as may be required.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data, and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and approved by the Architect. The Contractor shall be responsible for insuring that only 'approved' shop drawings, product data and samples, bearing the stamp of the Architect, are allowed on the Project.

§ 3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data and Samples or similar submittals unless the Contractor has specifically informed the Architect through the Construction Manager in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data and Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. A registered architect must prepare plans and specifications for all the work governed by Chapter 1051 of the Texas Occupations Code, and a registered engineer must prepare plans, specifications, and estimates for all work governed by Chapter 1001 of the Texas Occupations Code. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas designated by the Construction Manager, permitted by law, ordinances, permits and by the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment. The Contractor shall not use any of the Owner's existing facilities, such as, toilets, cafeteria, parking areas, power hookup, etc., except with the Construction Manager's written approval. The Contractor shall not, at any time, block or restrict access to the site.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site and shall comply with the Construction Manager's Site Utilization Plan.

§ 3.13.3 The roads, sidings and other transportation facilities at the site, where work under the Contract is being performed, are for the general use and convenience of the Owner. If Contractors are permitted to use them, Contractor must conform to the regulations of the local authorities. If the work of a Contractor requires that such facilities be temporarily discontinued, after obtaining Construction Manager's approval, the work must be performed expeditiously. Contractor shall provide and maintain proper warnings and detour signs at all pedestrian and vehicular closures, intersections, and along detours, directing traffic around closed portions of roadways. Contractor shall, at Contractor's own expense, wherever necessary or required, provide and maintain fences, temporary roadways, temporary cross signs, watchmen, warning lights and take such other precautions as may be necessary to protect life and property. Contractor shall be responsible for all damages occasioned in any way by Contractor's act or neglect. All barricades and obstructions shall be illuminated at night, and all lights shall be kept on from one half hour before sunset until one-half hour after sunrise.

§ 3.13.4 On-site storage space for Contractor's field office trailer, sheds, materials, tools, equipment, and supplies must be coordinated with and approved by the Construction Manager in advance. Contractor's materials, equipment, tools and supplies shall be moved at no cost if their location obstructs or impedes the work of others.

§ 3.13.5 The Owner will provide site survey, selected baselines and benchmarks. The Contractor shall not disturb existing monuments and markers at the site. Should monuments, markers, or both be disturbed by the Contractor, Contractor shall bear the cost of a licensed surveyor engaged by the Construction Manager for the purpose of relocating such monuments or markers. Contractor shall lay out Contractor's work and shall be responsible for the accuracy of all lines, elevations and measurements, grading, utilities, and other work executed under the Contract. Contractor must exercise proper precaution to verify figures shown on Drawings before laying out work. Contractor will be held responsible for any error resulting from Contractor's failure to exercise such precaution.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, coring, fitting, or patching required to complete the Work or to make its parts fit together properly. Contractor shall provide protection of existing Work as required.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

§ 3.14.3 The Contractor shall not disturb any existing structure, piping, apparatus or other work unless expressly required by the Contract. Where cutting, drilling or removals are required in existing walls, floors or roof construction, the Work shall be done in a manner that will safeguard and not endanger the structure, and shall in all cases be as approved by the Construction Manager and Architect. Prior to any cutting, drilling or removals, the Contractor shall investigate both sides of the surface involved, shall determine the exact location of adjacent structural members by visual examination, and shall avoid interference with such members. The Contractor shall not cut, weld to or otherwise alter any structural member without the written consent of the Architect obtained through the Construction Manager.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect, or their designated agents, with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, THE OWNER'S OFFICERS, THE OWNER'S AGENTS, THE OWNER'S CONSULTANTS, THE OWNER'S EMPLOYEES, THE CONSTRUCTION MANAGER, THE CONSTRUCTION MANAGER'S CONSULTANTS, THE CONSTRUCTION MANAGER'S AGENTS AND EMPLOYEES, THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND THE ARCHITECT'S AGENTS AND EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS AND SUITS FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGES, LOSSES (INCLUDING LOSS OF USE RESULTING THEREFROM), AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK UNDER THE CONTRACT, PROVIDED THAT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED, IN WHOLE OR IN PART, BY (1) ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (2) THE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (3) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE BY THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, OR (4) THE BREACH OF CONTRACT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER. THE CONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 3.18.1 SHALL BE IN EFFECT REGARDLESS OF WHETHER OR NOT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER, EXCEPT THAT THE CONTRACTOR'S OBLIGATION SHALL BE LIMITED TO THE COMPARATIVE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER AS DETERMINED BY THE TRIER OF FACT. THE CONTRACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY, DEFEND, OR HOLD HARMLESS A PARTY OR PARTIES INDEMNIFIED HEREUNDER AGAINST ANY CLAIM CAUSED SOLELY BY (1) THE NEGLIGENCE OR FAULT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, (2) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OR (3) THE BREACH OF CONTRACT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OTHER THAN THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER. THE INDEMNITY OBLIGATION SET FORTH HEREIN SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

§ 3.18.2 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE PARTIES INDEMNIFIED FROM AND AGAINST ALL CLAIMS ARISING OUT OF ANY BREACH OF THIS CONTRACT BY CONTRACTOR, OR A BREACH OF ANY

AGREEMENT RELATING TO THE WORK OR ANY WORK PERFORMED BY ANY SUBCONTRACTOR (OF ANY TIER), OR ANY NEGLIGENT ACT, GROSS NEGLIGENCE, ERROR OR OMISSION BY CONTRACTOR OR ANY OF ITS SUBCONTRACTORS (OF ANY TIER), OR ANY PATENT OR COPYRIGHT INFRINGEMENT ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT BY CONTRACTOR OR ANY OF ITS SUBCONTRACTORS (OF ANY TIER).

§ 3.18.3 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE PARTIES INDEMNIFIED FROM AND AGAINST ALL CLAIMS AND SUITS FOR BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR, THE CONTRACTOR'S AGENT, OR THE CONTRACTOR'S SUBCONTRACTOR OF ANY TIER, REGARDLESS OF WHETHER OR NOT SUCH CLAIMS OR SUITS ARE BASED IN WHOLE OR IN PART UPON THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, ITS OFFICERS OR ITS EMPLOYEES. THE INDEMNITY REQUIRED BY THIS PARAGRAPH 3.18.2 IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER PARAGRAPH 3.18.1.

§ 3.18.4 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.5 The obligations of the Contractor under paragraph 3.18.1 shall not extend to the liability of the Construction Manager, the Construction Manager's Consultants, Architect, the Architect's consultants, a registered engineer, and agents and employees of any of them for damage that is caused by or results from (1) defects in plans, designs, or specifications prepared, approved, or used by the Architect or engineer or negligence of the Architect or engineer in the rendition or conduct of professional duties called for, or arising out of the Construction Documents; and (2) arises from personal injury or death, properly injury, or any other expense that arises from personal injury, death, or property injury

§ 3.18.6 To the extent allowed by law, the Contractor agrees to insure the indemnity and hold harmless clauses contained in this Section 3.18, including its subparts, with insurance policies, approved by the Owner, and issued by a carrier authorized to do business in the State of Texas, in the minimum amounts set out in Article 11 and/or Section 11.2 of these General Conditions.

§ 3.18.7 The provisions of Section 3.18, including all of its subparts, shall survive the termination of the Agreement or the Contract, howsoever caused, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of final completion nor acceptance of occupancy in whole or in part of the Work shall waive or release any of the provisions of Paragraph 3.18 and its subparts.

§ 3.19 Prevailing Wage Rates

§ 3.19.1 The Contractor and each subcontractor who performs any portion of the Work must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code. The Contractor shall require all subcontractors to comply with the provisions of this Section 3.19 and its subparts.

§ 3.19.2 The Contractor and each subcontractor who performs any portion of the Work must pay not less than the prevailing wage rates attached as Exhibit "1" to this A232-2019 General Conditions document, as modified by the Owner, and incorporated herein as if fully set forth. In the event that a prevailing wage scale/schedule is not attached to the Agreement, the wage scale/schedule shall be the most recent scale/schedule adopted or determined by the United States Department of Labor for projects located in City of Roanoke, Texas. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction.

- .1 A Contractor or subcontractor who violates the provisions of these Sections 3.19.1 and/or 3.19.2 shall pay to the Owner the sum of Sixty Dollars and no/100 (\$60.00) for each worker employed for each

calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project.

§ 3.19.3 Records: The Contractor and each subcontractor shall keep a record showing

- .1 the name and occupation of each worker employed by the Contractor or subcontractor in the construction of the Work; and
- .2 the actual per diem wages paid to each worker.

The record shall be open at all reasonable hours to inspection by officers and agents of Owner.

Owner may request samples of Contractor's and Subcontractor's payrolls at its discretion. Contractor and Subcontractor shall deliver such samples promptly upon demand.

Payment greater than the prevailing wage is not prohibited.

§ 3.19.4 In the event of a complaint of a breach of the requirements in Sections 3.19, 3.19.1 or 3.19.2 above, or any of the Section subparts of § 3.19, the Owner shall have the right to make a determination as provided by law, and to retain any amount due under the Contract pending a final determination of the violation. Owner may conduct, at its discretion, wage-related interviews of any worker at the sites of the work without prior warning to the Contractor or Subcontractor.

§ 3.20 Antitrust Violations

§3.20.1 To permit the Owner to recover damages suffered; in antitrust violations, the Owner/Contractor Agreement shall include the following; "Contractor hereby assigns to Owner any and all claims for overcharges associated with this contract which are under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. (1973)." The Contractor shall include this provision in his agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

§ 4.1.3 The Owner shall notify the Contractor when duties, responsibilities, or limitations of authority of the Construction Manager or Architect have been modified.

§ 4.1.4 If the employment of the Construction Manager or Architect is terminated, the Owner may employ a successor construction manager or architect whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress

and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work. However, the Construction Manager will not be the guarantor of the Contractor's performance.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 Communications. The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect except where the Owner determines they should be made directly. Communications by and with Subcontractors and suppliers shall be through the Contractor. Except where the Owner determines they should be made directly. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Architect and/or Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive from the Contractor and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples, and transmit them to the Architect. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect. The Construction Manager's actions will be taken in

accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.13 The Construction Manager will prepare Budget Allocations and Construction Change Directives.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Budget Allocations or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, Specifications, Addenda, Budget Allocations and other Modifications and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents. In the event the Owner is required to pay the Construction Manager or Architect additional compensation because of Contractor's failure to meet the conditions for Substantial or Final Completion, the Contractor shall be responsible for paying or reimbursing the Owner for said additional costs.

§ 4.2.17 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.18 The Architect will interpret and make recommendations on matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor. The Architect's response to such requests will be made in writing within five (5) days from receipt of a written request from the Construction Manager, Owner, or Contractor.

§ 4.2.19 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.20 The Owner's decisions on matters relating to aesthetic effect shall be final if consistent with the intent of the Contract Documents.

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect. The Architect will review and respond in writing, through the Construction Manager, to requests from Contractors for information about the Contract Documents. The Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 All subcontractors and suppliers shall be obtained in accordance with Chapter 2269 of the Texas Government Code.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution.

§ 5.2.5 The Contractor is required to visit the site and completely familiarize himself with the existing conditions prior to the bid. No additional increase in the Contract amount will be provided when existing or known conditions require a certain amount of work to comply with the intent of the Contract Documents.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the

Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

§ 5.5 Contractor shall promptly notify Owner, Construction Manager and Architect of any material defaults by any Subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor or other material man or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, including persons or entities under separate contracts not administered by the Construction Manager, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents and under the general coordination of the Construction Manager. Copies of Contract Documents relating to these separate contracts shall be available to the Contractor, upon request, for Contractor's information in carrying out the above provisions. Contractor shall become familiar with the site and shall review the Contract Documents covering Contractor's work and the work of other Contractors and the Owner's

forces. Coordination of Contractor's work with the work of others shall be the responsibility of the Contractor. The Contractor shall be held responsible for any damage or misfit resulting from Contractor's neglect to comply with the foregoing. All Contractors on the project shall have equal rights on the premises for the performance of their work, but shall follow the sequence established by the progress schedule and coordination instructions issued by the Construction Manager.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or defective construction. If the Contractor notifies the Construction Manager, in writing, that another Contractor is failing to coordinate his work with the Work of the Contractor as directed, the Construction Manager will promptly investigate. If Construction Manager finds Contractor's claim to be true, Construction Manager will promptly issue such directions to the other Contractor as the situation may require. The Construction Manager shall not, however, be liable for any damages suffered by Contractor by reason of the other Contractor's failure to promptly comply with the directions issued by the Construction Manager or by reason of another Contractor's default in performance; it being understood that the Construction Manager does not guarantee the responsibility or continued efficiency of any Contractor. Costs caused by delays or improperly timed activities or defective construction shall be borne by the party responsible therefore.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14. Claims and other disputes and matters in question between Contractor and Other Contractors shall be subject to the Dispute Resolution provisions of Article 15 provided the other Contractors have reciprocal obligations. The Contractor shall cooperate with the Owner, Architect and Construction Manager and other Contractors working on this project in order to avoid interference, inconvenience or damage. To aid in avoiding conflicts, the Contractor, without additional charge, shall make all reasonable modifications in the work as may be directed by the Construction Manager and Architect. In the event the Contractor's operations cause any damage, interference, or inconvenience to work being carried out under any other Contract, the Contractor shall restore, replace, rectify, or otherwise make good any damage to the satisfaction of the Construction Manager, Architect and to the other Contractors. Should the responsible Contractor fail to comply, the corrective work will be performed by others at the expense of the responsible Contractor.

If the Contractor installs any work prior to proper coordination, or in such manner as to cause interference with the work of others, Contractor shall arrange for removal of, or arrange for necessary modifications to, the work. Any such action is subject to the approval of the Construction Manager and Architect and shall be at no additional cost

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Budget Allocation, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Budget Allocation shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Budget Allocations

§ 7.2.1 A Budget Allocation is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The Contractor shall be allowed the following percentages for Project general conditions, overhead and profit for each change authorization to be considered by the Construction Manager and Architect for changes to be incorporated into the Work. Applicable mark-ups shall be in addition to the cost of direct labor expense, cost of materials, services and equipment as may be required for the Work.

- .1 For Work Performed by the Contractor's Work Forces:

Payroll Burden-(Direct Labor Cost) MAXIMUM ALLOWED
(FICA, Medicare, FUTA, TEC, Worker's Compensation Insurance and General Liability Insurance)

General Conditions:

(Supervision, project management, engineering, estimating, detailing, layout, shop drawings, miscellaneous tool and material expense, field office expense, warranty, and cleanup)

Profit or Fee:

- .2 For Work Performed by Contractor's Subcontractors:
Overhead and Profit:

46%

10%

5%

5%

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

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

.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement. The term “reasonable expenditures” shall not include any of the items set forth below:

1. Salaries or other compensation of the Contractor's and Subcontractor's personnel at the Contractor's and Subcontractor's principal office and branch offices.
2. Expenses of the Contractor's and Subcontractor's principal and branch offices other than the field office on the project.
3. Any part of the Contractor's and Subcontractor's capital expenses, including interest on the Contractor's and Subcontractor's capital employed for the work.
4. Overhead and general expenses of any kind, except as described in this paragraph
5. Costs due to the negligence of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable including but not limited to the correction of defective or nonconforming work, disposal of materials and equipment wrongly supplied, or making good any damage to property.

The cost of any item not specifically and expressly included in the items described in this paragraph. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others at rates that are no greater than market rates in the locale of the Work at the time of the Work. Unless otherwise established in the Contract, the rental value of the Contractor's own equipment shall not be more than the normal local rental rate for similar equipment;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence the Work on the site or elsewhere prior to the effective date of insurance required to be furnished by the Contractor and Owner. The date of commencement shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Time is of the essence, and the deadline for achieving Substantial Completion is a material term of this Agreement.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, unusually adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and litigation; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. Extensions of time shall not cause or result in an increase in the contract price; the extensions of time shall be the Contractor's sole remedy, except in the event of a work stoppage ordered by Owner for Owner's convenience for a continuous period of more than 60 days. Contractor shall not seek recovery for and shall not be reimbursed by Owner for any damages for delay, and does hereby waive, release and hold harmless Owner from and against any such claims or damages.

§ 8.3.1.1 Time extensions for labor disputes shall be limited to the reasonable time required to establish separate entrances to the project in the event of labor disputes. In the event the Construction Manager, Architect, or Owner provide the Contractor with a separate entrance to the site, a time extension for labor disputes shall be limited to a maximum of one day following the establishment of separate entrances. It is the duty and responsibility of the Contractor to ensure that his or her employees enter through separate gates if same are established.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 precludes recovery of damages for delay by Owner under this and any other provisions of the Contract Documents.

§ 8.3.4 The Contractor shall have no claim for compensation or damages for delays or hindrances to the Work occasioned by any act or omission of the Owner or their agents, or separate contractors, other provisions of the contract notwithstanding, and further agrees that the Contractor shall be fully compensated for all delays solely by an extension of time

§ 8.3.5 The following is a requirement of the Contract and will be incorporated in the Agreement Between Owner and Contractor as if fully set forth therein:

The work to be performed under this Contract shall be commenced and substantially completed as set out in the Agreement Between Owner and Contractor, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions. The parties hereto agree that time is of the essence of this contract and that the pecuniary damages which would be suffered by the Owner, if the Contractor does not complete all work called for in the contract documents by the specified date, are in their very nature difficult of ascertainment.

It is therefore expressly agreed as a part of the consideration inducing the Owner to execute this contract that the Owner may deduct from the final payment made to the Contractor a sum equal to a certain amount, as stipulated herein below, for each calendar day that the completion of the work is delayed beyond the agreed date for Substantial Completion of the work as stated in the Agreement Between Owner and the Contractor. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the work is not completed within the agreed time, or within the legally extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damage being caused by additional compensation to personnel, for loss of interest on money and other miscellaneous increased costs, all of which are difficult of exact ascertainment.

Liquidated Damage Amount: \$500 per calendar day.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and

unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least twenty (20) days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Payments will be made on account of materials or equipment 1) incorporated in the Work and 2) suitably stored at the site or 3) suitably stored at some off site location provided the following conditions are met for offsite storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 Surety must agree, in writing, to each request for payment.
- .4 The Contractor, at Owner's option, must bear the cost of the Owner's and Architect's expenses related to visiting the offsite storage area.

Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured) and transportation to the site for those materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

§ 9.3.4 Contractors shall submit one electronic copy of the application using AIA Document G702- and G703-1992 Application and Certificate for Payment. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form.

§9.3.5 Monthly Payment Procedures: The following payment procedures shall be adhered to for all monthly payments:

A. Field review of Application: Submission to Construction Manager

- (1) An on-site review of the application shall occur on or about the 5th day of the month. A representative of the Architect, Owner, Construction Manager and Contractor shall attend the review meeting.
- (2) Ideally, the review shall be of a rough draft of the Application. Corrections and/or changes resulting from the field review shall be incorporated into the formal typed Application.
- (3) The Contractor shall deliver the corrected Application to the Construction Manager's office no later than the tenth (10th) of the month.

B. Architectural Processing:

- (1) In addition to normal processing, the Architect shall verify that the corrections and/or changes resulting from the field review have been incorporated into the formal typed Application.

C. Processing:

- (1) Owner forwards Contractor's check to the Construction Manager for distribution on or about the 30th day of the month.
- (2) The Owner, through the Construction Manager, may withhold release of the Contractor's check if the Contractor has been notified in writing by the Construction Manager that it owes money to
 - (i.) another Contractor for damages to the other Contractor's work;
 - (ii.) the Construction Manager for reimbursement of temporary cleanup labor charges; or
 - (iii.) other items for which the Contractor is responsible for reimbursement but has not responded to request for payment.

D. Project Application Amounts:

- (1) All Contractors shall prepare an estimated Schedule of Payments at the beginning of each project.
- (2) Along with the regular Applications for Payment, a projected amount for the following month shall be submitted.

§ 9.3.6 Retainage: Until substantial completion of the Contractor's work, the Owner will pay 95% of the amount due the Contractor on account of progress payments, and will retain 5% of each progress payment.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will

either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.2.2 The Architect will affix his signature to the same form described in Paragraph 9.3.4 to signify his certification of payment, provided the application is otherwise satisfactory.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

§ 9.4.6 The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor or other Contractor;

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 failure of the Contractor to submit a written plan indicating the necessary action to regain lost time on the construction schedule for the completion of the Work within the Contract Time.
- .9 persistent refusal to adequately pursue the Work with the necessary supervision, labor, materials, equipment or services required to execute the Work in accordance with the Project schedule and to avoid delays in the Work to be performed by other Contractors and the Owner's forces;
- .10 Contractor's refusal, neglect or failure to provide certificates of or other evidence of compliance with all the requirements of Article 11 to the Owner and the Construction Manager;
- .11 Contractor or Contractor's subcontractors' acts or inactions resulting in the filing of a lien against the Project;
- .12 Contractor or Contractor's subcontractors' refusal to follow the Project Safety Program issued as a Contract Document;
- .13 failure to maintain record drawings as specified; or
- .14 failure to properly submit a response to a RCQ (Request for Change Quotation) within thirty (30) days of receipt thereof.
- .15 failure to properly submit stored material documentation

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the work has not attained Substantial Completion with the contract time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors

and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use. Substantial Completion shall be evidenced solely by a Certificate of Substantial Completion approved by the Owner under this section 9.8.

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

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

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if

any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.5.1 After the date of Substantial Completion of the Project as evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to complete all work and correct all deficiencies contained in the punch list attached to the Certificate of Substantial Completion.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are

made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Prior to final payment, the Contractor shall submit in duplicate to the Architect the following completed forms:

- .1 Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706 on Contracts less than \$25,000.
- .2 Contractor's Affidavit of Release of Liens, AIA Document G706A on Contracts less than \$25,000.
- .3 Consent of Surety to Final Payment on Contracts \$25,000 and above.
- .4 Subcontractor's Guarantee notarized
- .5 Subcontractor's Lien Releases notarized
- .6 Each Contractor shall submit a notarized affidavit stating that no asbestos building materials were used.
- .7 Maintenance and instruction manuals. Three sets of each bound in a 3" ring binder.
- .8 Record drawings if required by Contractor's Scope of Work..
- .9 Final list of subcontractors (AIA Document G805).

Documents identified as affidavit must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index

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

§ 9.10.4 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors.

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner

and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.4 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.5 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Asbestos or Asbestos Containing Materials

§ 10.4.1 Certification of Asbestos Free Project:

§ 10.4.1.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed and notarized an officer of the construction company.

§ 10.4.1.2 Certification shall further state that should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

§ 10.4.1.3 Final Payment shall not be made until this letter of certification has been received. Add the following Paragraph 10.5 and subparagraph 10.5.1 :

§ 10.5 Lead Free Materials in Potable Water System

§ 10.5.1 Prior to payment of retainage and final payment, the Contractor involved with the potable water system shall furnish a notarized statement certifying that the potable water system is "lead free".

§ 10.6 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§11.0 GENERAL

§11.0.1 The Owner will be furnished an acceptable certificate of insurance, copies of all policies and endorsements, as requested, and an insurance checklist prior to the commencement of any Work.

§11.0.2 The insurance shall contain a provision that at least sixty days prior written notice shall be given to the Owner in the event of cancellation, material change, or non-renewal.

§11.0.3 Insurance shall be underwritten by a company rated not less than "A" and "VII" in Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on AM Best's website, www.ambest.com.

§11.0.4 There shall be a hold harmless agreement in which the Contractor assumes liability on the contract and holds the Owner, Construction Manager and Architect harmless.

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .9 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.2.1 The insurance required by this Article 11 shall contain no specific limitations on the coverage afforded the Additional Insureds.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 In addition to any other obligations required herein, the Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Construction Manager, the Construction Manager's consultants, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§11.1.5 In each contract for construction, the following language shall be included:

"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 a project is

required for the duration of the project.

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

Persons providing services on the project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, 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 that furnishes persons to provide services on the project.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The contractor 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 401.011 (44) for all employees of the contractor providing services on the project for the duration of the project.

The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor 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.

The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

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

No later than seven days after receipt by the contractor, a new certificate of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knows of any change that materially affects the provision of coverage of any person providing services on the project.

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

The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

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 401.011 (44) for all of its employees providing services on the project for the duration of the project.

Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project;

Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing

extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

Obtain from each other person with whom it contracts, and provide to the contractor:

- a) A certificate of coverage, prior to the other person beginning work on the project; and
 - b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
5. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 6. Notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 7. Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor that entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

As used in this §11.1.5, the term "governmental entity" shall mean the Owner.

§11.1.6 CONTRACTOR'S LIABILITY INSURANCE

Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- 1) Premises operations
- 2) Independent Contractor's Protective
- 3) Products and Completed Operations
- 4) Contractual-Including Specified Provisions for the Contractor's Obligations under Paragraph 3.18
- 5) Owned, Non-Owned and Hired Vehicles
- 6) Broad Form Coverage for Property Damage
- 7) Personal Injury including liability assumed by contract

The Contractor's insurance as required to meet the above potential liabilities shall be written on an "Occurrence" basis and not for less than the following specified limits or that which is required by law, which is ever greater:

TYPE OF COVERAGE	Min. Limits of Liability
1. Workers' Compensation Employer's Liability	<i>Statutory</i> \$500,000.00 Each Accident \$500,000.00 Disease Policy Limit

	\$500,000.00 Disease Each Employee
2. Comprehensive General Liability	<i>Comprehensive, Contractual, Independent Contractors, Personal Injury</i> \$1,000,000.00 Personal & Adv. Injury \$1,000,000.00 Each Occurrence \$2,000,000.00 General Aggregate Per Project \$ 5,000.00 Med. Expenses (any one person) \$ 50,000.00 Fire Damage \$1,000,000.00 Each Occurrence \$1,000,000.00 Aggregate
3. Automobile Liability	\$1,000,000.00 Combined Single Limit
The Automobile Liability needs to include coverage for loading and unloading hazards.	
4. Umbrella Excess Liability	\$1,000,000.00 Each Occurrence \$1,000,000.00 Aggregate
This coverage shall be combined single limits bodily injury, including death, and property damage liability insurance as an excess of the primary coverage required and to follow form of the primary coverage required.	
5. Independent Contractor's Liability -	Same limit as #2 above.
6. Products and Completed Operations - \$2,000,000.00 completed operations aggregate commencing with issuance of final certificate of payment, and remaining in effect for (1) year.	
7. Property Damage Liability Insurance will provide X, C and U coverage as applicable.	
8. Contractual Liability - Same limits as #2 above.	

POLICY ENDORSEMENTS

Each insurance policy required under sub paragraph 11.1.5 shall include the following conditions by endorsement to the policy:

Each policy shall require that sixty (60) days prior to the expiration, cancellation, non-renewal, endorsement reducing or restricting coverage or any other material change in coverage, a written notice thereof shall be given to OWNER by Certified Mail to: OWNER, c/o Gallagher Construction Company, 3501 Token Drive, Suite 100, Richardson, Texas 75082.

The Contractor shall also notify OWNER within 24 hours after receipt of any notices of expiration, cancellation, non-renewal or material change in coverage it receives from its insurer by Certified Mail to the aforementioned Assistant Superintendent of Administration at the same address.

The term City of Roanoke shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices of OWNER and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of OWNER.

The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by OWNER,

to any future coverage, or to OWNER's Self-Insured Retention's of whatever nature. The Contractors policy is considered Primary and Non-Contributory with respects to the additional insureds - OWNER, ARCHITECT AND CONSTRUCTION MANAGER.

OWNER, ARCHITECT and CONSTRUCTION MANAGER shall be named additional insured on the Commercial General Liability and Umbrella and Business Auto Policies. With respect to the Commercial General Liability policy, ISO form CG 20 1011 85 or its equivalent or broader will be attached to the policy and continue in force 1 year commencing after the issuance of the final payment certificate.

WAIVER OF SUBROGATION

The Contractor's Workers' Compensation, Commercial General Liability, Umbrella and Business Auto policies shall include a Waiver of Subrogation rights for the loss or damage against OWNER, ARCHITECT, AND CONSTRUCTION MANAGER shall be to extent same is covered by insurance.

FORM OF CERTIFICATE

The form of Certificate shall be Accord Form 25S. Furnish to the Construction Manager and Owner copies of any endorsements that are subsequently issued amending coverage or limits.

Contractor shall not commence work at site under this Contract until he has obtained all required insurance and submitted appropriate policies and/or certifications.

Certificate Holder: OWNER
c/o Gallagher Construction Company
3501 Token Drive, Suite 100
Richardson, Texas 75082

§ 11.2 Owner's Liability Insurance

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

§ 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner may, at its sole discretion, purchase and maintain (or cause to be purchased and maintained), in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

The Insurance required by Article 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are used in the performance of the work, but not incorporated in the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to

commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires minimum deductibles, and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.

§11.3.1.3.1 There will be a \$2000.00 deductible for each loss to be paid on a prorated basis between each Contractor having an interest in the loss, such prorated share to be determined by the Construction Manager.

§ 11.3.1.4 This property insurance shall cover materials and portions of the Work stored off the site, and also portions of the Work in transit.

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

§ 11.3.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 **Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Intentionally Omitted.

§ 11.3.7 **Waivers of Subrogation.** The Contractor waives all rights against (1) against the Owner and any of the Owner's subcontractors, sub-subcontractors, agents and employees each of the other, and (2) the Construction Manager, Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Contractor shall cause the policies to provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity

would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Contractor shall furnish a separate performance and a payment bond, each in the full amount of the Contract, said bonds covering faithful performance of the Contract and payment of obligations arising there under. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Article 7.19-1, Texas Insurance Code.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Contractor shall deliver the required Bonds to the Owner through the Construction Manager not later than the 5th day after the date that the Contract is presented to the Contractor. All Bonds will be reviewed by the Construction Manager for compliance with the Contract Documents prior to the execution of the Contract. In the event that Construction Manager has any questions concerning the sufficiency of the bonds, Construction Manager shall refer the bonds to Owner or Owner's representative for decision.

§ 11.4.4 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power attorney. The name, address, and telephone number of a contact person for the Bonding Company shall be provided.

§ 11.4.5 The Bonds shall be provided to comply with the terms and provisions of Chapter 2253 of the Texas Government Code. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be the date of execution of the Contract. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld until sufficient bonds are provided by Contractor.

§ 11.4.6 If, at any time during the contract, the Cost of the Work increases, by 25% or more or as determined by City of Roanoke Designee, above the amount of the bonds originally provided by the Contractor, through change order or otherwise, the Contractor shall, within five (5) days of the increase in the Cost of the Work, provide the Owner with a new Performance Bond and new Payment Bond, each in an amount sufficient to cover the current total amount of the Contract, including the new increased Cost of the Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5 and all costs for doing so will be assessed against the Contractor, and Owner's actions to correct the nonconforming Work will not constitute a waiver of any warranties or rights the Owner might possess. The deadlines for certain actions required herein of the Contractor are as follows:

- .1** The Contractor shall make written response to the Owner acknowledging receipt of the Owner's notice of defect and providing the proposed schedule to conduct corrective work within twenty-four (24) hours of receipt of the Owner's written notice. Corrective work shall not interfere with the Owner's normal operation and use of the Work, unless expressly approved by the Owner.
- .2** For corrective work which is not a life safety issue or which will not, by the nature of the defect, cause subsequent damage to the building or other Work, corrective work shall be completed within seven (7) days.
- .3** For corrective work which by its nature may cause subsequent damage to the building or other Work, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) days. The Contractor shall appropriately complete all corrective work relative to subsequent damage caused by a defect.
- .4** For corrective work which affects services to, and ordinary use of the Building, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) days.
- .5** The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor's direct control.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law and Venue

§ 13.1.1 Governing Law.

The Agreement, the Contract, and the Contract Documents shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to its conflict of laws or choice of law principles, Texas law being the choice of law for the Agreement, the Contract, and all Contract Documents.

§ 13.1.2 Venue.

To the maximum extent permitted by applicable law, the parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, the Agreement, the Contract, or any of the Contract Documents shall be in the state district courts of Denton County, Texas, and the parties hereby waive any and all objections to the agreed-upon venue as stated herein. The Contract, including but not limited to the Agreement and all other Contract Documents, is performable entirely in Denton County, Texas.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

§ 13.3.2 No action or failure to act by the Owner, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. This may apply to materials proposed for use, materials already delivered to the Project, or materials already incorporated into the Work. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense. Any materials which fail to meet the requirements established by the Contract Documents shall not be used whether or not previously approved by the Architect. If such materials have been delivered to the Project, they shall be removed. If the materials have already been incorporated into the Work, the Construction Manager or the Architect may order the materials removed, or, at the discretion of the Owner, through the Construction Manager and Architect, the materials may be permitted to remain in place providing the Contractor agrees to a proper deduction from the Contract Sum.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect. The Contractor shall maintain a file of all test reports. At the completion of the Project, the Contractor shall submit these reports to the Owner in an Appendix to the Operations and Maintenance Manual.

§ 13.4.5 If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing. Neither the observations of the Architect or the Construction Manager in their Administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor, shall relieve the Contractor from Contractor's obligation to perform the Work in accordance with the Contract Documents.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing at the place where the Project is located.

§ 13.6 Audit Rights

The Contractor relating to this Contract, at any time deemed necessary by the Owner. This right of the Owner is limited to books and other records relating to work performed by the Contractor on a cost plus fee basis.

§ 13.7 Equal Opportunity

§ 13.7.1 The Contractor shall maintain policies of employment as follows:

§ 13.7.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or

applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment, or recruitment advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies.

§ 13.7.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

§ 13.8 Certification of Proper Hazardous Waste Disposal

§ 13.8.1 Contractor shall submit to the Owner certification that all hazardous waste, trash, debris, etc. has been disposed of in a manner which is in strict compliance with all current requirements of the Environmental Protection Agency (EPA), State, County, City and Local districts and authorities.

§ 13.9 Texas Accessibility Standards

Contractor shall submit to the Owner certification that all work installed by Contractor is in strict compliance with all requirements and regulations of the Texas Accessibility Standards and that Contractor, at the Contractor's sole expense, shall be responsible for correcting all non-compliant work at any time, during construction or after substantial completion, when notified by Owner that Contractor's work is not in compliance.

§ 13.10 The Contractor will, before any duties are performed on Owner's property, obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor as required by Texas Education Code Chapter 22 if the person has or will have continuing duties related to the Project, and the person has or will have direct contact with students. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code.

Additionally, the Contractor will, before any duties are performed on Owner's property where students are regularly present, and at least annually thereafter, obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor if the person has or will have continuing duties related to the Project, and the duties are or will be performed on Owner's property or at another location where students are regularly present. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code.

The Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee, agent or other person who was convicted of a felony under Title V of the Texas Penal Code or any offense that requires the person to register as a sex offender. No person shall be engaged by the Contractor or by any entities with which the Contractor contracts, including but not limited to any suppliers or subcontractors, to work on Owner's property where students are regularly present who has charges pending, or who has been convicted, received probation, or deferred adjudication for the following:

1. Any offense against a child;
2. Any sex offense;
3. Any crimes against persons involving weapons or violence;
4. Any felony offense involving controlled substances; or
5. Any offenses involving the sale or distribution of controlled substances.

The Owner shall determine what constitutes "direct contact with students" and "where students are regularly present".

It shall be the responsibility of the Contractor and the entities with which the Contractor contracts to ensure compliance with this provision.

§13.11 Pursuant to the requirements of HB 89 and Tex. Govt. Code § 2270.002, Contractor affirms that it does not boycott and will not boycott Israel during the term of this Contract.

§13.12 Contractor affirms that it is not identified on a list prepared and maintained under Tex. Govt. Code §§ 806.051, 807.051 or 2252.153.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work actually executed, as well as reasonable overhead and profit. In any event, the amount paid to the Contractor under this § 14.1.3 shall not exceed the amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials to complete the Work in a diligent, efficient, workmanlike or timely manner;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents or does not fully comply with a material obligation under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner within thirty (30) days after demand by the Owner. The obligation for payment contained in this §14.2.4 shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract, any part of the Work, or any subcontract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor's compensation and/or damages shall be limited to payment for the Work actually executed to the date of termination in accordance with the payment terms set out in the Agreement, and reasonable and necessary costs incurred by Contractor for demobilization of Contractor's personnel as a direct result of such early termination, which are established to the reasonable satisfaction of Owner, but Owner shall not be responsible for the payment of any portion of the Contractor's unearned fee, overhead or profit, or any other amounts. .

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by Contractor, shall be initiated by notice to the Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract.

§ 15.1.5 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Claims for additional costs may only be submitted for Extra Work or Additional or Supplemental Services authorized in advance by Owner.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions.

§ 15.1.7 Waiver of Claims for Consequential Damages. The Contractor waives Claims for consequential damages arising out of or relating to this Contract. This waiver includes

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damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all consequential damages due to Contractor's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 The Architect shall be the Initial Decision Maker. Claims shall be referred to the Initial Decision Maker for initial decision/recommendation to the Owner. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision/recommendation shall be required as a condition precedent to mediation of any Claim unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision/recommendation having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide or make recommendations concerning disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) submit a schedule to the parties indicating when the Architect expects to render its recommendation; (3) recommend rejection of the Claim in whole or in part, stating reasons for the recommended rejection; (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect shall notify the surety, if any, of the nature and amount of the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished.

§ 15.2.5 The Initial Decision Maker's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall serve as the Initial Decision Maker's **recommendation** for the resolution of a Claim but shall not be final and binding on the parties. Upon receipt of the initial decision, the Owner will make its final decision concerning the Claim. The Owner may take any action with regard to the Claim and the initial decision as it deems appropriate, including but not limited to rejecting, approving, or modifying the Initial Decision Maker's recommendation. If an affected party disagrees with the Owner's final decision, the party may request non-binding mediation of the Claim and, if the parties fail to resolve their dispute through mediation, proceed to litigation.

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

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

§ 15.3 Mediation

§ 15.3.1 Any and all of Contractor's claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to non-binding mediation as a condition precedent to litigation.

§ 15.3.1.1 Notwithstanding any provision in the Contract Documents to the Contrary, the Owner may, at any time and with no conditions precedent, assert a Claim, dispute, or other matter in controversy against the Contractor or contend that the Contractor has committed a material breach of this Agreement and request mediation as provided by this Section 15.3, or, at the Owner's sole discretion, proceed directly to litigation against the Contractor. Claims that the Owner may possess against the Contractor are not required to be submitted to the Initial Decision Maker.

§ 15.3.2 A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. If the parties have not selected a mutually-acceptable mediator at the time the request for mediation is made, then the requesting party may suggest a mediator. The non-requesting party has 10 days after receipt of the request to respond to the requesting party in writing either accepting the mediator identified by the requesting party, or suggesting a different mediator. If such notice is not timely made, then the mediator suggested by the party requesting mediation will be deemed the selected mediator. If a different mediator has been suggested, and the parties are unable to agree on a mediator within 10 days after the notice suggesting a different mediate is given, then the parties shall request the Initial Decision Maker to select a mediator, and this selection will be binding on both parties. The request may be made concurrently with the filing of litigation proceedings but, in such event, mediation shall proceed in advance of litigation proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 The parties shall share the mediator's fee equally, unless the parties agree otherwise. The mediation shall be held in the place where the Project is located or the nearest City to the Project, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 LITIGATION

§ 15.4.1 For any Claim or other dispute of any kind between the parties, the method of "binding dispute resolution" shall be litigation in the exclusive venue described in § 13.1.

§ 15.4.2 All references to “arbitration” in the General Conditions or in any other Contract Document shall be considered as deleted, rendered null and void, and shall be given no effect.

ARTICLE 16 ADDITIONAL PROVISIONS

16.1 The Contractor shall certify in writing that no materials used in the work contain lead or asbestos materials in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

16.2 The Architect may appoint an employee or other person to assist him during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect’s Representative may have allowed work not in accordance with the Contract Documents shall not prevent the Architect or the Owner from insisting that the faulty work be corrected to conform with the Contract Documents and the Contractor shall correct same.

16.3 The Contractor and its employees, agents, consultants, suppliers and subcontractors shall abide by all Owner policies and procedures regarding campus access.

16.4 The Contractor shall indemnify and hold Owner harmless from any liens, claims, security interests, encumbrances, statutory or common law claims filed by the Contractor, suppliers, subcontractors, or anyone claiming by, through, or under the Contractor, suppliers or subcontractors for items covered by payments made by the Owner to Contractor.

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION

17.1 Pursuant to Texas Government Code, Chapter 2270, as amended, if Consultant is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Consultant represents and warrants to the Owner that the Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

Note: On April 25, 2019, the U.S. District Court for the Western District of Texas entered a preliminary injunction enjoining the enforcement of the above clause in any state contract. Texas Government Code, Chapter 2270 has been amended since the date of the injunction and the requirement of the statute is included above in its amended form. As the statute may not cure the entire breadth of issues addressed by injunction, the Client does not intend to seek enforcement of this statute until further order of this or higher court having jurisdiction over the issue

17.2 Prohibition of Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign terrorist Organizations. Contractor certifies that it is not a company identified by the Texas Comptroller as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the Owner or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by Owner in a fiscal year of the Owner. If the Owner receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of Owner, Owner shall send, not later than the third business day after the date Owner receives the written request, a written request to the Contractor that Contractor provide that information to Owner.

18.2 The Contractor must:

- .1** Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to Owner for the duration of the Contract;

- .2 Promptly, within four business days, provide to Owner any requested contracting information that is in the custody or possession of the Contractor upon request of Owner; and,
- .3 On completion of the Contract, either:
 - .1 Provide to Owner at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or
 - .2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to Owner.
- .4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.
- .5 Further, under Texas Government Code Chapter 552.372(c), Owner may not accept a bid for or awarding of a contract to an entity that Owner has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless Owner determines and documents that the entity has taken adequate steps to ensure future compliance.
- .6 If a Contractor fails to provide to Owner the requested information, Texas Government Code Chapter 552.373 requires Owner to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. Owner may terminate the Contract if Contractor fails to remedy the failure, Owner determines if the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

ARTICLE 19 CERTIFICATION OF SENATE BILL 13, SECTIONS 809 and 2274 TEXAS GOVERNMENT CODE Prohibition of Boycott Energy Companies

19.1 In accordance with Texas Government Code Chapter 2274, Contractor verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended. This section does not apply if Contractor is a sole proprietor, a nonprofit entity, or a governmental entity; and only applies if: (i) Contractor has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement

ARTICLE 20 CERTIFICATION OF SENATE BILL 19, SECTION 2274 TEXAS GOVERNMENT CODE

20.1 In accordance with Texas Government Code Chapter 2274, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association. This section only applies if: (i) Contractor has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement; and does not apply: (i) if Contractor is a sole proprietor, a non-profit entity, or a governmental entity; (ii) to a contract with a sole-source provider; or (iii) to a contract for which none of the bids from a company were able to provide the required certification.



AGENDA ITEM

TO: Mayor and City Council

SUBJECT: ORD NO 2025-101 - Amending FY 2024-2025 Budget

MEETING DATE: January 28, 2025

DEPARTMENT: Finance

ITEM SUMMARY:

Consideration and action on approval of Ordinance No. 2025-101 amending the FY 2024-2025 Budget.

INFORMATION:

The Roanoke City Charter stipulates that Council may, from time to time, amend the current year's budget through adoption of an ordinance. For this amendment, staff is requesting a total amendment amount of \$1,412,908 for the following items:

1. Remaining capital project expenses for the stormwater master plan - \$16,320
2. Remaining capital project expenses for Oak Street Electrical - \$1,107,649
3. Remaining capital project expenses for Dorman/North Walnut Design - \$207,332
4. Remaining REIDC expenses for a parks study - \$44,607
5. Remaining General Fund expenses for cybersecurity - \$37,000

As detailed above, the majority of this amendment will be in the city's capital project funds with smaller amounts in the REIDC and General Fund. All items listed represent initiatives that began in 2024 and will conclude in 2025.

STAFF RECOMMENDATION:

Staff recommends approval.

SPECIAL CONSIDERATION:

FINANCIAL CONSIDERATION:

This amendment will increase the budgets for the City's capital project funds, REIDC Fund, and General Fund. All funds will maintain balances well within the required reserves.



AGENDA ITEM

ATTACHMENTS:

1. ORD NO 2025-101 - Amending Budget FY2024-2025

ORDINANCE NO 2025-101

AN ORDINANCE AMENDING THE OFFICIAL OPERATING AND CAPITAL BUDGET FOR THE CITY OF ROANOKE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2024, AND ENDING SEPTEMBER 30, 2025; APPROPRIATING MONEY TO AN INTEREST AND SINKING FUND TO PAY INTEREST AND PRINCIPAL DUE ON THE CITY'S INDEBTEDNESS; PROVIDING FOR THE INVESTMENT OF FUNDS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Manager's recommended budget for the fiscal year beginning October 1, 2024 and ending September 30, 2025 was posted on the city's website and filed in the office of the City Secretary of the City of Roanoke on August 7, 2024, and has been available to the citizens and the public for their inspection since that date; and

WHEREAS, on September 10, 2024 City Council voted to pass the FY2024-25 operating and capital budget, which specifically set forth each of the various funds for which appropriations are delineated, and the estimated amount of money carried in the Budget for each of such funds; and

WHEREAS, the FY2024-25 Adopted Budget includes, certain elements of the Capital Improvements Program, which details planned capital improvement projects of the city that have been identified to date and contains a statement proposing capital expenditures deemed necessary for undertaking during the next budget year and recommended provisions for financing and a list of capital projects which should be undertaken within the five (5) next succeeding years.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS, THAT:

SECTION 1.

The official Budget for the City of Roanoke for the fiscal year beginning October 1, 2024 and ending September 30, 2025 is hereby amended and there is hereby appropriated from the funds indicated therein such sums for the projects, operations, activities, purchases, and other expenditures proposed in the Budget. The Roanoke City Secretary is directed to keep and maintain a copy of such official Budget on file in the office of the City Secretary available for inspection by citizens and the general public. A copy of the Budget shall be posted on the official website for the City of Roanoke. In addition, the City Manager shall file or cause to be filed a true and correct copy of this ordinance, along with the approved Budget, and any amendments thereto, in the office of the County Clerk of Denton County, Texas, as required by State law.

SECTION 2.

The City Council hereby approves as a part of the Budget the FY2024-25 Capital Improvements Program, which details planned capital improvement projects of the city that have been identified to date.

SECTION 3.

All funds appropriated and allocated shall be expended and used pursuant to the provisions of such official Budget and the City Manager is directed to appropriate and expend City funds according to City Charter provisions.

SECTION 4.

The sums below are hereby appropriated from the respective operating funds for the payment of expenditures on behalf of the city government as established in the approved Budget document:

<u>FUND</u>	<u>FY2025 Adopted Expenditures 9/10/2023</u>	<u>FY2024 Amended Expenditures 9/10/2024</u>
General Fund	\$ 41,206,337	\$ 41,243,337
General Obligation Debt Service Fund	\$ 12,231,752	\$ 12,231,752
Water and Wastewater Fund	\$ 11,294,296	\$ 11,294,296
Hotel/Motel Fund	\$ 148,407	\$ 148,407
Vehicle/Equipment Replacement Fund	\$ 651,413	\$ 651,413
Computer Replacement Fund	\$ 150,000	\$ 150,000
Briarwyck Public Improvement District	\$ -----	\$ -----
Roanoke Special Events	\$ 1,131,908	\$ 1,131,908
Economic Industrial Development Corporation (REIDC-4A)	\$ 9,387,763	\$ 9,432,370
Crime Control and Prevention District (CCPD)	\$ 8,048,026	\$ 8,048,026

SECTION 5.

The sums below are hereby appropriated from the respective capital funds for the payment of expenditures on behalf of the city government as established in the approved Capital Improvement Program:

<u>Fund</u>	<u>Appropriations</u>
Facilities Capital Projects Fund	\$ 20,304,600
Streets Capital Projects Fund	\$ 7,770,256
Water and Wastewater Capital Projects Fund	\$ 16,320

SECTION 6.

All appropriation balances for capital expenditures and capital improvement projects as of September 30, 2025 shall roll forward to October 1, 2025. All other appropriations shall lapse at the end of the fiscal year.

SECTION 7.

The City Manager is authorized from time to time, as he may deem to be in the best interest of the City of Roanoke, to invest city funds not immediately required for current use, including operating funds and bond funds, as per Council adopted Investment Policy.

SECTION 8.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause,

sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 9.

This ordinance shall become effective immediately from and after its passage.

PASSED AND APPROVED by the City Council of the City of Roanoke, Texas, on this 28th day of January, 2025.

APPROVED:

Carl E. Gierisch, Jr., Mayor

ATTEST:

April S. Hill, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney



AGENDA ITEM

TO: Mayor & City Council

SUBJECT: Parking lease estoppel agreement

MEETING DATE: January 28, 2025

DEPARTMENT: City Manager

ITEM SUMMARY:

Consideration and action on a Tenant Parking Lease Estoppel between the City of Roanoke and CWS.

INFORMATION:

This is regarding the sale and change of ownership for the downtown parking garage that the City partnered with the original developer to construct for public parking spaces.

STAFF RECOMMENDATION:

Approve

SPECIAL CONSIDERATION:

FINANCIAL CONSIDERATION:

ATTACHMENTS:

1. Tenant Parking Lease Estoppel-60170604-v5 (1)

TENANT PARKING LEASE ESTOPPEL

To: Landlord (as hereinafter defined), CWS Apartment Homes LLC, a Delaware limited liability company, CWS Parklake SAF V, LLC, a Delaware limited liability company, AVA NPH 2 LLC, a Delaware limited liability company, Jantz Ava, LLC, a Delaware limited liability company, Jantz Ava 2, LLC, a Delaware limited liability company, CWS Parklake PCHCN, LLC, a Delaware limited liability company, CWS Parklake PCLM, LLC, a Delaware limited liability company, CWS Parklake PCHCM, LLC, a Delaware limited liability company, CWS Parklake PM, LLC, a Delaware limited liability company, CWS Desert Ridge, L.P., a Delaware limited partnership, all future owners of the Property (as hereinafter defined), and their respective successors and assigns, and any and all of their lenders and title insurers ("**Addressees**")

The undersigned, **City of Roanoke, Texas**, as Tenant, hereby certifies that:

1. Tenant is a party to that certain Parking Garage Lease ("**Lease**"), dated as of the 17th day of March, 2017, by and between the undersigned, as tenant ("**Tenant**"), and **Enclave at Roanoke City Centre, LP**, a Texas limited partnership, as landlord ("**Landlord**"), covering the lease of certain Tenant Spaces to Tenant in the Parking Garage, as defined and described in the Parking Garage Lease. The Parking Garage is located on a certain 0.634-acre tract of land described therein as the "**Property**".
2. A true and complete copy of the Lease is attached to this Certificate as **Schedule 1**, and there are no other agreements between Landlord and Tenant with respect to the Tenant Spaces or the Parking Garage other than the Chapter 380 Agreement referenced in the Lease, to the extent applicable thereto.
3. The Lease has not been modified, and is valid and in full force and effect on the date hereof. The Commencement Date of the Lease was May 25, 2019, and, subject to any earlier termination under a right exercised by Landlord under the Lease, the term of the Lease shall expire on May 24, 2118.
4. Tenant has no renewal options or expansion options.
5. Tenant has prepaid the Base Rent (as defined in the Lease) for the entire term of the Lease. Tenant is not entitled to a reimbursement or refund of all or any portion of the prepaid Base Rent in the event of an Event of Default (as defined in the Lease) by the Tenant under the Lease.
6. Additional rent, including Tenant's share of Operating and Maintenance Cost (as defined in the Lease), taxes and insurance, payable by Tenant presently is \$99,929.12 per year and no such rent has been paid more than thirty (30) days in advance of its due date.
7. Tenant's security deposit is \$0.00.
8. There are no uncured defaults on the part of Tenant or on the part of Landlord under the Lease, and, to Tenant's knowledge, no event has occurred and no condition exists which, with the giving of notice or the lapse of time, or both, will constitute a default under the Lease.

9. Tenant claims no present defense, charge, lien or claim of offset under the Lease or otherwise, against rents or other charges due or to become due thereunder.
10. Tenant has accepted possession of the Tenant Spaces in the Parking Garage; the Parking Garage and other improvements required by the terms of the Lease to be made by Landlord thereunder have been completed to the satisfaction of Tenant. All conditions and agreements under the Lease with respect to construction and delivery of the Parking Garage and the Tenant Spaces to be satisfied or performed by Landlord have been satisfied and performed.
11. There is no outstanding monetary obligation of Landlord to Tenant under the Lease or otherwise.
12. The address for notices to be sent to Tenant is as set forth in the Lease.
13. Tenant has not assigned the Lease or sublet the Tenant Spaces or any portions thereof (or any of its rights to possession of the leased portions of the Parking Garage under the Lease).
14. Tenant has no right of first refusal, right of first offer option or other similar right to purchase or lease the Tenant Spaces, Parking Garage or any portions hereof.
15. No actions, whether voluntarily or otherwise, are pending against the undersigned under the bankruptcy laws of the United States or any states thereof.
16. The ability of Landlord to transfer or assign Landlord's interest in the Lease is not subject to the consent of the Tenant.
17. The undersigned makes the representations and warranties contained in this Tenant Parking Lease Estoppel on behalf of Tenant for the benefit and reliance of Landlord and the Addressees with full and complete legal authority to do so on behalf of Tenant.

Any party's execution of this instrument may be completed and delivered via an Adobe® portable document format (.pdf) image (or other customary electronic image) of this instrument with such party's signature, delivered as an attachment to an electronic mail transmission or other customary electronic delivery, and such electronic image shall be deemed to be equally effective as a manually delivered instrument with an original signature.

[remainder of page intentionally left blank]
[signature page next page]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Tenant Parking Lease Estoppel on the _____ day of January, 2025.

CITY:

CITY OF ROANOKE, TEXAS
A Texas home- rule municipality

By: _____
Carl E. Gierisch, Mayor

Date Signed: _____

ATTEST: _____
April Hill, City Secretary

**SCHEDULE 1
TO TENANT PARKING LEASE ESTOPPEL**

COPY OF LEASE

PARKING GARAGE LEASE

BETWEEN

**ENCLAVE ROANOKE CITY CENTRE, LP,
As Landlord**

AND

**CITY OF ROANOKE, TEXAS,
as Tenant**

THIS PARKING GARAGE LEASE (the "Lease") is entered into this ___ day of _____, 2017 (the "Effective Date") by and among **ENCLAVE ROANOKE CITY CENTRE, LP**, a Texas limited partnership ("Landlord") and the **CITY OF ROANOKE, TEXAS**, a Texas home-rule municipality ("Tenant" or "City").

WHEREAS, on or about December 22, 2016, Landlord's predecessor-in-interest with respect to the Property, Integrity Retirement Group, LLC ("Developer") and Tenant executed a Chapter 380 Economic Development Program Agreement and Performance Agreement (hereinafter referred to as the "Chapter 380 Agreement") which in part addressed the obligations of the Tenant and Developer concerning the construction of a parking garage on an approximately 0.634 acre tract of land located in the D.O. Hoover Survey, Abstract No. 603, City of Roanoke, Denton County, Texas, as more particularly described and/or depicted in *Exhibit A* of this Lease, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the "Property") (all capitalized terms not otherwise defined herein shall have the meaning set forth in *Exhibit B* attached hereto); and

WHEREAS, pursuant to Section 4(i) of the Chapter 380 Agreement the Developer covenanted and agreed to commence construction of a minimum 412 parking space Parking Garage located on the Property by **December 1, 2017**; and

WHEREAS, Section 4(i) of the Chapter 380 Agreement also provides that the Developer would complete construction of said Parking Garage located on the Property by **December 1, 2018**; and

WHEREAS, Section 4(i) of the Chapter 380 Agreement also provides that upon completion of said Parking Garage, the City and Developer would enter into this Lease concerning the Parking Garage and the use of respective parking spaces by Developer and City; and

WHEREAS, Landlord has or will acquire the Multifamily Tract (as defined in the Chapter 380 Agreement) from Developer, as well as the Garage Tract (as defined in the Chapter 380 Agreement, which Garage Tract is the same land as the Property described herein); and Developer has or will by separate agreement assign to Landlord its rights and obligations under the Chapter 380 Agreement with respect to the construction, ownership, and operation of the Parking Garage, including without limitation the right to receive the amounts that will be applied toward Base Rent from the City or the EDC and CDC as described herein; and City and Developer and/or Landlord has or will enter into an Amendment to the Chapter 380 Agreement ("First Amendment to Chapter 380 Agreement") whereby (in lieu of the original provisions relative to the Parking Garage) Developer (or its assignee) will be responsible for developing and owning the Parking Garage on the Garage Tract and leasing the right to use certain parking spaces therein to the City during the Term of this Lease as provided herein; and

WHEREAS, this Lease is entered into as contemplated under the arrangements discussed in the foregoing recitals, and is entered into under the rights assigned or to be assigned to Landlord under the Chapter 380 Agreement (as such agreement has or will be amended by the First Amendment to Chapter 380 Agreement) to address the leasehold interest of the City in and to certain parking spaces in the Parking Garage as provided below.

NOW THEREFORE in consideration of the mutual covenants herein contained and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

SECTION 1. BASIC TERMS AND DEFINITIONS.

- (a) Property: Means the approximately 0.634 acre tract of land in the D.O. Hoover Survey, Abstract No. 603, City of Roanoke, Denton County, Texas, as more particularly described and/or depicted in ***Exhibit A*** of this Lease, which is attached hereto and incorporated herein for all purposes.
- (b) Term: The term of this Lease is for a term of ninety-nine (99) years. Said Lease shall commence on the Commencement Date.
- (c) Base Rent: The City will pay or cause to be paid by the EDC and CDC (as such terms are defined in the Chapter 380 Agreement) to Landlord one-half of the cost of the construction of the Parking Garage located on the Property in an amount not to exceed **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00)** as prepaid Base Rent for the City's lease of the Tenant Spaces during the Term of this Lease. The payment of such amount to Landlord shall be a condition precedent to City's right to use the Tenant Spaces hereunder.
- (d) Permitted Use: Tenant may use 204 Tenant Spaces (defined below) within the Parking Garage, pursuant to the terms and conditions herein.
- (e) Exhibits. The following Exhibits to this Lease constitute part of this Lease:
 - ***Exhibit A*** Legal Description of the Property;
 - ***Exhibit B*** Defined Terms;
 - ***Exhibit C*** Depiction of the Parking Garage;
 - ***Exhibit D*** Tenant's General Public Parking Spaces.
- (f) First Amendment to Chapter 380 Agreement. Notwithstanding anything contained herein to the contrary, within forty-five (45) days after the Effective Date of this Lease ("**Amendment Deadline**"), City shall enter into (and shall cause the EDC and CDC to enter into) the First Amendment to Chapter 380 Agreement contemplated above with the Developer or Landlord, as applicable, the terms of which First Amendment to Chapter 380 Agreement with respect to the Parking Garage and this Lease shall be consistent with all terms and provisions of this Lease and the construction, ownership and operation of the Parking Garage as provided herein in all respects. If the City (and the EDC and CDC) and the Developer or Landlord, as applicable, have not entered into the First Amendment to Chapter 380 Agreement in accordance with the terms hereof by the Amendment Deadline, Landlord shall have the right to terminate this Lease upon written notice to City (in which case neither Party shall have any further rights or obligations hereunder except those that expressly survive termination), or to pursue specific performance and/or all other remedies Landlord may have at law or in equity with respect to City's obligation to enter into the First Amendment to Chapter 380 Agreement.

SECTION 2. GRANT OF LEASE; TERM AND TERMINATION RIGHTS.

- (a) Grant. Subject to the terms of this Lease, Landlord hereby demises and leases to Tenant for the duration of the Term to right to use the Tenant Spaces within the Parking Garage. Tenant shall also be permitted hereunder to use, on a non-exclusive basis with Landlord, private streets owned by Landlord and located adjacent to the Parking Garage as reasonably necessary to access the Parking Garage and Tenant Spaces; provided that Tenant shall contribute to the costs of maintaining such areas in accordance with Section 6 below.

- (b) Term. The Term shall begin on the Commencement Date and unless earlier terminated in accordance with the terms of this Lease, shall end on the last day of the last calendar month of the Term.
- (c) Holding Over. If Tenant continues its use of the Tenant Spaces after an early termination of this Lease by Landlord resulting from a Tenant Event of Default, or upon the end of the Term of this Lease, with Landlord's consent, then Tenant will be deemed to be leasing the right to use the Tenant Spaces as a tenant on a month-to-month basis, subject to all of the terms and conditions of this Lease. For so long as Tenant holds over and continues its use of the Tenant Spaces, the Tenant shall pay to Landlord rental in an amount equal to the greater of (i) **Twenty Thousand and No/100 Dollars (\$20,000.00)** per month; or (ii) the average market value of said lease of the Tenant Spaces based upon two (2) independent MAI appraisers selected by the Landlord. The Tenant shall reimburse Landlord for all costs of said appraisals as Additional Rent. Notwithstanding the foregoing, Landlord reserves the right to terminate Tenant's use of the Tenant Spaces as a holdover tenant in accordance with the above upon thirty (30) days' notice to Tenant.

SECTION 3. USE AND ACCEPTANCE OF THE PROPERTY.

- (a) Use of the Property. Tenant shall not use any portion of the Property or the Parking Garage for any purpose or use other than the Permitted Use, without the prior written consent of Landlord.
- (b) Acceptance of the Property. Tenant accepts the Property, Parking Garage and Tenant Spaces in its "As Is" condition and subject to all Applicable Laws. TENANT IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF LANDLORD OR LANDLORD'S AGENTS OR EMPLOYEES WITH RESPECT THERETO, EXCEPT AS EXPRESSLY SET FORTH HEREIN, AND TENANT WAIVES ANY CLAIM OR ACTION AGAINST LANDLORD IN RESPECT OF THE CONDITION OF THE PROPERTY EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD. EXCEPT AS EXPRESSLY SET FORTH HEREIN, LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE PROPERTY OR ANY PART THEREOF, EITHER AS TO THE USE OF THE PROPERTY PURSUANT TO **SECTION 3(a)**, THE PROPERTY'S FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY TENANT.

SECTION 4. RENT.

- (a) Base Rent. Base Rent will be prepaid in accordance with Section 1(c) of this Lease above.
- (b) Payment of Taxes and Insurance. From and after the Commencement Date, Tenant shall pay Landlord as Additional Rent, an amount equal to one-half (½) of: (i) all Taxes that are imposed or assessed by any government or other taxing authority having jurisdiction and which relate to or are attributable to the Property and/or the Parking Garage; and (ii) all premiums paid by Landlord for property insurance applicable to the Property or the Parking Garage. Landlord will invoice Tenant for such costs on an annual basis, and Tenant covenants and agrees to pay said invoice within thirty (30) days of receipt as Additional Rent.

SECTION 5. CONDUCT OF BUSINESS.

- (a) Compliance with Laws and Rules and Regulations. Tenant shall and shall cause its agents and invitees to observe and comply with all Applicable Laws (including Environmental Laws) applicable to the Property, the Parking Garage, the Tenant Spaces and the use thereof by Tenant. Tenant shall not be permitted to use any Hazardous Substances on the Property or the Parking Garage or in connection with Tenant's use of the Tenant Spaces. Tenant shall and shall cause its agents and invitees to further comply with all reasonable rules and regulations with respect to the Parking Garage and Tenant Spaces adopted by Landlord from time to time.
- (b) Landlord Access and Entry. Notwithstanding anything contained herein to the contrary, Landlord shall at all times and for all purposes have full and free access to the Parking Garage and the Tenant Spaces for maintenance, inspection and all other purposes, without any liability to Tenant or any other party for compensation or damages thereto; provided that Landlord uses commercially reasonable efforts to avoid material interference with Tenant's use of the Tenant Spaces as described herein.
- (c) Signage and Displays. Tenant shall have the right to install and maintain signage related to Tenant's use in and around the Tenant Spaces, subject to the prior reasonable approval of Landlord. All such signage or displays shall be in compliance with all Applicable Laws. The cost of installing, maintaining, changing and removing all such signage or displays shall be borne solely by Tenant. Notwithstanding the foregoing, in no event shall Tenant display signs, billboards or advertising media on or outside of the Property that does not directly relate to the City of Roanoke. Upon the sooner termination of this Lease, at Landlord's request, Tenant, at its expense, shall remove all signage installed by Tenant in and around the Property. Without limitation to Landlord's approval rights described above, Tenant agrees that its signage shall direct all public parking in the Parking Garage to the Tenant Spaces only. As described further in Section 10(a) below, all remaining parking spaces in the Parking Garage are for the sole and exclusive use of Landlord, and Landlord may place signage, barriers and other controls in the Parking Garage as it may desire, provided such signage, barriers and controls of the Landlord do not unreasonably interfere with Tenant's right to use the Tenant Spaces hereunder.

SECTION 6. MAINTENANCE AND REPAIR OF PARKING GARAGE AND PROPERTY.

- (a) Maintenance and Repair of Parking Garage and the Property.
 - (1) Landlord shall maintain and operate the Parking Garage as discussed below, but Landlord and Tenant shall split the Operating and Maintenance Costs (defined below) of the Parking Garage and Property equally during the Term. "Operating and Maintenance Costs" shall mean the total costs and expenses incurred by Landlord in connection with the management, operation, maintenance, repair and ownership of the Parking Garage and the Property, including, without any limitation to the generality of the foregoing, (i) the cost of any capital replacement, reconstruction or improvements made by Landlord to the Parking Garage or capital assets acquired by Landlord in order to comply with Applicable Laws or insurance requirements, or for the protection of the health and safety of the occupants or users of the Parking Garage, or those capital replacements, improvements or capital assets designed to reduce other operating and maintenance costs, all as determined in Landlord's discretion (and including any reasonable reserve charges in connection with the foregoing), (ii) the cost of any Utilities which serve, relate to or are attributable to the Property and/or the Parking Garage, (iii) the cost of all on-site personnel with respect to

the operation of the Parking Garage and (iv) the cost of maintenance for any private streets or other access ways maintained by Landlord and used by the City (with Landlord's consent) for pedestrian or vehicular access to the Parking Garage.

- (2) During the Term of the Lease, Landlord shall, once per calendar year, provide Tenant an itemized (to the extent reasonably practicable) list of the expected Operating and Maintenance Costs ("Proposed Operating and Maintenance Budget") for the following calendar year. If Tenant does not agree with said Proposed Operating and Maintenance Budget provided by Landlord, Tenant must notify Landlord in writing ("Objection Notice") within thirty (30) days of Landlord's provision of such Proposed Operating and Maintenance Budget. If Tenant does not send an Objection Notice with such 30 day period, Tenant shall be deemed to have accepted the Proposed Operating and Maintenance Budget. If Tenant timely sends the Objection Notice, the Parties agree to make reasonable and good faith efforts to agree on a mutually satisfactory Operating and Maintenance Budget for the calendar year in question. The final Operating and Maintenance Budget, whether deemed approved in the absence of an Objection Notice or mutually agreed upon by the Parties after the timely delivery of an Objection Notice, shall be referred to herein as a "Final Operating and Maintenance Budget". Notwithstanding the foregoing, if Tenant timely sends an Objection Notice, but the Parties are unable to agree on a mutually satisfactory Operating and Maintenance Budget as described above prior to the commencement of the applicable calendar year, the Final Operating and Maintenance Budget for such calendar year will be that of the prior calendar year with a five percent (5%) increase.
- (3) Landlord agrees, with respect to its operation of the Parking Garage and the Property, to make reasonable efforts to abide by the Final Operating and Maintenance Budget applicable to any calendar year; provided that in any case Tenant will be responsible for one-half (½) of the actual Operating and Maintenance Costs incurred by Landlord, regardless of the costs shown on the Final Operating and Maintenance Budget. Landlord will invoice Tenant for one-half (½) of such Operating and Maintenance Costs on an annual basis, and Tenant covenants and agrees to pay said invoice within thirty (30) days of receipt as Additional Rent.

SECTION 7. LIABILITY, RELEASE.

- (a) Limitations on Landlord's Liability. Tenant acknowledges and agrees that Landlord shall not be liable or responsible to Tenant, and Tenant to the extent allowed by law hereby waives, releases, indemnifies and holds harmless Landlord from any Claim for any Injury to any Person or for the loss of or damage to any property of Tenant or any other Person in respect of any occurrence during the Term and any period of time in which Tenant possesses the right to use the Tenant Spaces, arising from any act or omission in, upon, at, or relating to the Tenant Spaces by Tenant or any of its agents or invitees, or any part thereof, except to the extent such Injury or damage to property results from any gross negligence or willful misconduct of Landlord. In addition to and without limitation to the foregoing provisions of this **Section 7**, Tenant agrees that Landlord will not be liable in any event for any Claims whatsoever advanced by any Person for any Injury and Damages of any nature which are caused, result or arise from or are contributed to by reason of: (a) the condition of or temporary interruption, suspension, discontinuance or failure, in whole or in part, of any Utilities or service serving the Property; or (b) any act or omission by or on behalf of Landlord, acting reasonably, in curing or attempting to cure any default of Tenant under this Lease or in responding to an Emergency.

SECTION 8. TRANSFERS.

- (a) Intentionally Deleted.
- (b) Disposition by Landlord. Landlord shall be liable for the performance of Landlord's covenants and obligations expressly set forth in this Lease only during the period in which Landlord holds an interest in the Property, and in the event of any bona fide sale, lease or other disposition by Landlord of Landlord's interest in the Property, and provided that Landlord's successor-in-interest shall have assumed the performance of Landlord's covenants and obligations from and after the disposition of Landlord's interest in the Property, Landlord shall thereupon and without further agreement be relieved of all liability with respect to the performance of such covenants and obligations, and Tenant shall thereafter look solely to Landlord's successor-in-interest in and to this Lease. Tenant shall immediately upon request, and without charge to Landlord, attorn in writing to such successor-in-interest, provided always that Landlord's successor-in-interest shall have agreed in writing to be bound by the terms of this Lease.

SECTION 9. DEFAULT.

- (a) Tenant Default.
 - (1) The occurrence of any of the following events during the Term shall constitute an "Event of Default" for purposes of this Lease:
 - (A) Tenant fails to pay any Rent or Additional Rent when due and such failure continues for ten (10) days after written notice to Tenant from Landlord of non-receipt of such Rent or Additional Rent; provided that, Landlord shall not be required to give written notice of non-receipt more than two (2) times in any consecutive twelve (12) month period and any failures thereafter shall constitute an Event of Default if the payment is not made when due, without the necessity of Landlord giving any notice of non-receipt;
 - (B) Tenant fails to vacate the Property and cease all use of the Parking Garage and Tenant Spaces upon any early termination or expiration of the Term;
 - (C) Tenant fails to comply with any other term, provision, or covenant of this Lease, other than those matters set forth above in subsections (A) through (B), and does not cure the failure within thirty (30) days after written notice of the failure to Tenant; provided that, if such failure cannot reasonably be cured by Tenant within such 30-day period, Tenant will not be in default as long as Tenant commences the cure with such 30-day period and thereafter diligently pursues the cure to completion.
- (b) Landlord Remedies. Upon the occurrence of any Event of Default, Landlord shall have the option to pursue any one or more of the following remedies:
 - (1) Landlord may terminate this Lease and forthwith repossess the Property and be entitled to recover forthwith as damages a sum of money equal to the total of (i) the unpaid Rent earned at the time of termination, plus interest thereon at the Default Rate from the due date, (ii) the balance of the Base Rent for the remainder of the Term discounted to present value at a reasonable discount rate and (iii) any other sum of money and Damages owed by Tenant to Landlord.

- (2) Landlord may enter upon the Property, without being liable for prosecution or any claim for Damages for such entry, and do whatever Tenant is obligated to do under the terms of this Lease to correct the default. Tenant agrees to reimburse Landlord on demand for any expenses that Landlord may incur in effecting compliance with Tenant's obligations under this Lease in this manner, and Tenant further agrees that Landlord shall not be liable for any Damages resulting to Tenant from such action.
- (c) Remedies Cumulative. Landlord may, from time to time, resort to any or all of the rights and remedies available upon the occurrence of an Event of Default by Tenant, either by any provision of this Lease or by law or in equity, all of which rights are intended to be cumulative and not alternative. Any provision contained in this Lease as to certain rights and remedies is not to be interpreted as excluding any other or additional rights and remedies available to Landlord at law or in equity.
- (d) Waiver of Damages; Attorney Fees. Notwithstanding anything in this Lease to the contrary, neither Party shall have any liability to the other for indirect, incidental, consequential or special damages. Tenant shall look solely to the interest of Landlord in the Property for satisfaction of any claim against Landlord arising out of or related to the terms of this Lease and Tenant shall not seek to impose liability upon Landlord for satisfaction of any claim against Landlord. If any action shall be instituted by either Landlord or Tenant for the enforcement or interpretation of any of its rights or remedies in or under this Lease, either party may additionally seek and recover reasonable attorneys' fees and court costs as determined by the Court.
- (e) Landlord's Default. Landlord shall not be in default hereunder unless Landlord fails to perform the obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for performance, then Landlord shall not be in default if Landlord commences the cure within such thirty (30) day period and thereafter diligently pursues the cure to completion. In the case of a default by Landlord, Tenant's sole remedy shall be to cure the same and seek reimbursement from Landlord (and should Landlord fail to promptly reimburse Tenant, Tenant shall have the right to pursue an action at law against Landlord for monetary damages). Nothing herein contained shall be interpreted to mean that Tenant is excused from paying Base Rent, Additional Rent and all other monetary obligations due hereunder as a result of any default by Landlord.

ARTICLE 10. COVENANT OF QUIET ENJOYMENT.

- (a) Covenant of Quiet Enjoyment. Landlord represents and warrants throughout the Term, that upon payment of the Rent hereby reserved at the times and in the manner herein provided, and upon the observance and performance of each and every covenant, condition, restriction and stipulation by Tenant to be observed and performed, Tenant shall and may peaceably and quietly possess and enjoy the right to use the Tenant Spaces without any interruption from or by Landlord or any other Persons lawfully claiming by, through or under Landlord, save and except as expressly provided in this Lease.
- (b) Landlord's Parking Spaces. Notwithstanding the covenants of Landlord set forth in this **Section 10** or anything else to the contrary set forth in this Lease, Tenant acknowledges and agrees that it is only leasing hereunder the right to use those **two hundred four (204)** parking spaces in the Parking Garage in the locations identified as "Public Parking" on **Exhibit D** attached hereto (the "Tenant Spaces"). Any other spaces in the Parking Garage, including without limitation those other

two hundred and twelve (212) parking spaces identified as "Reserved Parking Residential" on *Exhibit D* attached hereto, shall be reserved for the exclusive use of Landlord (including, without limitation, parking for the adjacent multi-family property).

ARTICLE 11. SURRENDER OF PROPERTY UPON TERMINATION.

- (a) Surrender of Property. Upon any termination of this Lease under a right exercised by Landlord or the expiration of the Term, Tenant shall peaceably surrender and yield up possession of the Tenant Spaces to Landlord, in as good as condition and repair as existed as of the Commencement Date, subject to ordinary wear and tear.

ARTICLE 12. FORCE MAJEURE.

- (a) Relief from Performance. Except to the extent set forth in this Lease to the contrary, whenever and to the extent that either Party is bona fide unable to fulfill or is delayed or restricted in fulfilling any of its obligations under this Lease by an event of Force Majeure, such party shall be relieved from the fulfillment of the part of its obligations affected by Force Majeure for the period of the delay caused by such Force Majeure, and the period for the performance of such obligation, including any applicable dates under this Lease, provided that the Party so delayed shall forthwith notify the other after becoming aware of the commencement of any event which is the cause of Force Majeure and the steps proposed to be taken to overcome the event which is the cause of Force Majeure.

ARTICLE 13. NOTICES.

- (a) Addresses for Notices. Whenever in this Lease, it is required or permitted that notice or demand be given or served by either Party to or on the other, such notice or demand shall be in writing and shall be validly given or sufficiently communicated and shall be deemed to be received if delivered (i) by hand, (ii) prepaid overnight courier, or (iii) forwarded by electronic mail transmission; provided in the case of delivery by the means set forth in clause (iii) of this **Section 13**, a copy of such transmittal is delivered the next Business Day after transmission by one of the means set forth in clause (i) or clause (ii) of this **Section 13**, to the Parties' respective addresses as follows:

To Landlord: Enclave Roanoke City Centre, LP
3110 W. Southlake Blvd., Suite 120
Southlake, Texas 76092
Attn: Kenneth W. Fambro, II
Telephone: (817) 742-1851 ext 14
E-mail: kfambro@integratedreg.com

With a copy to: Mellina & Larson, P.C.
1128 Fairmount Avenue
Fort Worth, Texas 76104
Attn: Joel A. Eckhardt
Telephone: (817) 335-1200 ext. 9
E-mail: jeckhardt@mellinalarson.com

To Tenant: City of Roanoke, Texas
108 S. Oak Street
Roanoke, Texas 76262
Attn: Scott Campbell, City Manager

Telephone: (817) 491-2411
E-mail: scampbell@roanoketexas.com

With a copy to: Jeff Moore
Brown & Hofmeister, LLP
740 E. Campbell, Suite 800
Richardson, Texas 75081
Telephone: 214-747-6109
E-mail: jmoore@bhlaw.net

- (b) Such addresses may be changed from time to time by either Party giving notice as above provided. If any question arises as to whether any notice was communicated by one Party to the other, a notice shall be deemed to have been effectively communicated or given on the day delivered, delivery was rejected or sent by electronic transmission, as the case may be.

ARTICLE 14. CONDEMNATION AND CASUALTY.

- (a) Condemnation. If there is Taking of all or any portion of the Property, the Term shall cease and terminate on the date of the Taking as fully and completely as if such date were the originally stated date for expiration of the Term. Landlord shall receive the entire Award from any Taking, and Tenant shall have no claim to that Award or for the value to Landlord of any unexpired term of this Lease.
- (b) Casualty. If the Parking Garage, or any structures or Improvements on the Property, should be damaged or destroyed by fire, tornado, or other casualty, Tenant shall give immediate written notice of the damage or destruction to Landlord, including a description of the damage and, as far as known to Tenant, the cause of the damage. Landlord shall proceed immediately to rebuild or repair the Parking Garage to substantially the condition in which it existed upon commencement of the Term; provided that the costs of such restoration not covered by insurance will be split evenly between Landlord and Tenant. Tenant shall pay its share of such costs promptly upon receipt of invoice thereof from Landlord.

ARTICLE 15. GENERAL.

- (a) Agency. The Parties specifically agree that nothing in this Lease shall be construed to establish any partnership, joint venture or relationship of agent and principal as between Landlord and Tenant.
- (b) Headings. Any note appearing as a heading in this Lease has been so inserted for convenience of reference only and of itself cannot define, limit or expand the scope or meaning of the Lease or any of its provisions.
- (c) Inurement. This Lease and everything herein contained shall inure to the benefit of and be binding upon the successors and assigns of Tenant and Landlord, as the case may be, and nothing herein shall restrict the ability of Landlord to transfer or assign its interests herein.
- (d) Provisions Separately Valid. If any covenant, obligation, agreement, term or condition of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such covenant, obligation, agreement, term or condition to Persons or circumstances other than those in respect of which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation,

agreement, term and condition of this Lease shall be separately valid and enforceable to the fullest extent permitted by Applicable Law.

- (e) Waiver Negated. The waiver or acquiescence by either Party of any breach of any covenant, term or condition of this Lease shall not be deemed to be a waiver of the covenant, term or condition or any subsequent or other breach of any covenant, term or condition of this Lease.
- (f) Subordination and Attornment. Tenant accepts this lease subject to any deeds of trust, security interests, or mortgages that might now or later constitute a lien upon the Property. In connection with any mortgages or deeds of trust creating a lien upon Landlord's fee interest in the Property, Tenant shall execute and deliver to Landlord, within twenty (20) days after written request, any reasonable instrument that is required by any mortgagee ("Mortgagee") for the purpose of subjecting and subordinating this Lease to the lien of any such mortgage or deed of trust, provided that the lienholder agrees for itself, its successors and assigns, and any purchaser at foreclosure, in such instrument that: (i) Tenant's peaceful possession of the Tenant Spaces will not be disturbed so long as no uncured Event of Default exists under this Lease; (ii) this Lease shall remain in full force and effect during the Term as long as no uncured Event of Default exists under the Lease; (iii) subject to the foregoing, this Lease will not be terminated by any foreclosure or deed-in-lieu of foreclosure. Such instrument may include provisions requiring Tenant to agree that: (i) upon the sale, transfer or foreclosure of Landlord's fee interest in the Property that the Lease will remain in full force and that Tenant will attorn to the Mortgagee pursuant to the terms of this Lease, (ii) upon any default of this Lease by Landlord or any action or omission by Landlord or any third party that would give Tenant the right to terminate this Lease immediately, or after the passage of time, Tenant shall provide notice to the Mortgagee and provide the Mortgagee an opportunity to cure such default, (iii) the Mortgagee shall not be liable for any previous act or omission of Landlord.
- (g) Certificate by Tenant. Within twenty (20) days after any request therefor by Landlord, Tenant shall in each instance execute and deliver, in a form to be supplied by Landlord, a status statement to Landlord or to any assignee, Mortgagee, purchaser or any other Person designated by Landlord, stating (if such is the case):
 - (1) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements), and that this Lease constitutes the whole of the legal relationships between Landlord and Tenant;
 - (2) whether or not there are any existing claims or defaults either by Tenant or Landlord under this Lease with respect to which a notice of default has been served, and specifying the nature and extent thereof;
 - (3) whether or not there are any set-offs, defenses or counterclaims against enforcement of the obligations to be performed by Tenant under this Lease; and
 - (4) such other matters relating to this Lease as Landlord may reasonably request.

Tenant's failure to deliver the statement within twenty (20) days shall be conclusive upon Tenant that (i) this Lease is in full force and effect without modification except as may be represented by Landlord, (ii) there are no claims or defaults with respect to which a notice of default has been served, (iii) there are no set-offs, defenses or counterclaims against enforcement of the obligations to be performed by Tenant under this Lease, and (iv) any other matters relating to this Lease as are designated by Landlord acting reasonably are true.

- (h) Intentionally Deleted.
- (i) Governing Law and Venue. This Lease shall be governed by and construed in accordance with the laws of the State. The Parties agree to venue of any action arising under or in connection with this Lease in courts of the Denton County, Texas.
- (j) Construed Covenants. Each obligation or agreement of Landlord or of Tenant contained in this Lease, even though not expressed as a covenant, is to be construed as a covenant as though the words imparting such covenant were used in each separate provision hereof.
- (k) Independent Covenants. Each covenant contained in this Lease is considered for all purposes to be a separate and independent covenant, and a breach by either Landlord or Tenant will not discharge the other from its obligation to perform each of its covenants.
- (l) Time of the Essence. Time shall be strictly of the essence hereof.
- (m) Survival of Covenants. All obligations of Tenant and Landlord which by their nature require all or part of their performance or fulfillment after the expiration or termination of this Lease shall (whether specifically provided for in this Lease or not) survive the expiration or early termination of this Lease.
- (n) Entire Agreement. This Lease shall be deemed to constitute the entire agreement between Landlord and Tenant hereto with respect to the subject matter hereof and shall supersede all previous negotiations, representations and documents in relation hereto made by any Party.
- (o) Counterparts. This Lease may be executed and delivered in counterparts and such counterparts, taken together, shall constitute one and the same instrument.
- (p) Execution and Delivery by Electronic Transmission. This Lease may be executed and delivered by electronic transmission of an Adobe .pdf file. The Party executing and delivering this Lease by electronic transmission shall provide the other Party with the original document as soon as may be convenient following such execution and delivery.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date.

TENANT:

CITY OF ROANOKE, TEXAS

a Texas home-rule municipality

By: _____

Scott Campbell, City Manager

ATTEST:

April S. Hill, City Secretary



APPROVED AS TO FORM:

Jeff Moore, City Attorney

LANDLORD:

ENCLAVE-ROANOKE CITY CENTRE, LP, a Texas limited partnership

By: Enclave-Roanoke GenPar, LLC, a Texas limited liability company, its general partner

By: _____

Rick Simmons, Manager

Exhibit A

[Legal Description and/or Depiction of the Property]

LEGAL DESCRIPTION 0.634 ACRES

Being all that certain lot, tract or parcel of land situated in the D. O. Hoover Survey, Abstract Number 603, City of Roanoke, Denton County, Texas, and being part of that certain called 36-1/5 acre tract of land described in deed to Viola Coleman recorded in Volume 268, Page 73 of the Deed Records of Denton County, Texas, and being part of that certain called 23.049 acre tract of land described in deed to Peterson/Coleman Family Partnership recorded in Instrument Number 2007-19269 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING at a "+" found on the easterly line of South Oak Street at the most easterly corner of that certain called 0.2688 acre tract of land described in an agreement in favor of the City of Roanoke described in Instrument Number 2010-54292 of the Real Property Records of Denton County, Texas, and the most southerly corner of that certain called 0.3400 acre tract of land described in deed to the City of Roanoke recorded in Instrument Number 2010-54294 of the Real Property Records of Denton County, Texas, and being on the north line of said 23.049 acre tract and the south line of that certain called 2.958 acre tract of land described in deed to Roy Dale Coleman and John A. Coleman, Jr. recorded in Volume 927, Page 661 of the Deed Records of Denton County, Texas;

THENCE S 65°47'50" E, 190.50 feet with the north line of said 23.049 acre tract and the south line of said 2.958 acre tract, from which a 5/8" capped rebar found (illegible) at the southeast corner of said 2.958 acre tract bears S 65°47'50" E, 479.43 feet;

THENCE S 24°12'10" W, 54.00 feet to the **POINT OF BEGINNING**;

THENCE S 65°47'50" E, 221.00 feet;

THENCE S 24°12'10" W, 125.00 feet;

THENCE N 65°47'50" W, 221.00 feet

THENCE N 24°12'10" E, 125.00 feet to the **POINT OF BEGINNING** and containing approximately 0.634 acres or 27,625 square feet of land.

Bearings based on Texas Coordinate System, North Central Zone (4202), NAD '83.

Field observations performed during the month of February 2016.



Exhibit B

[Defined Terms]

Certain terms in the Lease have been given specially defined meanings. The defined terms may be used in the singular or plural or in varying tenses or forms but such variations shall not affect their defined meaning so long as they are written with initial capital letters. The terms defined in this ***Exhibit B*** for all purposes of this Lease shall have the following meanings unless the context expressly or by necessary implication otherwise requires:

Additional Rent. The words “Additional Rent” means any and all sums of money or charges, if any required to be paid to Landlord by Tenant pursuant to this Lease except Base Rent, whether or not designated as “Additional Rent”.

Applicable Law(s). The words “Applicable Law” or “Applicable Laws” mean all federal, State or municipal laws, statutes, ordinances, governmental rules or regulations, orders and decrees, now in force or which may hereafter be enacted or promulgated by any governing authority having jurisdiction over the Property, specifically including, without limitation, zoning, building, environmental and fire laws, ordinances, codes, regulations, rules and orders and the Americans with Disabilities Act, to the extent the same are applicable to the Property or the use or operation thereof.

Award. The word “Award” means the condemnation award and/or proceeds of a Taking, including any interest earned on the Award.

Business Day. The words “Business Day” mean any day which is not a Saturday, Sunday or a governmental holiday observed in the State.

Chapter 380 Agreement. The words “Chapter 380 Agreement” mean the Chapter 380 Agreement, authorized pursuant to Chapter 380 of the Texas Local Government Code entered into by and between the Developer and Tenant and the EDC and the CDC on or about December 22, 2016.

Claims. The word “Claims” mean any claims, losses, suits, proceedings, actions, causes of action, demands, judgments, executions, liabilities and responsibilities of any nature for any Damages or for any Injuries.

Commencement Date. The words “Commencement Date” mean the first (1st) day of the month following the month in which Landlord completes construction of the Parking Garage in accordance with the terms of the Chapter 380 Agreement by and between Developer and Tenant (as such rights and obligations of Developer therein with respect to the Parking Garage are assigned to Landlord pursuant to a separate agreement between Developer and Landlord).

Costs. The word “Costs” mean all expenses, losses, charges and payments relating to an event and including any professional, consultant, and reasonable attorneys’ fees of professionals and consultants retained by a Party.

Damages. The word “Damages” mean and include any damages but shall not mean, include or extend to indirect, incidental, special, exemplary or consequential damage.

Default Rate. The words “Default Rate” mean the lesser of (a) eighteen percent (18%), or (b) the maximum rate allowed by Applicable Law, per annum.

Effective Date. The words “Effective Date” mean the date of the latter to execute this Lease by and between the Landlord and Tenant, to be filled in at the top of Page 1 by the last executing Party.

Emergency. The word “Emergency” means an event posing imminent threat of injury to Persons or material damage to property.

Environmental Laws. The words "Environmental Laws" means any and all Applicable Laws in effect during the Term, or any part of the Term hereof, pertaining to environmental regulation, or the use, processing, storage, housing, disposal, generation or transportation of Hazardous Substances.

Force Majeure. The words “Force Majeure” mean (a) acts of God, (b) war, riot and other civil unrest, (c) governmental or quasi-governmental action or inaction, save and except lawful regulatory actions of the City of Roanoke, (d) material and adverse site conditions that are reasonably unknown by Tenant as of the date of Effective Date, and (e) any other event beyond the reasonable control of either party; provided, however, that no Force Majeure event shall excuse the payment of any Rent due.

Hazardous Substances. The words "Hazardous Substances" shall mean and include all hazardous or toxic substances, wastes or materials, any pollutants or contaminants (including, but not limited to, petroleum and certain chemical products, asbestos and materials which include hazardous constituents), or any other similar substances, which are defined in, included under, or regulated by any Environmental Law.

Improvements. The word “Improvements” mean and include the Parking Garage and all physical improvements thereto, or any repairs and restoration of existing Improvements, together with all fixed equipment (excluding removable trade fixtures), and alterations from time to time made, constructed, erected, or installed in, on, or to the Parking Garage.

Injury. The word “Injury” means any personal injury or bodily injury, or both, including death resulting therefrom, and whether the injury occurs before or after the end of the Term or after any period of time in which when Tenant is occupying the Property.

Landlord. The word “Landlord” means Enclave Roanoke City Centre, LP, a Texas limited partnership, and its permitted successors and assigns, whose address for the purposes of this Lease is 3110 W. Southlake Blvd. Suite 120, Southlake, Texas 76092.

Lease. The word “Lease” means this lease agreement, including any schedules and attachments hereto, and any written amendments thereto as may be made from time to time.

Parking Garage. The words “Parking Garage” mean the design, construction, and installation of a minimum 412 parking space parking garage constructed on the Property, as depicted in *Exhibit C* of this Lease, to be constructed in accordance with the terms of the Chapter 380 Agreement.

Parties. The word “Parties” mean the Landlord and Tenant and “Party” means either Landlord or Tenant, as the context shall require.

Person. The word “Person” means any individual, company, corporation, partnership, limited liability company, association, firm, trust, sole proprietorship, or other entity or organization, including a government or government agency, authority or entity or political subdivision or agency or instrumentality thereof, however designated or constituted.

Permitted Use. The words “Permitted Use” mean the use of the Tenant Spaces in the Parking Garage as described in Section 1(d) of the Lease.

Property. The word "Property" means an approximately 0.634 acre tract of land located in the D.O. Hoover Survey, Abstract No. 603, City of Roanoke, Denton County, Texas, as more particularly described and/or depicted in *Exhibit A* of this Lease, which is attached hereto and incorporated herein for all purposes.

Rent. The word "Rent" means all Base Rent and Additional Rent payable pursuant to this Lease.

State. The word "State" means the State of Texas.

Taking. The word "Taking" means a taking during the Term of all or any part of the Property, or any interest therein or right accruing thereto including any right of access, by or on behalf of any approving authority or by any entity granted the authority to take property through the exercise of a power of eminent domain granted by statute, any agreement that conveys to the condemning authority all or any part of the Property as the result of, or in lieu of, or in anticipation of the exercise of a right of condemnation or eminent domain, or a change of grade affecting the Property. The date of the Taking shall be deemed to be the date that title vests in the condemning authority or its designee.

Taxes. The word "Taxes" mean all real property taxes, capital levies, rates, business taxes, license fees, excise, room, hotel, occupancy, gross receipts, entertainment, admission, tourists, sales and use taxes or similar taxes, impositions, levies, charges or assessments, including, without limitation, any fine, penalty, interest and cost relating thereto. Taxes due not include any income taxes or personal property taxes payable by Landlord.

Tenant. The word "Tenant" means the City of Roanoke, Texas, a Texas home-rule municipality, whose address for the purposes of this Lease is 108 S. Oak Street, Roanoke, Texas 76262.

Utilities. The word "Utilities" means the sanitary sewers, storm sewers, water mains, hydrants, and electrical, telephone, communication, cable TV and natural gas lines.

Exhibit C

[Depiction of the Parking Garage - inserted below]

Exhibit D

[Depiction of Parking Spaces – inserted below]

This exhibit should detail the 204 general public parking spaces for use by the City (Tenant Spaces), and the 212 Landlord/multifamily parking spaces.