

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



Carl E. Gierisch, Jr., Mayor

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

ROANOKE CITY COUNCIL AGENDA REGULAR MEETING

**JANUARY 10, 2023
7:00 PM
500 S. OAK STREET
ROANOKE, TX 76262**

A. CALL CITY COUNCIL TO ORDER

Invocation and Pledge of Allegiance

B. ANNOUNCEMENTS

1. Mayor Gierisch will swear in Police Officers Michael MacLean, Kenneth Richardson, and Manual Sullivan to the Roanoke Police Department.

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 December 13, 2022.



AGENDA FOR THE MEETING
OF THE ROANOKE CITY COUNCIL

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2. Authorize the Interim City Manager to enter into an agreement between the City of Roanoke and DFW StratComm Strategic Communications for Communications Audit and Communication Consultant Services.
3. Consider approval of an Interlocal Agreement between the City of Roanoke and Denton County for the use of the Denton County Radio Communications System.
4. Consider approving the contract for Construction Manager at Risk (CMAR) for **Sedalco Construction Services**.

E. **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.

F. **ADJOURNMENT**

CERTIFICATION

I certify that the above notice was posted at City Hall, 500 South Oak Street, Roanoke, Texas, on Thursday, January 5, 2023, by 5:00 pm, in accordance with Chapter 551, Texas Government Code.



AGENDA FOR THE MEETING
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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: City Hall Guests



AGENDA ITEM

TO: Honorable Mayor and City Council

SUBJECT: Swearing in Police Officers Michael MacLean, Kenneth Richardson, and Manual Sullivan to the Roanoke Police Department.

MEETING DATE: January 10, 2023

DEPARTMENT: Police

ITEM SUMMARY:

Mayor Gierisch will swear in Police Officers Michael MacLean, Kenneth Richardson, and Manual Sullivan to the Roanoke Police Department.

INFORMATION:

STAFF RECOMMENDATION:

SPECIAL CONSIDERATION:

FINANCIAL CONSIDERATION:

ATTACHMENTS:

None



CITY COUNCIL AGENDA ITEM

TO: Mayor and City Council

SUBJECT: 12/13/2022 - CC Minutes

MEETING DATE: January 10, 2023

DEPARTMENT: City Secretary

ITEM SUMMARY:

Consider approval of the minutes from the regular City Council meeting held on December 13, 2022.

INFORMATION:

STAFF RECOMMENDATION:

SPECIAL CONSIDERATION:

FINANCIAL CONSIDERATION:

ATTACHMENTS:

1. CCMin 12-13-2022

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



Carl E. Gierisch, Jr., Mayor

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

**MINUTES
ROANOKE CITY COUNCIL
REGULAR MEETING
DECEMBER 13, 2022
CITY HALL COUNCIL CHAMBERS
500 S. OAK STREET
7:00 P.M.**

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

DEPT. STAFF: Chief of Police Jeriahme Miller, Chief Financial Officer Vicki Rodriguez, Public Works Director Shawn Wilkinson, Development Services Administrator J.R. Hames, and Library Manager Kelly Holt.

ABSENT: Fire Chief Chris Addington.

A. CALL CITY COUNCIL TO ORDER

City Council called to order at 7:00 p.m.
Invocation and Pledge of Allegiance given by Mayor Gierisch.

B. ANNOUNCEMENTS

Interim City Manager Cody Petree thanked staff and volunteers for all of their hard work and making the Christmas Event such a success.

Mayor Gierisch also thanked everyone for creating such a beautiful Christmas Event and Veteran's Parade.

C. PUBLIC INPUT

No one wished to speak.

D. PRESENTATION

1. Mayor Gierisch presented the following Employee Recognitions for 2022:



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

**December 13, 2022
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Service Recognition

<u>5 years:</u>	Corey Bosworth, IT Connor Brown, Police Ryan Estanislao, Parks & Recreation Clint Eustace, Police Jonathan Robinson, Police
<u>10 years:</u>	Jamie Collier, Police Tanner Mahan, Police
<u>15 years:</u>	Thomas Brocato, Library Dennis Frank, Parks & Recreation
<u>20 years:</u>	Jason Allbright, Public Works Jason Brown, Fire

2022 Core Value Keepers & Employee of the Year

Empower for 2022:	Greg Davis, Public Works
Creativity for 2022:	Cody Mulcahy, Public Works
Dedication for 2022:	Jennifer Etle, Police
Connection for 2022:	Yolanda Mendoza, Municipal Court
Service for 2022:	Tim Stokes, IT
Employee of the Year:	Diane Rice, Marketing & Events

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 November 8, 2022.
2. Consider approval of an Interlocal Agreement between the City of Roanoke and Denton County for Fire Protection Services.
3. Consider approval of an Interlocal Agreement between the City of Roanoke and Denton County for Ambulance Services.



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

**December 13, 2022
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4. Consider approval of an Interlocal Agreement between the City of Roanoke and the City of Watauga for Vehicle Maintenance Services.
5. Consider approval of 1st Choice Air Solutions authorizing the purchase of apparatus bay heaters for Roanoke Fire Department Station One.
6. Consider approval of Resolution No. 2022-118R authorizing the renewal of the City of Roanoke's participation in the state's cooperative purchasing program, Texas SmartBuy.
7. Consider approval of a Professional Service Agreement between the City of Roanoke and Birkhoff, Hendricks & Carter for the design of a 2.0 million gallon ground storage reservoir.
8. Consider approval of an Interlocal Agreement between the City of Roanoke and Frisco Independent School District for the purchase of goods and services.
9. Consider approval of a Professional Services Agreement between the City of Roanoke and Focused Advocacy LLC for regulatory and legislative consulting services.
10. Consider approval of a Memorandum of Understanding (MOU) between the City of Roanoke and Benbrook Public Library for courier service.

Motion made by Holly Gray-Moore second by David Thompson to approve Consent Agenda Items 1 through 10.

Motion carried unanimously.

F. NEW BUSINESS

1. Public hearing to consider amending the Comprehensive Zoning Ordinance, by granting a change in zoning from Oak Street Corridor Zoning District – Civic Mixed Use Zone to Oak Street Corridor Zoning District – Civic Mixed Use Zone – Specific Use Permit (Oak Street Corridor Zoning District – Civic/Mixed Use Zone – SUP) to allow the sale of alcoholic beverages at Lot 1, Block D of the Roanoke City Center Brownstones Addition, an addition located within the City of Roanoke, Denton County, Texas, and having a street address of 320 S. Oak Street, Suite No. 120, Roanoke, Texas. (Ordinance No. 2022-135 / SUP 2022-08)

Public hearing stated at 7:15 p.m

No one wished to speak.

Public hearing ended at 7:15 p.m



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

**December 13, 2022
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2. Motion made by Holly Gray-Moore second by Hogan Page to approve Ordinance No. 2022-135 a Specific Use Permit (SUP 2022-08) granting a change in zoning from Oak Street Corridor Zoning District – Civic Mixed Use Zone to Oak Street Corridor Zoning District – Civic Mixed Use Zone - Specific Use Permit (Oak Street Corridor Zoning District – Civic/Mixed Use Zone - SUP) to allow the sale of alcoholic beverages on Lot 1, Block D of the Roanoke City Center Brownstones Addition, an addition to the City of Roanoke, Denton County, Texas, and having a street address of 320 S. Oak Street Suite No. 120, Roanoke, Texas.

Motion carried unanimously.

3. Motion made by Holly Gray-Moore second by David Thompson to approve a site plan request (SP 2022-13) from Austin Haynes for an automotive oil change shop on an approximate 0.366 acre tract of land located in the Homestead Retail Addition, Lot 1BR-2A, Block 6, and having an address of 1211 N Hwy 377, Roanoke, Denton County, Texas. The property is generally located on the west side of N US Hwy 377 between Hwy 114 and Marshall Creek Rd.

Motion carried unanimously.

4. Motion made by Holly Gray-Moore second by Bryan Moyers to approve a site plan request (SP 2022-14) from Craig Jacobson with RGA Architects on an approximate 1.7 acre tract of land located in the Henrietta Creek Business Park Addition, Lot 7, Block 1, Roanoke, Denton County, Texas. The property is generally located on the north side of Henrietta Creek Rd., approximately 1/4 mile west of S US Hwy 377.

Motion carried 6-0-1. Councilmember Hogan Page abstained, due to a conflict of interest.

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 CONVENED INTO CLOSED SESSION AT 7:20 P.M.

Section 551.074

To deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee: Municipal Court Judge and Municipal Court Associate Judges.

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



MINUTES FOR THE REGULAR MEETING
OF THE ROANOKE CITY COUNCIL

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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:

CITY COUNCIL RECONVENED INTO REGULAR SESSION AT 7:57 P.M.

1. **Section 551.074 of the TEXAS GOVERNMENT CODE** To deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee: Municipal Court Judge and Municipal Court Associate Judges.

Motion made by David Thompson second by Holly Gray-Moore to approve Municipal Court Judge Compensation increases on the terms as discussed in executive session.

Motion carried unanimously.

2. **Section 551.087 of the TEXAS GOVERNMENT CODE** 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.

No action taken.

H. ADJOURNMENT

Motion made by Holly Gray-Moore second by Brian Darby to adjourn the meeting at 7:58 p.m.

Motion carried unanimously.

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

April S. Hill, City Secretary



AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Authorize Interim City Manager to enter agreement with DFW StratComm Communications

MEETING DATE: January 10, 2023

DEPARTMENT: Administration

ITEM SUMMARY:

Authorize Interim City Manager to enter agreement with DFW StratComm Communications

INFORMATION:

DFW StratComm Strategic Communications offers several services that would benefit the city in the area of community engagement, social media, special publications, marketing plans, and emergency and crisis planning. Their team is made up of experienced local government professionals with each having 10-40 years' experience. The City would like to start by having them complete a communication audit. We would also like authorization to utilize their communication consulting services on an a la carte basis to assist us with public information services. Once the communication audit has been completed, we will have a better idea of our future needs. We would eventually come back for authorization to complete the Strategic Communication Plan and the Crisis Communication Plan.

STAFF RECOMMENDATION:

Staff recommends approval

SPECIAL CONSIDERATION:

n/a

FINANCIAL CONSIDERATION:

n/a

ATTACHMENTS:

1. DFW StratComm Brochure



AGENDA ITEM

2. DFW StratComm Strategic Communications - Roanoke Proposal DEC 2022

DFW STRATCOMM

STRATEGIC COMMUNICATIONS

**Experienced Local Government
Communication Professionals**

ON YOUR TEAM



texaspio.com | 214-638-8060

DFW STRATCOMM

STRATEGIC COMMUNICATIONS

WHO WE ARE



SHARON LOGAN, CPC

Cheryl A. Soward Communicator of Distinction

Sharon@texaspio.com

Strategic Communications Consultant Sharon Logan has more than 30 years experience in local government having served as the City of Coppell, Texas' first public information officer, after service in Arlington, Grand Prairie and Hobbs, New Mexico. Sharon is a graduate of the University of Texas in Arlington and of the first graduating class of the Certified Public Communicator Program at Texas Christian University. Sharon has extensive experience in telling a government agency's story, proficient in web and social media content, video creation and programming, promotional work and more. She is a past president of the the Texas Association of Municipal Information Officers. That organization conferred upon her the Cheryl A. Soward Communicator of Distinction honor in 2012.



BELINDA WILLIS, CPC

Cheryl A. Soward Communicator of Distinction

Belinda@texaspio.com

Belinda Willis is an award-winning strategic communications and marketing professional specializing in content creation for government, business and industry. Belinda served for more than 20 years as the Director of Communications & Marketing for the City of Mansfield, Texas, where she was responsible for generating content for the City's various channels including social media, website, print and marketing. Belinda's success as a communicator is founded on more than 20 years as an award-winning journalist and editor in Dallas-Fort Worth. She is a past president of the Texas Association of Municipal Information Officers and is also a board member of the City-County Communications & Marketing Association. Belinda is one of the founders of the Certified Public Communicator program at Texas Christian University and serves on its advisory board. In 2019, she was the recipient of the Cheryl A. Soward Communicator of Distinction Award from TAMIO.



BETSY DECK, ABC

Betsy@texaspio.com

Betsy Deck is a strategic public communicator and Accredited Business Communicator with experience in community affairs and environmental sustainability. She spent 20 years in local government with the cities of Euless and Southlake, primarily focused on leading complex communications and outreach initiatives to culturally diverse populations. Betsy built trust with employees, residents and businesses through responsive communication and community engagement, while also advocating for environmental initiatives through solid waste, water quality and water reclamation projects. She also brings experience in website and social media content management, public education campaigns, video production and economic development marketing, with 80 hours of training with the Economic Development Institute.

DFW STRATCOMM

STRATEGIC COMMUNICATIONS

WHO WE ARE

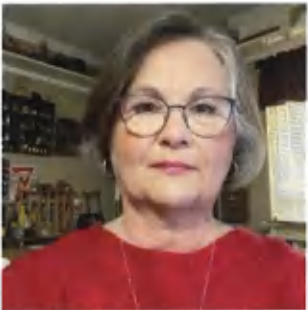


WILL HAMPTON

Cheryl A. Soward Communicator of Distinction

Will@texaspio.com

Will Hampton understands local government communication challenges. He successfully combined his multi-media storytelling skills with effective citizen engagement practices for nearly 24 years with the City of Round Rock, Texas. Residents there regularly gave his efforts high marks in citizen surveys, and his team won more than 100 awards from national and state associations. He served on the board of directors of the Texas Municipal League, City-County Communications and Marketing Association (3CMA) and Texas Association of Municipal Information Officers (TAMIO). He was recognized as the 2018 Communicator of the Year by 3CMA, and the 2021 Cheryl A. Soward Communicator of Distinction by TAMIO.



JJ JONES, LCEM

JJ.Jones@pagd.us

JJ Jones is a seasoned Certified Emergency Management professional with 40 years of experience in the emergency management arena, from first responder to emergency manager. She has experience in writing emergency plans, conducting drills/exercises, training, and responding to major disasters, including a presidential declared disaster. She brings the aspect of actual response experience to realistic emergency planning. Her experience includes, paramedic, City of Fort Worth OEM, FEMA, special events and medical community emergency planning and response, i.e., 2000 Tornado, Wedgwood Church Shooting, Hurricanes, Ebola, and COVID-19.



KEVIN SLAYTER

Kevin@dfwvideo.com

A veteran and Telly-award winning video producer, Kevin Slayter has 35 years and thousands of hours of video production work to his credit, including award-winning programs at the regional, state and national levels. His expertise includes pre-production, budgets, video and digital film production, audio production, editing, graphics and after effects. Specific municipal projects for the DFW Area cities of Carrollton, Coppell and Farmers Branch include productions like State of the City, event promotion and highlights, budget explanatory videos and more. In addition, he has worked with CEOs and marketing teams from Verizon, Saber, Travelocity in both internal and external communications.



RACHAEL JOHNSON, CPC

info@texaspio.com

An award-winning graphic designer, marketing professional and brand manager, with more than a decade of local government experience, Rachael Johnson consistently produces creative and dynamic graphics for digital and print. From simple social media graphics to complicated infographics, Rachael can engage your audience with stunning visuals to further tell your story. Rachael holds degrees from the University of Texas at Dallas and the University of Oklahoma and is a graduate of the Certified Public Communicator program at Texas Christian University. Her work has been recognized by state and national peers since 2008. of the Cheryl A. Soward Communicator of Distinction Award from TAMIO.

DFW STRATCOMM

STRATEGIC COMMUNICATIONS

SERVICES



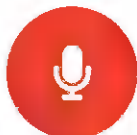
STRATEGIC PLANNING

Communication Plans | Marketing Plans
Content Planning | Social Media Planning
Emergency & Crisis Planning



VIDEO PRODUCTION

Conceptualizing | Script Writing
Coordination | Shooting | Editing



COMMUNITY ENGAGEMENT

E-Newsletters | Print Newsletters
Copywriting | Mailings | Targeted
Social Media | Annual Reports
Special Publications



SPECIAL PROJECTS

Communication Audits
Needs Assessments
Bond Election Education



GRAPHIC DESIGN

Logo & Branding Development
Infographics | Branding & Style Guides
Slide Deck Templates | Business Cards
Brochures | Post Cards



TRAINING

Media 101
On Camera Interview Training
for Staff and Elected Officials
Crisis Communications
Tabletop Exercises

December 14, 2022

Ms. Vicki Rodriguez
Chief Financial Officer
City of Roanoke
500 S. Oak St.
Roanoke, TX 76262

Vicki,

It was great to sit down with you and Cody to discuss your communication needs. We greatly appreciate your time. Please find the attached documents providing **Budgetary Quotes for a Communications Audit, a Strategic Communications Plan and a Crisis Communications Plan**, all specifically designed for your city's needs. We have also included additional options and training packages for your review.

DFW StratComm suggests that the first proposal to address is the Communications Audit. Performing a communications audit will provide management with the current state of the communication efforts and help to identify areas needing attention and steps needed to move forward.

The second project, the Strategic Communications Plan, will address the opportunities head-on and provide a guided path forward that aligns with your City Mission and Vision. Finally, the Crisis Communications Plan will specifically address the procedures necessary to respond to a crisis situation, including templated messages to help expedite public information distribution.

DFW Strategic Communications employs a full staff of professionals including seasoned public information officers, graphic artists and videographers who have expertise in municipal communication efforts. Should you have any questions and would like to discuss this proposal further, please do not hesitate to contact me. Thank you for this opportunity, and the team looks forward to your response.

In appreciation,



Betsy Deck, ABC
Sr. Strategic Communications Consultant
DFW Strategic Communications

Comprehensive Communications Audit

A comprehensive look at existing communication processes and procedures, content and platforms, to determine if efforts are effective and in line with staff/council/city goals.

- Kickoff and discovery meeting with Roanoke communication personnel – In person or via Zoom.
- Review current communication channels and assets.
 - Request list of communication delivery systems.
 - Request statistics for communication channels used by the city and its departments including website and social media analytics, survey data, etc.
- Review current communication and marketing plans (including department plans) and processes in place.
- Analyze resource availability including technology, human and information.
- Analyze budget resources.

Projected Hours for City of Roanoke Communications Audit

Minimum Hours: 30 hours

Maximum Hours Not to Exceed: 46 hours

Projected Cost at \$150 per hour

Minimum: \$ 4,500

Maximum: \$ 6,900

Projected Timeframe for Project completion: 8 weeks

Deliverables to include:

- Comprehensive Communications Audit Report in PDF format.

Strategic Communications Plan

A strategic plan designed to address and meet communication goals based on a comprehensive communications audit of existing efforts and platforms.

- Kickoff and discovery meeting with Roanoke communication personnel.
- Interview key personnel (as defined by staff) to determine:
 - Priorities for messaging/communications,
 - Specific initiatives and/or projects the city is undertaking in the next five years,
 - Organizational culture,
 - Maximum number of interviews 12.
- Collect and review employee communication processes within the organization
- Develop Strategic Communication Plan.
 - Identify short and long-term goals.
 - Identify target markets and demographics.
 - Develop tactics and measurement.

Projected Hours for City of Roanoke Strategic Communications Plan:

Minimum Hours: 70 hours

Maximum Hours Not to Exceed: 110 hours

Projected Cost at \$150 per hour:

Minimum: \$ 10,500

Maximum: \$ 16,500

Projected Timeframe for Project completion: 8 weeks

Deliverables to include:

- Strategic Communications Plan document in editable format and PDF

Crisis Communications Plan

A comprehensive and versatile crisis communications plan designed to address a wide variety of needs and events.

- Kickoff meeting with Roanoke communication personnel – In person or via Zoom.
- Interview Fire and Police Departments regarding existing State OEM Annex I.
- Develop External and Internal procedures for implementing plan before/during/after event.
 - Define “crisis” and levels of interaction.
 - Define triggers that kick off an incident.
 - Define triggers that end an incident.
 - Develop protocol for implementing plan and stages, including post event debriefing.
- Develop templates for use by City communicators covering a wide range of events.
 - Develop delivery templates.
 - Develop message templates.
 - Develop strategy for addressing and the responses for questions that are “unanswerable.”

Projected Hours for City of Roanoke Crisis Communications Plan:

Minimum Hours: 52 hours

Maximum Hours Not to Exceed: 75 hours

Projected Cost at \$150 per hour:

Minimum: \$ 7,800

Maximum: \$ 11,250

Projected Timeframe for Project completion: 8 weeks

Deliverables to include:

- Crisis Communications Plan document in editable format and PDF
- Templates for delivery systems
- Pre-scripted messages for incident response and hypothetical/unanswerable questions
- Incident logs

Communications Consultant Package

DFW Strategic Communications will provide a dedicated communications consultant that will create news stories about Roanoke to post on the website and social media channels and a monthly eNewsletter. This is a package price based on an average number of monthly hours. Services will be billed at the end of each month. If there are months that require additional hours, an estimate of hours will be provided to you for approval in writing before any work is completed. The Dedicated Communications Consultant Package pricing is based upon five hours per week or 20 hours per month.

Month-to-month contract at \$150 an hour: \$3,000/month or \$36,000/year

12-month contract at \$125 an hour: \$2,500/month or \$30,000/year

The following a la carte services are available at \$150/hour, 3-hour minimum

Any of the services listed below can be packaged for monthly implementation

- Content planning for communication pieces in consultation with staff
- Monthly eNewsletter to be sent to existing customers
- Planning and execution of social media content calendar
- Employee website editor training
- Placement of news stories on website
- Graphic design services publications including annual budget, strategic plan, annual reports
- Video shoots consisting of planning, scripting, shooting and editing
- Photography sessions of the facility, staff and infrastructure to begin building an image library
- Assistance with media interactions

On-call Emergency Management/Crisis Media Relations services

Onsite or virtual EOC attendance, preparing and distributing public statements and media releases, coordinating press conferences and preparing City spokesperson(s) and elected officials for media interviews and/or press conferences.

On-call media assistance: one StratComm staff member at \$150/hour, 3-hour minimum

Onsite EOC presence: one StratComm team member at \$175/hour, 3-hour minimum

Virtual EOC attendance: one StratComm team member at \$150/hour, no minimum

Training

Media Relations Training with Staff or Elected Officials

Half-day Media Training Workshop with two onsite DFW StratComm instructors and one videographer to capture on-camera practice for students and establish a comfort level in front of a camera. One instructor and one videographer will be provided for this training.

**Projected Cost: \$1,500 for one 1/2-day training event/plus travel expenses per instructor
 \$3,000 for two, same day, 1/2-day training events/plus travel expenses**

DFW StratComm charges \$50/hour travel time plus expenses, per consultant above and beyond the minimum/maximum hours.

Tabletop Emergency Management Communications Scenario with City Personnel

Half-day tabletop Crisis Communications Workshop and tabletop exercise (stress test) to introduce crisis situational roles, emphasizing the necessity of inter-departmental communication efforts during and after an event, and how to handle communicating with the media during and after an event.

**Projected Cost: \$2,000 for one ½-day training event/plus travel expenses
 \$3,000 for two, same day, ½-day training events/plus travel expenses**

DFW StratComm charges \$50 hour travel time plus expenses, per consultant above and beyond the minimum/maximum hours.

Tabletop Crisis Exercise with elected officials and what role they play including interacting with the media during and after an event.

Half-day tabletop Crisis Communications Workshop and tabletop exercise (stress test) to introduce elected officials to their roles and how to handle.

**Projected Cost: \$1,500 for one ½-day training event/plus travel expenses
 \$3,000 for two, same day, ½-day training events/plus travel expenses**

DFW StratComm charges \$50/hour travel time plus expenses, per consultant above and beyond the minimum/maximum hours.



AGENDA ITEM

TO: Mayor and City Council

SUBJECT: ILA - Denton County Radio Communications System

MEETING DATE: January 10, 2023

DEPARTMENT: Fire

ITEM SUMMARY:

Consider approval of an Interlocal Agreement between the City of Roanoke and Denton County for the use of the Denton County Radio Communications System.

INFORMATION:

Renewal of the annual agreement between Denton County and the City of Roanoke for use of the Denton County Radio System. This affords the ability for us to use the communications towers and 800mhz system for communications with our dispatch and surrounding agencies.

STAFF RECOMMENDATION:

Staff recommends approval.

SPECIAL CONSIDERATION:

FINANCIAL CONSIDERATION:

With the addition of our dispatch and PD moving to 800mhz we will be required to move to Tier 3 from Tier 1 in previous years. The financial outlay for that is \$5,184 versus the \$3,456.

ATTACHMENTS:

1. 2022-23 Communications Contract WITH Worksheet-Invoice

INTER-LOCAL COOPERATION AGREEMENT BETWEEN DENTON COUNTY AND THE CITY OF ROANOKE FIRE DEPARTMENT FOR THE USE OF THE DENTON COUNTY RADIO COMMUNICATIONS SYSTEM

This Inter-Local Agreement (“Agreement”) is entered into by and between the County of Denton, Texas (“the County”) and the City of Roanoke, Texas, both entities being located in Denton County, Texas (collectively, the “Parties” or separately as a “Party”). The Parties execute this agreement as hereinafter provided, pursuant to the Texas Governmental Code, Chapter 791, known as the Inter-Local Cooperation Act:

WHEREAS, Denton County and Roanoke are political subdivisions within the State of Texas, each of which engages in the provision of governmental services for the benefit of its citizens; and

WHEREAS, the Inter-Local Cooperation Act, Texas Government Code, Chapter 791, as amended “the Act” provides authority for local governments of the State of Texas to enter into Inter-local agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, the County owns, operates, and maintains the radio-communications system, exclusive of the radios owned individually by each User city (“System”) for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, Roanoke wishes to use certain portions of the System for its governmental operations; and

WHEREAS, the use of the System in the provision of governmental services benefits the public health and welfare, promotes efficiency and effectiveness of local governments, and is of mutual concern to the contracting Parties; and

WHEREAS, Roanoke and the County have current funds available to satisfy any fees and costs required pursuant to this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreement herein contained, the sufficiency of which are hereby acknowledged, and upon and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

I.

DEFINITIONS

“Assignee” means the City employee assigned to a specific Subscriber Unit.

“Communications System” or *“System”* means a wide area, multi-agency digital trunked radio system compliant with P-25 interoperability standards to be used jointly by the City of Lewisville, the City of Denton, Denton County, and other Infrastructure Members, if any, primarily for providing public safety dispatch and communications for fire, emergency medical and police services and such other governmental services as may be agreed from time to time by the Parties.

“Coordinating Committee” means the committee that is responsible for making recommendations to the Infrastructure Management Committee on the administration and operation of the Communications System.

“Infrastructure Management Committee” means the committee that is responsible for the administration and operation of the Communications System.

“Subscriber Units” means mobile radios, portable radios or any similar devices used for communicating over the Communications System.

“Talk Group” means a specific group of Subscriber Units allowed to communicate privately within that group over shared infrastructure resources.

“Technical Committee” means the committee that advises the Coordinating Committee on technical issues related to the operation of the Communications System.

“User” means any entity with which the City of Denton, the City of Lewisville, Denton County, or other Infrastructure Member has entered into a contractual agreement for the provision of radio communication services through the Consolidated Communications System.

II.

TERM

2.1 This Agreement is for a period of a one (1) year term, beginning on the 1st day of October, 2022, and ending on the 30th day of September, 2023. unless terminated earlier pursuant to Section 7.1.

2.2 It is the intention of the Parties for this to be a long term enterprise which will be renewed with a new ILA each year subject to approval by each Party’s governing body.

III.

OBLIGATIONS OF CITY OF ROANOKE

3.1 Roanoke shall use the System in accordance with this Agreement to provide integration of communications by Roanoke between its Users on the System for governmental operations.

3.2 When using the System, Roanoke shall abide by all applicable Federal and State laws and regulations, including any regulations of the Denton County Radio System. When Roanoke uses the System for interoperability with Talk Groups (hereinafter defined) other than those provided by this Agreement, Roanoke will also abide by the User rules of those Talk Groups.

3.3 Roanoke must provide a written request to the Denton County Radio System Manager (“System Manager”) or his designee, to activate radios (“Subscriber Units”) on the System. Such request must include the model and serial number of the Subscriber Unit, the name of the Assignee, and identifying Talk Groups required in the Subscriber Unit.

3.4 Roanoke is responsible for furnishing its own Subscriber Units, which must be compatible with the APCO P-25 Phase 2 TDMA Digital System, and for maintenance of the Subscriber Units. Roanoke is responsible for all programming of City-owned Subscriber Units.

3.5 Roanoke shall be solely responsible for obtaining a technical services support contract and a maintenance contract for all City-owned dispatch infrastructure equipment, either from the manufacturer of the equipment or from a manufacturer-authorized service provider. The County shall not be responsible for maintenance of any City-owned equipment.

3.6 Depending on the equipment that will be purchased and installed by Roanoke, the City shall be solely responsible for entering into such Software Update Agreements and/or Software Maintenance Agreements from the manufacturer as necessary to ensure that the equipment owned by the City will be maintained and upgraded to meet the requirements of the System when the County performs System upgrades.

3.7 Roanoke shall be solely responsible for having periodic maintenance (PM) performed on its Subscriber Units at least every two years which shall include tuning and alignment of the Subscriber Units and updating the Subscriber Units with the latest firmware available.

3.8 The County shall not be liable to the City for the lack of interoperability between the Subscriber Units and the System if the City fails to perform the required PM and/or obtain the software and/or firmware upgrades recommended by the County and/or the manufacturer of the Subscriber Units necessary to communicate through the System as set forth in Sections 3.5, 3.6, and 3.7 above.

IV.

OBLIGATIONS OF THE COUNTY

4.1 The County will allow Roanoke to use County provided Talk Groups, which are a primary level of communication for Users on the System (“Talk Group”), comparable to a channel on a conventional radio system, for the exclusive use of Roanoke. Talk Groups will be established for the City by the County.

4.2 The System Manager will not activate radios on the Roanoke Talk Groups nor make changes to the Roanoke radios without first receiving authorization from the designated representative of the City, unless, in the opinion of the County, such action is necessary to eliminate harmful interference.

4.3 The County is solely responsible for:

- (1) Coordinating Talk Groups among System Users;
- (2) Grouping of Talk Groups to allow transmitting and receiving on all associated Talk Groups as required by the City; and
- (3) The operation, maintenance, and control of the System

V.

FEEES

5.1 The fees payable for the term of this Agreement are set out in **Exhibit B**, which is attached and incorporated for all purposes.

5.2 The County may increase the fees each October 1st, the beginning of each County fiscal year, by an amount not to exceed five percent (5%) of the previous year’s fees. The County will provide ninety (90) days’ notice to Roanoke before increasing the fees.

5.3 Based on the fees described above, the County will calculate the annual fee due based upon the total number of Subscriber Units and submit an invoice to the City on or before October 1st of each year. This amount is subject to change when the City adds or deletes the number of Subscriber Units in service. The City must notify the System Manager in writing of any addition or deletion of Subscriber Units.

5.4 Fees for Additions - The amount owed for annual fees for additions of Subscriber Units will be prorated for the year added, invoiced immediately, and amounts will be due within thirty (30) days of receipt of the invoice for the addition(s).

5.5 Deletions - No refunds for deletions will be made for the City’s deletion of Subscriber Units during the period of the Agreement. The fees for the upcoming fiscal year will

be calculated based on the number of Subscriber Units in service on the radio system as of May 1st of the current contract year.

5.6 In the event a new Inter-Local Agreement is not executed prior to the expiration of this Agreement, and the Sheriff's Office continues to provide access to the Radio Communications System, the City shall reimburse and compensate the County for access to the Denton County Radio Communications System at the rate set by the Denton County Sheriff and approved by the Denton County Commissioners Court for the next fiscal year.

VI.

PAYMENT DUE

6.1 The City agrees to pay the County the annual fees specified under Article V within thirty (30) days of the receipt of the invoice. Should the City add Subscriber Units or Talk Groups to the Service within a Term, the City agrees to pay the additional fee(s) due within thirty (30) days of invoice. All payments for expenses incurred as a result of the performance of the Agreement shall be made only from current revenues legally available to each respective Party.

VII.

TERMINATION

7.1 Either Party may terminate this Agreement at any time by giving ninety (90) days advance written notice. The City shall pay for all fees incurred through the effective date of termination. If the County permanently discontinues the operation of its System, this Agreement shall terminate on the date of discontinuance without further notice, and the County will reimburse the City the pro-rated amount of the fees previously paid by the City for the use of the System for the then current fiscal year.

VIII.

RELEASE AND HOLD HARMLESS

TO THE EXTENT PERMITTED BY LAW, EACH PARTY AGREES TO WAIVE ALL CLAIMS AGAINST, TO RELEASE, AND TO HOLD HARMLESS THE OTHER PARTY AND ITS RESPECTIVE OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, ATTORNEYS, FEES, INCLUDING ALL EXPENSES OF LITIGATION OR SETTLEMENT, OR CAUSES OF ACTION WHICH MAY ARISE BY REASON OR INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN THE EVENT THAT A CLAIM IS FILED, EACH PARTY SHALL BE RESPONSIBLE FOR ITS PROPORTIONATE SHARE OF LIABILITY.

IX.

IMMUNITY

In the execution of this Agreement, neither of the Parties waives, nor shall be deemed hereby to have waived any immunity or any legal or equitable defense otherwise available against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement does not create any rights in parties who are not signatories to this Agreement.

X.

ASSIGNMENT

The City agrees to retain control and to give full attention to the fulfillment of this Agreement. The City cannot assign or sublet this Agreement without the prior written consent of the County. Further, the City cannot sublet any part or feature of the work to anyone objectionable to Denton County. Roanoke also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve the City from its full obligations to the County as provided by this Agreement.

XI.

ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between Denton County and Roanoke and supersedes all prior negotiations, representations and/or agreements, either written or oral, between Denton County and Roanoke. This Agreement may be amended only by written instrument signed by Denton County and Roanoke.

XII.

NOTICES

Unless notified otherwise in writing, all notices are required to be given to either Party in writing and delivered in person or sent via certified mail to the other Party at the following respective addresses:

County:	1	Denton County Judge Denton County Commissioners Court 1 Courthouse Drive, Ste 3100 Denton, Texas 76201
	2	Denton County Sheriff Denton County Sheriff's Office 127 N. Woodrow Lane Denton, Texas 76205
	3	Assistant District Attorney Counsel to the Sheriff 127 N. Woodrow Lane Denton, Texas 76205

Name of Agency:	The City of Roanoke Fire Department
Contact Person	Chris Addington, Fire Chief
Address	201 Fairway Drive
City, State, Zip	Roanoke, TX 76262
Email:	caddington@roanoketexas.com

XIII.

AUTHORITY TO SIGN

The undersigned officers and/or agents of the Parties hereto are the properly authorized officials or representatives and have the necessary authority to execute this Agreement on behalf of the Parties.

XIV.

SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

XV.

VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the Parties hereto, shall be governed by the laws of the State of Texas. The Parties agree that this Agreement shall be enforceable in Denton County, Texas, and if legal and necessary, exclusive venue shall lie in Denton County, Texas.

XVI.

INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the County, this is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that the Agreement shall not be construed more favorably for either Party.

XVII.

REMEDIES

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the Parties. It is further agreed that one (1) or more instances of forbearance by either Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XVIII.

SUCCESSORS AND ASSIGNS

The Parties each bind themselves, their respective successors, executors, administrators, and assigns to the other Party to this contract. Neither Party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other Party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all Parties.

EXECUTED duplicate originals on the dates indicated below:

SIGNED AND AGREED BY THE CITY OF ROANOKE, TEXAS:

BY:

Carl E. "Scooter" Gierisch, Jr., Mayor
The City of Roanoke
500 S, Oak Street
Roanoke, TX 76262
817-491-2411
sgierischl@roanoketexas.com

Date: _____

Approved as to content:

Chris Addington, Fire Chief

Attest:

April S. Hill, City Secretary

Approved as to form:

Jeff Moore, City Attorney

**APPROVED BY THE DENTON COUNTY COMMISSIONERS COURT OF DENTON
COUNTY, TEXAS:**

BY:

Andy Eads, County Judge
Denton County Commissioners Court
1 Courthouse Drive, Ste 3100
Denton, Texas 76201
(940)349-2820

Date: _____

Approved as to content:

Denton County Sheriff's Office

Approved as to form:

Assistant District Attorney
Counsel to the Sheriff

Exhibit B
Denton County Sheriff's Office
Radio Communications System Agreement
FY22-23 Agency Payment Worksheet/Invoice

Agency:	Roanoke Fire Department		
Payment Contact Person:	Deputy Chief Doug Parks and/or April S. Hill, City Secretary		
Phone Number:	817-491-2301 or 817-491-8152		
Email(s):	dparks@roanoketexas.com or ahill@roanoketexas.com		
Address:	500 W. Oak Street		
City, State, Zip	Roanoke, TX 76262		
Agency Should Include this Worksheet with Each Payment Sent to Denton County.			
Make checks payable to:	Denton County		
Mail payments to:	Radio Communications Systems Agreement Payments Denton County Sheriff's Office Attn: Sherry Cochran 127 N. Woodrow Lane Denton, Texas 76205		
Please select one of the following options:			
<u>Tier 1</u>		<u>Tier 3</u>	
Radio User <i>ONLY</i> - \$4 each per month		Includes Tier 1 User + add on of Subscriber Services (program once per year and PM radios every two years) - \$6 each per month	
FD Radio Subscribers	72	\$3,456.00	FD Radio Subscribers 72 \$5,184.00
Total Amt Per Year =		<u>\$3,456.00</u>	Total Amt Per Year = <u>\$5,184.00</u>
<i>BILLED ANNUALLY</i>			

Please make your Tier selection, sign and date below.

Circle One: Tier 1 / Tier 3

Signature of Agency Representative	Title	Date
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AGENDA ITEM

TO: Honorable Mayor and City Council

SUBJECT: Consider approving a Construction Manager at Risk for the Police and Municipal Court Project.

MEETING DATE: January 10, 2023

DEPARTMENT: Police

ITEM SUMMARY:

Consider approving the contract for Construction Manager at Risk (CMAR) for **Sedalco Construction Services**.

INFORMATION:

Sedalco was selected by the Evaluation Committee as a result of a 2-stage process – which factored in qualifications, project-specific experience, and value. The response to the Request for Qualifications resulted in six (6) submissions, upon which a shortlist of three (3) firms were interviewed.

The City and Owner's Rep diligently negotiated scope, contract language, and associated fees in a contract awaiting approval by City Council for the City Manager to execute. The City Attorney was engaged in the contract language and terms working in conjunction with City Staff.

While the framework of the contract establishes the terms, conditions, and costs for both Pre-Construction Services and Construction Services - which will contractually obligate Sedalco for the future GMP, it is only the Pre-Construction Services that Council is approving at this stage in time for \$50,000.

Upon completion of the design and construction documents – targeted for July/August timeframe – Sedalco will issue the package for solicitation of bids and prepare recommendations to the City for the various Trade Packages which will then comprise the Guaranteed Maximum Price (GMP). City Staff and the Owner's Rep – in conjunction with the City Attorney – will then prepare the appropriate amendments to this contract for the presentation and approval to council of the formal GMP and the Construction Services.



AGENDA ITEM

STAFF RECOMMENDATION:

Recommendation to approve this item.

SPECIAL CONSIDERATION:

FINANCIAL CONSIDERATION:

Council is approving solely the Pre-Construction Services at this stage in time for \$50,000.

ATTACHMENTS:

1. Manager at Risk Agreement
2. General Conditions of the Contract for Construction



AIA® Document A133™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Eleventh day of January in the year Two Thousand and Twenty-Three
(In words, indicate day, month, and year.)

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

City of Roanoke, Texas
500 S. Oak Street
Roanoke, TX 76262
(817) 491-2411

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

SEDALCO, Inc.
4100 Fossil Creek Boulevard
Fort Worth, TX 76137
(817) 831-2245

for the following Work, which is a portion of the Project:
(Name, location, and detailed description)

Police & Municipal Court Project
Park & Fairway Drive
Roanoke, TX 76262

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

FGM Architects
300 Throckmorton Street, Suite 580
Fort Worth, TX 76102
(817) 900-6026

The Owner and Construction Manager agree as follows.

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Exhibit "C" – Scope of Work

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

See Exhibit "C" – Scope of Work

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

To Be Determined

Init.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:

Exhibit "D" – Construction Manager's Project Schedule

- .2 Construction commencement date:

Exhibit "D" – Construction Manager's Project Schedule

- .3 Substantial Completion date or dates:

Exhibit "D" – Construction Manager's Project Schedule

- .4 Other milestone dates:

Exhibit "D" – Construction Manager's Project Schedule

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

To Be Determined

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

To Be Determined

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234 2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234 2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective. ~~Omitted.~~

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

See Exhibit "C" – Scope of Work

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Jeriahme Miller
City of Roanoke
Police Chief
500 S. Oak Street
Roanoke, TX 76262
(817) 491-6052
jmill@roanokepolice.com

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who ~~are required to~~ may review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

Init.

To Be Determined

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

.1 Geotechnical Engineer:

To Be Determined

.2 Civil Engineer:

By Architect

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

To Be Determined

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Brian Meade, AIA
FGM Architects Inc.
Vice President & Design Principal
1211 22nd Street, Suite 700
Oak Brook, IL 60523

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Russ Garrison
SEDALCO, Inc.
President
4100 Fossil Creek Boulevard
Fort Worth, TX 76137
(817) 831-2245
rgarrison@sedalco.com

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

See Exhibit "E" – Key Personnel

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

See Sections 3.1.11 and 3.1.12 herein.

Init.

§ 1.1.15 Other Initial Information on which this Agreement is based:

Not Applicable

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information. Omitted.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party. Omitted.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in Exhibit "Z" – Schedule of Exhibits, this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Exhibit "A" – Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.1.1 If, and to the extent of, any inconsistency, ambiguity, discrepancy or error in the Contract Documents (referred to collectively in this Section 2.1.1 as "discrepancy"), the Construction Manager shall immediately seek clarification from the Architect and notify the Owner that clarification has been requested. In the event that the Architect fails to clarify such discrepancy, within a reasonable time under the circumstances, the Construction Manager shall proceed with the Work without the clarification based on the written permission from the Owner, and give precedence to the Contract Documents in the following descending order of priority:

- .1 Modifications issued after execution of the Owner-Construction Manager Agreement, including all exhibits not specifically referenced in Section 2.1;
- .2 the Owner-Construction Manager Agreement;
- .3 Addenda issued prior to the execution of the Owner-Construction Manager Agreement, with the Addenda bearing the latest date taking precedence;
- .4 the General Conditions of the Contract for Construction; and
- .5 the Drawings and Specifications.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to, without limitation, cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a reasonably timely manner, information required by the Construction Manager when such information is requested in writing and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. Documents and in accordance with Texas Government Code Ch. 2251.

Init.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Construction Manager" in this A133 Agreement shall mean and include the use of the terms "Construction Manager at Risk", or "CMaR". The term "Contractor" as used in A201–2017 shall ~~mean the Construction Manager~~ also mean and include the use of the terms "Construction Manager at Risk," or "CMaR".

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.3 All references in this Agreement to AIA Document A201™–2017, General Conditions of the Contract for Construction, shall mean the AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified and amended by the parties hereto.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, ~~authorities~~. However, if the Construction Manager recognizes, or a Construction Manager of similar size and experience would have recognized that portions of the Drawings and Specifications are at variance therewith, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form in writing as the Architect may require. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to review by the Architect and approval of the Owner and the Owner's other professional consultants.

§ 3.1.2 The Construction Manager at Risk, after carefully reviewing Exhibit "C" – Scope of Work and the Conditions of the Contract, shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, for the Project, and the Construction Manager's Work which is a portion thereof, and will work with the Owner and Architect to establish the general parameters of the Construction Manager's management plan, budget, and schedule for the Work, each in terms of the other. Such parameters shall be agreed upon meetings held with the Parties as needed for the purpose, and a more detailed understanding of the work plan, budget and schedule shall be proposed by the Construction Manager to the Owner and Architect in a written preliminary draft of a Construction Management Plan thereafter, but prior to the execution of this Agreement.

§ 3.1.2.1 The Construction Manager, after consulting with the Owner and Architect, shall update the preliminary proposed Construction Management Plan for the Work for the Architect's further review and Owner's approval. Such review and approval shall not in any way reduce the Construction Manager's responsibility to indemnify the Indemnitees; including but not limited to those specified in Sections 3.18.2 and 4.2.3.1 of the AIA A201 – 2017 General Conditions, as amended. In preparing the Construction Management Plan, the Construction Manager shall consider, without limitation, the Owner's safety, schedule, cost, quality, and design goals and requirements for the Construction Manager's Work and the Owner's Project, each in terms of the other. The Construction Manager shall then develop and consider various alternatives for the sequencing and management of the Work and shall recommend to the Architect and Owner those

Init.

alternatives that are best suited to the goals of both the Work and the Project. The Construction Management Plan must include, at a minimum and without limitation, these separate deliverables:

- .1 Safety and Logistics Plan;
- .2 Construction Manager's Project Schedule;
- .3 Cost Management Plan, Control Estimate and Schedule of Values;
- .4 Quality Management, Commissioning and Turnover Plan; and
- .5 Information Management System.

As part of this Construction Management Plan, the Construction Manager shall prepare and submit to the Architect for review, and subsequently for the Owner's written approval, a Control Estimate Management Plan as mutually agreed in Exhibit "Z" – Schedule of Exhibits. The Control Estimate shall include the estimated Cost of the Work plus the Construction Manager's Fee. The Control Estimate shall be used to monitor the conformance of the Design Documents with the Owner's Budget during the Preconstruction Phase and the actual costs and the timely performance of the Work during the Construction Phase. The Control Estimate shall be updated continuously, or a minimum of every other week, in addition to full Construction Estimates at the end of each phase. The Construction Manager shall update the Control Estimate not later than fifteen (15) business days after release of Drawings and Specifications identified by Owner, either directly or through the Architect, as prepared for Construction Manager's pricing (a "Pricing Submittal") during the Preconstruction Phase and again not later than each Application for Payment to reflect Changes in the Work during the Construction Phase.

§ 3.1.2.2 The Control Estimate must include:

- .1 a list of the documents enumerated in Article 1 of the Agreement, including their dates, all Addenda thereto and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions made, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Construction Manager's Contingency, General Conditions and Construction Manager's Fee; as those costs are further described and detailed in Exhibit "C" – Construction Manager's Soft Costs and Fee;
- .4 schedules indicating proposed activities, activity sequences and durations, milestone dates for receipt and approval of pertinent information; schedule of shop drawings, submittals, and samples; procurement and delivery of materials or equipment that must be ordered well in advance of construction; pre-installation meetings; mockups; materials testing inspections, and permitting activities; and the Owner's occupancy requirements, showing portions of the Work and the Project having occupancy priority; and
- .5 contingencies for further development of design and construction as required by Section 3.1.1.4.

§ 3.1.2.3 The Construction Manager shall meet with the Owner and Architect to review the Control Estimate. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 3.1.2.4 The Drawings and Specifications are anticipated to require further development by the Architect, and the Construction Manager shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 3.1.2.5 The Construction Manager shall develop and implement a detailed system of cost control (the "Cost Management Plan") that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The Cost Management Plan shall detail the processes used to compare the Control Estimate with the Pricing

Sets released during the Preconstruction Phase, and during the Construction Phase, the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, through the Construction Manager, in writing, no later than twenty-one (21) days after the release date of any Pricing Set during the Preconstruction Phase and again not later than the Construction Manager's first Application for Payment and shall thereafter be revised and submitted with each Application for Payment.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner Architect, the Owner and their consultants to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on, without limitation, proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on, among other aspects of the Work and the Project, constructability; availability of materials and labor; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. Omitted.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the The Construction Manager shall prepare and periodically update a 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 Exhibit "B" – Construction Manager's 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 identify items that affect the Project's timely completion. The updated Project schedule shall Construction Manager's Project Schedule must include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. As design proceeds, the Construction Manager's Project Schedule shall be updated by the Construction Manager to indicate, in increasing detail and without limitation, proposed sequences and durations of the Preconstruction Phase activities and the activities necessary to complete the Work during the Construction Phase. This schedule will include, at minimum, the following milestones:

- .1 dates for receipt and approval of pertinent information by the Owner, governmental agencies and other stakeholders;
- .2 Owner's submittal dates of information agreed to be required by the Construction Manager and Architect;
- .3 dates for Construction Manager's submittal and the Architect's and Owner's review and subsequent Owner's approval of the initial Control Estimate and subsequent updates;
- .4 submittal, review by the Architect and Owner, and Owner's subsequent approval of the Construction Management Plan;
- .5 preparation and processing of shop drawings and samples;
- .6 delivery of materials or equipment requiring long-lead-time procurement;
- .7 Owner's occupancy requirements showing portions of both the Work and the Project having occupancy priority; and
- .8 proposed dates of Substantial Completion and Final Payment.

If the Construction Manager's Project Schedule updates indicate that previously accepted schedules may not be met, the Construction Manager shall make appropriate recommendations for acceleration, concurrency of activities, and other alternatives to the Owner and Architect to maintain the most recently accepted target dates for the Work

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall ~~take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.~~ make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications (if any) to facilitate the Construction Manager's Project Schedule taking into consideration such factors as, without limitation, relative cost impacts (if any), constructability, procurement and construction scheduling issues, economies, long lead item requirements, time of performance, availability of labor and materials, and provisions for temporary facilities.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on updates to the preliminary design and other new design criteria prepared by the Architect, or otherwise provided, and in addition to the formal Control Estimates above, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 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 the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. 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 the Cost of the Work ~~exceeds the latest approved Project budget, exceeds, or appears likely to exceed,~~ the latest approved Control Estimate, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating ~~services as a Supplemental Service, services,~~ and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Owner, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall ~~provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.~~ Omitted.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. Omitted.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval. Omitted.

§ 3.1.11.2 The Construction Manager shall develop ~~bidders' interest in the Project.~~ Subcontractor and supplier interest in the Work and shall furnish to the Owner and Architect for their information a list of potential Subcontractors and suppliers that are qualified to possibly furnish materials, services or equipment, from whom competitive proposals will be requested for each principal portion of the Work. The Owner, after consulting with the Architect, will promptly reply in writing to the Construction Manager if they object to any such Subcontractors or suppliers, or if there are additional Subcontractors or suppliers, they wish the Construction Manager to consider. The Construction Manager will be required to utilize the

procedures set forth in Texas Government Code Section 2269.256 for review of bids or proposals for all trade contractor or subcontractor bids or proposals. The receipt of any such list of prequalified Subcontractors or suppliers shall not require the Owner or Architect to investigate the qualifications of any proposed Subcontractor or supplier; nor shall it waive the right of the Owner, or Architect later to object to or reject any proposed Subcontractor or supplier. Review by the Owner or Architect of all or a portion of such list or their request for the Construction Manager to consider additional Subcontractors or suppliers shall not relieve the Construction Manager of its obligation to prequalify all Subcontractors and suppliers later solicited for bids, or any other responsibility for the performance of the Construction Manager or any Subcontractor or supplier under this Agreement.

§ 3.1.11.3 The processes described in Article 9 Section 3.1.12 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall ~~prepare, propose,~~ for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Owner, after review and acceptance of those terms by the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them for them as if procured by the Construction Manager. If such long-lead-time items are proposed to be procured by the Owner, they shall be procured on Owner's terms and conditions, which shall be provided to the Construction Manager for review.

§ 3.1.12.1 Selection by Competitive Bid:

Except as otherwise agreed in writing by both parties hereto, the Construction Manager must publicly advertise for bids or proposals and receive competitive bids or proposals from any and all trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions and receive no less than three (3) responsive bids in the following categories, where applicable:

.1 Work performed by Construction Manager's Forces. If the Construction Manager wishes to perform Work with the Construction Manager's own forces, or through a Related Party as defined in Section 7.8, the Construction Manager must:

- a. obtain no less than three (3) additional responsive bids or proposals from responsible Subcontractors acceptable to the Owner;
- b. submit a written bid or proposal for such Work to the Owner and Architect in the same manner as all other trade contractors or subcontractors; and
- c. obtain approval from the Owner and Architect that the Construction Manager's bid or proposal provides the best value for the Owner.

.2 The Construction Manager shall use all effort necessary to solicit interest from all the potential qualified Subcontractor bidders for such Work; vigorously and proactively communicate to them the Construction Manager's obligation to provide its bid to the Owner in advance.

.3 Other than services normally associated with Construction Manager's performance of the General Conditions, Construction Manager shall not perform any portions of the Work unless it has been awarded such portion in accordance with the same procedures imposed upon all other trade contractors or subcontractors as specified above, and then, only if the Owner has determined that the Construction Manager's bid or proposed bid provides the best value for the Owner.

.4 In the event any Work is to be performed by the Construction Manager's own forces or by a Related Party, such Work shall be covered in a separate agreement between the Owner and the Construction Manager or the Related Party when required by the Owner. Such agreement shall, without limitation, satisfy all requirements for subcontracts as set forth herein.

.5 In the event the Construction Manager cannot, using its utmost efforts, secure the required three (3) or more Subcontractors willing to provide responsive bids for any scope of the Work, the Owner and Architect shall work

with the Construction Manager to solicit these responsive bids. In the event that the Construction Manager working in conjunction with the Owner and Architect is still unsuccessful in securing three (3) responsive bids for a scope of the Work, the Owner shall waive the requirement for three (3) competitive bids, where allowed by law, but solely for the category of Work in question.

§ 3.1.12.2 Pre-Qualifying Bidders

The Construction Manager shall develop lists of possible Subcontractor and other necessary bidders and pre-qualify bidders, unless otherwise agreed to in writing by Owner.

.1 The Construction Manager's pre-qualification process shall include some, or all, of following services for some, or all, of the Subcontractors and suppliers as agreed in advance with the Owner and Architect: preparation and transmission of requests for qualifications; receiving and analyzing qualifications; interviewing possible bidders, bonding agents, and financial institutions; and preparing summary reports regarding these activities to the Owner and Architect.

.2 The Construction Manager shall also prepare a proposed qualified bidders list for each bid package for the Work for the review and comment of the Owner and Architect.

.3 The Owner or Architect may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been agreed, the Owner may not prohibit the Construction Manager from obtaining bids from other bidders that are otherwise qualified and approved by the Owner and Architect. Such approval shall not be unreasonably withheld.

.4 The Construction Manager shall be responsible for pre-qualifying all Subcontractors and suppliers; shall be responsible for their performance; and shall not be required to contract with any Subcontractor or supplier to whom the Construction Manager can demonstrate a factual and reasonable, or legal objection.

§ 3.1.12.3 Delivery of Bid Documents

The Construction Manager shall expedite the delivery of bid documents to the bidders. The Construction Manager shall obtain documents from the Architect and arrange for electronic distribution to Subcontractors and other vendors, with electronic confirmation of receipt; or in the case of hard copy distribution, printing, binding, wrapping and delivery to the bidders. The Construction Manager will determine the vendor(s) to be used for printing, and costs of hard copy printing, binding, and distribution shall be billed directly to the Owner as directed by the Construction Manager. The Owner prefers electronic distribution but will approve a reasonable amount for printing hard copies when a budget is submitted by the Construction Manager in advance. The Construction Manager shall maintain a record of bidders receiving documents.

§ 3.1.12.4 Pre-Bid Conference

In conjunction with the Owner and Architect, the Construction Manager shall conduct Pre-bid Conferences. These conferences shall be forums for the Construction Manager to explain to the bidders the requirements of the Work and the proposed Contract Documents, including, without limitation information concerning the Construction Management Plan and its safety, logistics, schedule, quality, cost control and other requirements; access restrictions; the project's administrative procedures; and technical design and engineering information.

§ 3.1.12.5 Information to Bidders

The Construction Manager shall develop and coordinate procedures to document, forward to the Architect, track questions from, and provide and document answers to bidders' questions.

§ 3.1.12.6 Addenda

The Construction Manager shall receive from the Architect a copy of all addenda. The Construction Manager shall review all addenda for clarity; consistency of response; and insure coordination of distribution and receipt among the bidders. By performing the reviews described herein, the Construction Manager is conducting the review in its capacity as a contractor and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the content of the Design Documents or the design intent.

§ 3.1.12.7 Bid Openings

§ 3.1.12.7.1 The Construction Manager shall receive, open, and evaluate the bids with the Owner and Architect in attendance, at their option. Whether or not they attend, the Owner, Construction Manager and Architect will promptly be provided with copies of all Subcontractor and supplier bids received, initialed by hand or electronically by the Construction Manager to confirm each as an accurate and timely submitted copy. The Construction Manager will have the right to reject any and all bids or proposals, when such rejection is based on the Construction Manager's consistently applied, objective, and standard evaluation criteria which must be included in the public advertisement.

§ 3.1.12.7.2 The Construction Manager shall evaluate all apparent responsible bidders for all major components of Work, and may conduct interviews to determine the responsiveness of their bids or proposals. In evaluating the responsiveness of bid or proposals and in making a determination as to the best value bid or proposal submitted, the Construction Manager, in addition to bid or proposal price, may consider the following factors: past performance on similar projects; qualifications and experience of personnel assigned to the Safety and Logistics Plan, the Quality Management, Commissioning and Turnover Plan, and other components of the Work; approach or understanding of the Work to be performed; performance schedule to complete the Work; or other criteria agreed upon with the Owner and Construction Manager in advance and in writing.

§ 3.1.12.7.3 Any portion of the Construction Manager's evaluation of Subcontractor and supplier bids by the Construction Manager may be attended by the Architect and Owner, at their option, and they will be given compete access to all aspects of the process. Such participation by the Owner, Architect and Owner, or their receipt of copies of Subcontractors' and suppliers' bids and proposals shall not impose any burden of review or analysis on them or relieve the Construction Manager of its sole responsibility for the Construction Manager's, Subcontractors' and suppliers' performance under this Agreement.

§ 3.1.12.7.4 The Construction Manager will resolve any Subcontractor protest or disqualification in connection with the award at no increase in the Cost of Work.

§ 3.1.12.8 Analyzing Bids and Award Recommendation

Upon receipt of bids and completion of each bid package's evaluation, the Construction Manager shall prepare a formal award recommendation, including alternate prices and unit prices (if any), for each bid package for the Owner's and Architect's review. Subsequent and subject to such review, Construction Manager shall request the Owner's review and approval of its award recommendation. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. Notwithstanding any other provision in this agreement, the Owner reserves the right to reject any and all bids.

§ 3.1.12.8.1 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified and approved by Owner to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager shall be entitled to submit a Change Order allowing for an adjustment to the Contract Time, if needed and an adjustment to the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 3.1.12.9 Construction Contracts

At the direction of the Owner, the Construction Manager shall prepare, execute, and deliver the Contract Documents between the Construction Manager and the Subcontractors and suppliers. The Construction Manager shall also issue the notices to proceed to each Subcontractor and Supplier after execution of such Contract Documents.

.1 All Work shall be performed under written subcontracts or by other appropriate written agreements with the Construction Manager.

.2 Such subcontracts and agreements shall contain the same obligations for the Subcontractor to the Construction Manager for their portions of the work as the Construction Manager has to the Owner for the Work under this Agreement.

.3 Subcontracts and other agreements shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document. Omitted.

Not Applicable

§ 3.1.15 Construction Manager's Review of Design Documents Prepared by the Architect

The Construction Manager shall review the Design Documents for clarity, consistency, constructability and coordination among the Subcontractors. The results of the review shall be provided as either electronic notes or "red-line" notations on the documents themselves. With the exception of the Design-Build Scope, the Construction Manager is not responsible for providing, nor does the Construction Manager control the design intent and contents of the Design Documents prepared by the Architect. By performing the reviews described herein, the Construction Manager is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Design Documents prepared by the Architect or their design intent. The Construction Manager's action in reviewing the Project design and Design Documents prepared by the Architect and in making recommendations as provided herein for such documents are only advisory to the Owner.

§ 3.1.16 Design Recommendation

The Construction Manager shall make recommendations to the Owner and Architect with respect to constructability, construction cost, and sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Work into contracts for various categories procurement and performance, and compliance with the previously approved Work Breakdown Structure (referred to as "WBS"). All Design Document reviews by the Construction Manager, and subsequent design recommendations shall be in accordance with the Owner's goals for the Work and the Project, and in conformance with the Quality Management, Commissioning, and Turnover Plan.

§ 3.1.17 Owner Design Reviews

The Construction Manager shall expedite the Owner's design reviews by compiling and conveying the Owner's comments in its review comments to the Architect.

§ 3.1.18 Approvals by Regulatory Agencies

In accordance with the most recently approved Construction Manager's Construction Schedule, the Construction Manager shall monitor transmittal of documents to regulatory agencies for review and shall advise the Owner and Architect of potential delays and problems in completing such reviews, offer recommendations for mitigating their impact, and shall compile and convey the regulatory agencies' comments to the Architect.

§ 3.1.19 Public Relations

When specifically directed in writing, the Construction Manager shall assist the Owner in public relations activities and shall prepare information for and attend public meetings regarding the project. Such assistance, information, and participation by Construction Manager shall be subject to strict oversight and control by the Owner and be bound by Owner's confidentiality requirements as shown in Exhibit "E" – Confidentiality of the Project.

§ 3.1.20 Revisions to Construction Manager's Construction Schedule

While performing the services required to implement the Construction Management Plan, and as necessary throughout the Preconstruction Phase, the Construction Manager shall recommend revisions to the Construction Manager's Construction Schedule, if and when appropriate, for Owner's and Architect's review. Subject to such review, and the Owner's subsequent approval, the Architect shall issue Change Orders as needed to the appropriate parties to implement the approved revisions to the Construction Manager's Construction Schedule.

§ 3.1.21 Monitoring the Construction Manager's Construction Schedule

While performing the services in this Agreement, the Construction Manager shall monitor the Architect's compliance with the Architect's responsibilities for reviews and approvals shown in the Construction Manager's Construction Schedule. The Construction Manager shall inform the Architect and Owner of any significant risk for delay to the Project due to the Architect's non-compliance or failure to timely perform known Architect responsibilities and issue updates as necessary to keep the Owner and Architect informed of other schedule impacts.

§ 3.1.22 Bidding and Award Schedule

Prior to transmitting the proposed Contract Documents to bidders and as a component of the Construction Manager's Construction Schedule, the Construction Manager shall prepare a detailed Bidding and Award Schedule for procurement of each part of the Work and make the schedule available to the Owner and Architect for review, and incorporate those revisions reasonably requested by the Owner or Architect as a result of such review.

§ 3.1.23 Impacts to the Construction Budget and Schedule

The Construction Manager shall make recommendations to the Architect and Owner to mitigate, without limitation, the cost and time impacts of any ongoing design changes; unforeseeable delays or scope changes; and other factors beyond the responsibility of the Construction Manager to control under this Agreement that may result in revision to the Construction Manager's Construction Schedule or Control Estimate.

§ 3.1.24 Preconstruction Cost and Schedule Control

In accordance with Cost Management Plan and Section 3.1.2.1, the Construction Manager shall prepare a formal update to the Control Estimate for each Pricing Submittal released by the Architect. Each new Control Estimate submittal shall be accompanied by a report to the Owner and Architect identifying specific variances from the previous Construction Manager's Control Estimate and impacts to the Construction Manager's Construction Schedule. The Construction Manager shall clearly identify the specific changes by line item in the proposed Control Estimate and proposed Construction Manager's Construction Schedule, and also clearly identify the specific changes in scope and quality from the previous Pricing Submittal not reasonably inferable therefrom causing such proposed changes in cost and time. In the event no additional scope or quality changes have been made in the new Pricing Submittal that were not reasonably inferable from earlier submittals, the Construction Manager will identify the other cause(s) of such proposed changes in the Control Estimate and Construction Manager's Construction Schedule and provide supporting detail acceptable to the Architect and Owner sufficient to easily validate such changes. The Construction Manager shall coordinate, facilitate, and request acceleration of the activities of the Owner and Architect when changes to the design are required to remain within the cost shown in the Control Estimate, and meet the Construction Manager's Construction Schedule.

§ 3.1.25 Sustainability and Environmentally Responsible Design

One of the Owner's goals is an energy efficient, sustainable Project, and therefore the Construction Manager shall participate in interactive work sessions when scheduled by the Architect for the purpose of identifying environmentally responsible alternatives for the Work, evaluating the relative merits of each, and assisting with selecting the preferred alternative(s) to be incorporated into the Project. The Owner may attend and participate in such work sessions at its option.

§ 3.1.26 Value Studies

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.) Using the information obtained during the work sessions described above and other meetings, and such energy models and other data on systems and materials as may be provided by the Architect, the Construction Manager shall prepare Value Studies as defined using such method for value analysis as mutually agreed by the Owner, Construction Manager and Architect to be most efficient and effective for comparing the viable alternatives for major components of the Work. The results of these studies shall be in report form, contain Value Engineering Proposals, and be distributed to the Owner and Architect for their review and use.

§ 3.1.27 Value Engineering

Each Value Engineering Proposal submitted by the Construction Manager must include, without limitation, the following: (1) a detailed description of the difference between the requirements of the current design and the proposed changes and comparative advantages and disadvantages of each; (2) itemization of aspects of the current design affected by the enactment of the proposal; (3) the impact of the proposal upon both Control Estimate and the Construction Manager's Construction Schedule; (4) a list of the projects to the extent known, where the proposal was previously used in similar circumstances, and the results of that experience; (5) any other information reasonably necessary to fully evaluate the

proposal; and (6) the date by which the Owner must accept the proposal in order for the Construction Manager's cost and time estimates to remain valid.

§ 3.1.28 Cash Flow Report

The Construction Manager shall periodically prepare, update, and distribute a Cash Flow Report. The frequency of issuance of such Cash Flow Reports shall be acceptable to the Owner and Architect.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall ~~prepare-propose conversion of the most recently approved Control Estimate to a~~ Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.1.1 Alternatively, during the Preconstruction Phase, but not later than sixty (60) days prior to the date the Work is scheduled to begin being advertised for bids, the Owner, at its sole option, may request the Construction Manager to establish a Guaranteed Maximum Price for the Work. The Guaranteed Maximum Price shall be documented by the Construction Manager as defined in Section 3.2.3 and, once established the Guaranteed Maximum Price shall be subject to modification only as defined in this Agreement.

§ 3.2.1.2 The Guaranteed Maximum Price shall be submitted by the Construction Manager in response to Section 3.2.1.1 above to the Owner and Architect not more than thirty (30) days after receipt by the Construction Manager of the Owner's request for the Guaranteed Maximum Price. Owner, at its sole option and discretion, may reject the Guaranteed Maximum Price proposal or any of them in the case of multiple proposals, or attempt to renegotiate the proposal with Construction Manager (with the right to cease negotiations at any time and reject the proposal). Construction Manager shall not withdraw its Guaranteed Maximum Price proposal and its proposal shall be irrevocable and open to acceptance by Owner for twenty-one (21) days after Owner's receipt of such. Owner's rejection of Guaranteed Maximum Price proposal shall in no way entitle Construction Manager to make any claim for compensation or damages due to such rejection, all of which claims are hereby **waived and released**.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion and Construction Manager's Project Schedule upon which the proposed Guaranteed Maximum Price is based; ~~and~~
- .5 A date by which the Owner must accept the ~~Guaranteed Maximum Price~~ Price;
- .6 Documentation and detail supporting the Cost of the Work (e.g. detailed quantities, unit costs and other information as mutually agreed to be appropriate);
- .7 A separate listing of any previously agreed upon Allowances and their basis; and
- .8 A detailed listing of the further information required from the Owner and Architect and their required issuance dates upon which the date of Substantial Completion is based.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency ("Construction Manager's Contingency") for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.4.1 The Construction Manager shall also include a separate line item in the Guaranteed Maximum Price for each contingency specified in Section 7.7.8 of this Agreement, labeled to match their respective uses shown in that Section.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.6.1 In the event the Owner does not accept the Construction Manager's Guaranteed Maximum Price proposal and elects not to go forward with either the Construction Manager, the Work or both, the Construction Manager shall be reimbursed in accordance with Section 13.1.4 herein.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in Exhibit "Y," the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. any taxes from which the Owner is Exempt by virtue of its status as governmental entity. In the event that the Construction Manager is required to pay or bear the burden of any new federal, state, or local tax, or if any rate increase of an existing tax (except tax on net profits), as a result of an statute, court decision, written ruling, or regulation takes effect after the contract date, the Guaranteed Maximum Price shall be increased by the amount of the new tax, or tax increase.

§ 3.2.10 In determining the proposed Guaranteed Maximum Price and proposed Contract Time, the Construction Manager shall take into account the level of completeness of the proposed Contract Documents and exercise the best skill and efforts of the Construction Manager to make:

.1 such site visits and investigations of existing and observable conditions necessary to allow therefore;

.2 all inquires of the Architect and Owner necessary to clarify the documents; and

.3 appropriate judgments and inferences in connection with the requirements of such documents to calculate and firmly establish both the proposed Contract Sum shown in the proposed Guaranteed Maximum Price and the proposed Contract Time represented in the updated and proposed Construction Manager's Construction Schedule.

§ 3.2.11 Construction Manager warrants, represents, covenants, and agrees that all of the services to be performed by Construction Manager under or pursuant to this Agreement (including submission of the proposed Guaranteed Maximum Price and proposed Contract Time) shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project.

Init.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work ~~shall mean~~ means the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase ~~shall commence~~ commences upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of ~~the Exhibit "A" –~~ Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a ~~construction schedule for the Work and a~~ detailed submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The complete log shall be made readily available to the Owner and Architect.

§ 3.3.2.5 Cost Control

The In conformance with the Construction Management Plan, the Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. tasks, tracking the status and potential cost and time impacts of pending Proposal Requests, Change Order Requests, and cost and time impact of Change Orders, and Construction Change Directives.. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

§ 3.4 The Construction Manager shall provide and maintain a management team on the site to provide, without limitation, sufficient contract administration to meet its obligations under this Agreement and shall establish and implement coordination and communication procedures among the Owner, Construction Manager, Architect and Subcontractors, all in accordance with the Construction Management Plan and its Information Management Plan.

§ 3.5 In accordance with the Construction Management Plan and its Information Management Plan, the Construction Manager shall establish and implement procedures for expediting and processing, without limitation, requests for information, shop drawings, material and equipment sample submittals, Construction Manager's Project Schedule adjustments, Proposal Requests, Change Order Requests, Change Orders, Construction Change Directives, substitutes, payment requests, and the maintenance of logs. The Construction Manager shall be the party to whom requests for information, submittals, Subcontractor schedule adjustment, requests, substitution requests, Proposal Requests, Change Order Requests, Change Orders, Construction Change Directives, and payment requests shall be submitted.

§ 3.6 Project Personnel

- .1 The Construction Manager shall furnish only skilled and properly trained staff for the performance of the Work. The key members of the Construction Manager's staff shall be persons agreed upon with the and identified in Exhibit "D" – Key Personnel, which is attached hereto and incorporated herein for all purposes.

- .2 Such key members of the Construction Manager's staff shall not be changed without the written consent of the Owner, unless such person becomes unable to perform any required duties due to death, disability, or termination of employment with the Construction Manager. If a key member is no longer capable of performing in the capacity described in Exhibit "D" – Key Personnel, the Owner and Construction shall agree on a mutually acceptable substitute.
- .3 During the performance of the Work, the Construction Manager shall keep a competent superintendent at the Project site, who is fully authorized to act on behalf of the Construction Manager. Notice from the Owner or the Architect to such superintendent, in connection with defective work, instructions for the Work, or any and all other issues shall be considered notice of such issues to the Manager.

§ 3.7 Project Site Meetings

Periodically the Construction Manager shall conduct meetings at the site with each Subcontractor and the Construction Manager shall conduct coordination meetings with all Subcontractors and the Architect. The Construction Manager shall record, transcribe and promptly distribute minutes to all attendees, the Owner, and the Architect, after the Construction Manager has allowed the Architect two (2) business days for review and edit of such minutes. Such Architect's edits shall be incorporated into the minutes by the Construction Manager unless demonstrably inaccurate or misleading.

§ 3.8 Observation, Coordination of Other Independent Consultants

Technical inspection and testing provided by the Architect or Owner's other consultants shall be coordinated by the Construction Manager. The Construction Manager shall be provided a copy of all inspection and testing reports, preferably on the day the results of the inspection or test are available. The Owner shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the Work by the Owner. The Construction Manager is not responsible for providing, nor does the Construction Manager control the actual performance of technical inspection and testing. The Construction Manager is performing a coordination function and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing performed by the Architect, Owner, or the Owner's other consultants.

§ 3.9 Review and Incorporation of Time Extension Requests

The Construction Manager shall, prior to the issuance of a Change Order Request to the Owner and Architect, determine, diligently validate, and negotiate on behalf of the Owner the least proposed effect of time extensions requested by the Subcontractor on the Construction Manager's Project Schedule. If such Change Order Request is approved by Change Order, the Construction Manager shall verify that the Work and any adjustment of time required by such approval has been promptly incorporated into the Construction Manager's Project Schedule and that of the affected Subcontractor(s).

§ 3.10 Construction Manager's Project Schedule

The Construction Manager shall adjust and update the Construction Manager's Project Schedule frequently and distribute updated copies not less than monthly to the Owner and Architect for review, and subject to such review, for the Owner's approval. All adjustments to the Construction Manager's Project Schedule shall be made for the benefit of the Owner.

§ 3.11 Subcontractor's Construction Schedule

The Construction Manager shall review each Subcontractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the Construction Management Plan, its WBS, as well as the requirements of the Contract Documents and that its established completion dates comply with the requirements of the Construction Manager.

§ 3.12 Construction Schedule Report

The Construction Manager shall review the progress of construction of each Subcontractor on a weekly basis, shall evaluate the percentage complete of each construction activity as indicated in the Subcontractor's Construction Schedule and shall review such percentages with the Subcontractor. This evaluation shall serve as data for input to the periodic Construction Schedule Report that shall be prepared and distributed to the Subcontractor, Owner and Architect. The Construction Schedule Report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payments to the Construction Manager. The Construction Manager shall determine and implement alternative courses of action that may be necessary to achieve schedule and other contract compliance by the Subcontractor.

§ 3.13 Recovery Schedules

The Owner or Architect may require the Construction Manager, and the Construction Manager shall require the Subcontractor to prepare and submit a Recovery Schedule satisfactory to the Construction Manager when it is apparent or appears likely the Construction Manager or Subcontractor(s) will fail to meet important milestones as specified in the Construction Management Plan.

§ 3.14 Schedule of Values (Each Contract)

The Construction Manager shall, with participation of the Subcontractors, determine a Schedule of Values for each of the construction trade subcontracts. The Schedule of Values shall comply with the WBS and shall be the basis for the allocation of the contract price to the activities shown in the Subcontractor's Construction Schedule.

§ 3.15 Cost Records

In instances where a Construction Change Directive is issued, the Construction Manager shall, in addition to the requirements of Section 3.23, require each affected Subcontractor to keep separate records of the cost of payroll, materials and equipment expended on such Work, and the keep separate records of the amount of payments to Sub-subcontractors incurred by the Subcontractor in performing the Work.

§ 3.16 Progress Payments (Construction Manager)

In consultation with the Owner and Architect, the Construction Manager shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Construction Manager shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner, through the Architect, a Progress Payment Report. Each Progress Payment Report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be an Application for Payment that shall be prepared in accordance to the Contract Documents, signed by the Construction Manager and delivered to the Owner through the Architect. The Construction Manager acknowledges it is holding payments due to Subcontractors in trust, and shall make payments to all Subcontractors, suppliers and vendors as specified in the Contract Documents, and in all cases within ten (10) days following receipt of payment for such Work from the Owner unless allowed to withhold those payments based upon Subcontract provisions or as otherwise allowed by law. Such withholding of payment(s) to any Subcontractor shall be notified to the Owner in advance and in writing. Receipt by the Construction Manager of payment from the Owner is required before the Construction Manager is required to make payment to a Subcontractor. In addition, the Construction Manager shall keep the Work and the site on which work is performed free and clear of all liens and claims from its Subcontractors, Sub-subcontractors, suppliers, and vendors as further described in A201 – 2017, General Conditions. Appropriate statutory conditional and unconditional waivers and releases of lien shall be required for all progress payments and final payments to the Subcontractors, Sub-subcontractors, suppliers, and vendors.

§ 3.17 Cash Flow Reports

The Construction Manager shall prepare, update and distribute Cash Flow Reports monthly during the Construction Phase to the Owner and the Architect. The Reports shall specify actual cash flow as compared to previously projected cash flow in the level of detail agreed to in the Construction Management Plan.

§ 3.18 Progress Payment Reports (Each Subcontract)

The Construction Manager shall prepare and distribute the appropriate section of the Progress Payment Reports to each affected Subcontractor for their information. This section of the report shall be identical to that provided to the Owner, and shall state the total Subcontract price, payment to date, current payment requested, retainage, and actual amounts owed to that Subcontractor for that period.

§ 3.19 Construction Manager's Safety Program Report

In accordance with the Safety and Logistics Plan, the Construction Manager shall review the safety programs of each Subcontractor as required by the Contract Documents and coordinate the safety programs for the Project, as well as report any serious safety incidents occurring on site to the Owner and Architect in writing within thirty (30) minutes of the first discovery by the Construction Manager of their occurrence. Construction Manager is solely responsible for all safety precautions and programs in connection with the Work.

§ 3.20 Quality Review

The Construction Manager shall establish and implement a Quality Management, Commissioning and Turnover Plan to, among other things, monitor the quality of the Work. One of the purposes of the program shall be to guard the Owner

against defects and deficiency in the Work of the Subcontractor(s). The Construction Manager shall reject work and transmit to the Subcontractor a notice of nonconforming Work when it is the opinion of the Construction Manager that the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the Construction Manager is not authorized as part of this service to change, evoke, enlarge, relax, alter, or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

§ 3.21 Record Documents

The Construction Manager shall coordinate and expedite submittals of information from the Subcontractors for record drawings and specification preparations and shall coordinate and expedite the transmittal of Record Documents to the Owner as required by the Contract Documents.

§ 3.22 Operation and Maintenance Materials

The Construction Manager shall receive and carefully review all operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project Subcontractors, suppliers and manufacturers, as required by the Contract Documents. The Construction Manager shall approve those in compliance with the Contract Documents, and promptly reject in writing those not acceptable.

§ 3.23 Organize and Index Operations and Maintenance Materials

Prior to final completion of the Work, the Construction Manager shall compile the approved editions of the Subcontractor's, Supplier's, and manufacturer's operations and maintenance manuals, warranties, and guarantees, prepare electronically accessible records of, and bind hard copies of, such documents in an organized manner.

§ 3.24 Occupancy Permit

The Construction Manager shall assist the Owner in obtaining Occupancy Permits, both a Temporary and a Final, by, without limitation, coordinating the appropriate governmental officials during inspections of the Work; preparing and submitting documentation to governmental agencies; coordinating final testing and distributing results of such testing; and other activities necessary to obtain such Occupancy Permits.

§ 3.25 Occupancy Plan

In accordance with the Contract Documents, if called for as part of the Project requirements, the Construction Manager shall assist the Owner in the preparation and implementation of a detailed Occupancy Plan for the Owner and the Project. This Occupancy Plan will graphically show the sequencing of Owner's occupancy of the facility by area, with dates, access points, and parking allocations acceptable to both the Owner and Construction Manager.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of Exhibit "A," the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall carefully scrutinize such information for consistency with other information about the Work and exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, reasonably requested by Construction Manager to perform the Work, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.~~ other information under the Owner's control when (1) such services are reasonably required by the scope of the Work; (2) are scheduled by the Construction Manager in the approved Construction Manager's Project Schedule; (3) and requested by the Construction Manager in writing reasonably in advance of the date required by the Construction Manager to allow the Owner to begin procurement of the requested consultant(s), and such consultant(s) to complete the requested services in the normal course of the consultant(s)' business.

§ 4.1.6 ~~If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~ Omitted.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, ~~insurance and accounting services, including auditing services, insurance, accounting, auditing services, testing services, and inspection services required by statute that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.~~

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as ~~described in AIA Document B133™ 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement.~~ normally and customarily provided on projects of similar size and quality. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Fifty Thousand dollars (\$50,000.00)

§ 5.1.2 ~~The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below. Omitted.~~

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

Not Applicable

Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification. Omitted.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within three (3) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 ~~Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid — (—) days after the invoice date within thirty (30) days of the date the Owner receives the Construction Manager's approvable invoice. Amounts unpaid shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~

~~(Insert rate of monthly or annual interest agreed upon.)~~

~~—%—~~ allowed by Texas Government Code Ch. 2251.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

As limited by the Guaranteed Maximum Price set forth in Section 6.2, the Construction Manager shall receive a basic fee (the "Construction Manager's Fee") equal to three-point eight five percent (3.85%) of the Cost of Work, until acceptance of the final update to the Guaranteed Maximum Price, when it will be converted to and fixed as a lump sum.

§ 6.1.2.1 For changes in the Work, the rate of the Construction Manager's Fee shall be adjusted at a rate of three-point eight five percent (3.85%), with the exception of an amount equal to the first five hundred thousand dollars (\$500,000.00) of the GMP (excluding Owner's Contingency) in Change Orders, which shall include Zero percent (0%) Fee.

§ 6.1.2.2 The Construction Manager's Fee includes without limitation, all required off-site corporate management personnel; contract and trade contract negotiations; administration; accounting; information technology, software,

hardware and related labor costs; off-site corporate office equipment, infrastructure and staff; and other corporate office requirements the Construction Manager may need for its operations or to complete the Work. Construction Manager shall not charge any of said costs as Costs of Work.

§ 6.1.2.3 The Construction Manager's Fee shall not be subject to reduction for decreases in the Cost of the Work for accepted Value Engineering Proposals, or deductive changes in the Work. If, however, an individual reduction in the scope of the Work is substantial and exceeds five hundred thousand dollars (\$500,000.00) of the GMP (excluding Owner's Contingency) in value, the Construction Manager's Base Fee shall be reduced by a sum equal to three-point eight five percent (3.85%) of the amount in excess of that amount, with the exception of the savings realized in the final reconciliation of the actual Cost of Work with the Guaranteed Maximum Price.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Shall be as defined in the Contract Documents.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Shall be as defined in the Contract Documents.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (—%) of the standard rental rate paid at the place of the Project; the rates shown in Exhibit "I" – Rental Rates, and as further specified in A201 – 2017, General Conditions.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Shall be as defined in Section 8.6 of the A201 – 2017, General Conditions.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in Exhibit "A," the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

Not Applicable

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time Contract Time may be adjusted as a result of changes in the Work. Work as agreed upon in writing by the Owner.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 that do not affect cost or schedule as provided in Section 7.4 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Exhibit "A," the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 Section 7.2.2 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to

subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 ~~If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~ Omitted.

§ 6.4 Change Order Control

In accordance with the Construction Management Plan, the Construction Manager shall establish and implement a Change Order control system.

§ 6.4.1 After first consulting with the party initiating a request for a change in the Work, and collating the initial information necessary to issue such request, the Architect shall provide the Construction Manager with a general written description of the proposed change, together with any technical information and drawings prepared by the Architect which further detail the impact to the scope of the Work (a "Proposal Request"). The Construction Manager will promptly acknowledge receipt of the Proposal Request, the sufficiency of the information provided, and the date it will respond; or promptly and specifically request, in detail, the missing information necessary to prepare a response.

§ 6.4.2 The Construction Manager shall send the Proposal Request to the affected Subcontractor(s). In response to the request for a proposal, the Subcontractor(s) shall submit to the Construction Manager for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change in Work, including without limitation the request's impact on the quantities and unit costs of Subcontractor(s)' previously contracted portion of time Work, if any. The Construction Manager shall discuss the proposed change with the Subcontractor(s) and endeavor to determine the Subcontractor(s)' basis for the proposed cost and time to perform the work, and the effect thereof, if any, on the Guaranteed Maximum Price and Construction Manager's Project Schedule.

§ 6.4.3 The Construction Manager shall assemble, organize, review and validate all the information provided for any request for change to the Contract Time or Guaranteed Maximum Price submitted by Subcontractor(s); and after such analysis shall diligently and vigorously negotiate the best value on behalf of the Owner with each such Subcontractor.

§ 6.4.4 In instances where the Construction Manager's analysis supports the validity of the request, and the Construction Manager's negotiations with the Subcontractor have resulted in the Owner receiving good value, the Construction Manager shall prepare a detailed Change Order Request for the Owner's and Architect's review. Such Change Order Request shall include, without limitation deltas in quantities and unit costs from the Work included in the Guaranteed Maximum Price and impacts to specific scheduled activities in the most recently approved Construction Manager's Construction Schedule occasioned by the Proposal Request.

§ 6.4.5 The Construction Manager shall carefully review the Change Order Request and its supporting detail with the Owner and Architect; and make recommendations to them for mitigating the cost and schedule impacts thereof to both the Construction Manager's Work and the Owner's Project.

§ 6.4.6 The Construction Manager shall consult with the Architect to evaluate the merits and validate the appropriateness of the Construction Manager's Change Order Requests, and incorporate the Architect's opinions into the Construction Manager's recommendations to the Owner.

§ 6.4.7 The Construction Manager shall consult with the Owner prior to the Owner's consideration of any Change Order Request. Following Owner acceptance, the Construction Manager shall prepare the Change Order documents for signature by the Construction Manager, Architect and Owner, in that order.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the ~~standard rates~~ competitive prices paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 ~~Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops for labor in the direct employ of the Construction Manager are shown in Exhibit "E" – Construction Manager's Soft Costs and Fee, in the performance of the Work at the rates set forth in Exhibit "H" - Customary and Usual Labor Rates.~~

§ 7.2.1.1 Pursuant to Chapter 2258, Texas Government Code, all contractors and any Subcontractor involved in the construction of a public work project shall pay not less than the prevailing rates as per diem wages in the locality at the time of construction to all laborers, workmen and mechanics employed by them in the execution of this contract. Construction Manager shall assure that these requirements are met for the Project and shall insure that every contract or subcontract relating to the Work requires, on behalf of Owner, that the prevailing wage rates be paid

§ 7.2.1.2 The Construction Manager shall be provided an applicable Department of Labor Wage Rate Determination for use on the Project required by Chapter 2258.022, Texas Government Code. In the event the Owner does not provide this Labor Wage Rate Determination, the Construction Manager shall request it in writing in a timely manner, so as not to delay the Construction Manager's initial subcontractor procurement process during preconstruction. The Construction Manager shall, if requested by the Owner, assist the Owner in obtaining a survey of the wages paid, by labor class, on projects of a similar type in a similar location.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 ~~Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:~~

~~(Identify the personnel, type of activity and, if applicable, any agreed-upon percentage of time to be devoted to the Work.)~~
Charges for Construction Manager's personnel, when stationed at the field office and engaged exclusively in the performance of the Work, or other personnel as Construction Manager and Owner may mutually agree, as provided and set forth in Exhibit "H" - Customary and Usual Labor Rates.

N/A

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, but not merit bonuses or profit-sharing provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. Charges for such costs shall not exceed the Construction Manager's actual cost and, as a result, when computing amounts chargeable for such costs Construction Manager shall give proper consideration to what portion of such charges are solely attributable to the Work and the effect of any annual or other periodic limitations on any such charges.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates ~~The rates set forth in Exhibit "H – Customary and Usual Labor Rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~

§ 7.2.6 Notwithstanding Exhibit "H" – Customary and Usual Rates to be used by the Construction Manager for progress billings, the Owner shall have the right to audit the Construction Manager's actual labor costs, burdens, and related expenditures before final payment, and adjust the Owner's payment to the Construction Manager for variations found accordingly.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and properly entered into under this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including ~~transportation and storage at the site, temporary storage and transportation~~ of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed ~~to allow for reasonable waste and~~ but required to provide allowance for waste and for spoilage. Unused excess materials, if any, shall become the Owner's property ~~be properly stored at the site, or in accordance with the Owner's instructions, provided to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager.~~ Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work. ~~Construction Manager shall use its best efforts and judgment to avoid purchasing excess materials without the prior approval of the Owner.~~

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of ~~transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully~~ Costs, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools (not owned by the workers) consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value. Any such items used but not consumed, which were paid for by the Owner, shall become property of the Owner and shall be delivered to the Owner upon completion of the Work in accordance with instructions furnished by the Owner. If the Owner elects, however, the Construction Manager shall purchase any items from the Owner at a purchase price equal to the original cost charged to the Owner, less the reduction in fair market value resulting directly from any use of such item in connection with the Work or such other price which is mutually acceptable for the Owner and the Construction Manager. Upon demand by the Owner, the Construction Manager shall furnish the Owner with any information and documentation necessary to verify the period of time for which items were used in connection with the Work.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item of all necessary machinery and equipment, exclusive of hand tools, not used at the site of the Work, whether rented from the Construction Manager or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof. Such rental charges shall not exceed the amount set forth in Exhibit "I" – Rental Rates, attached hereto and made part hereof. In the absence of any appropriate rental amount set forth in Exhibit "I" – Rental Rates, rental charges shall be consistent with those generally prevailing in the location of the Project. The Construction Manager shall obtain bids for all machinery and equipment to be rented from no less than three (3) responsible suppliers other than the Construction Manager itself, or an Affiliate as defined herein. The Owner shall, with the advice of the Construction Manager and Construction Manager, determine which bid is to be accepted. In no event shall the Construction Manager be entitled to reimbursement for any cumulative total of rental charges in connection with any single piece of machinery or equipment in excess of sixty percent (60%) of its fair market value as of

the date that such machinery or equipment is first put into service in connection with the Work. The Construction Manager shall pay any excess rental charges. Construction Manager shall disclose to the Owner if any rental arrangements include a lease to purchase component as a result of which rental payments chargeable to Owner as costs are applied, in whole or in part, to Construction Manager's acquisition of such rented equipment, in which event the rental rate otherwise provided for shall be reduced by fifty percent (50%).

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including reproduction costs, electronic communications and data connections at the site, postal and parcel express delivery charges, documented petty cash expenses of the site office as well as general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval, with the Owner's prior approval, when stored and maintained in compliance with the Contract Documents.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents. That portion of insurance and bond premiums that can be directly attributed to this Contract and required by this Agreement. Expenses shall be substantiated by documentation in form of substance satisfactory to Owner.

§ 7.6.1.1 Costs for self insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Omitted.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval. Omitted.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that which are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of testing laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3. nonconforming Work other than that which payment is permitted under the Contract Documents.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents and provided such royalties, fees, and other costs are not excluded by the last sentence of Section 3.17 of AIA Document A201-2017 or other provisions of the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval. Omitted.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents. Omitted.

Init.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. Omitted.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval. That portion of the reasonable expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work, when in compliance with Section 7.2.2.1.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work. Omitted.

§ 7.6.12 The cost of travel more than 100 miles from the site by; and commercial lodging, rental housing and meals for the Construction Manager's supervisory personnel properly and reasonably incurred in the performance of the Work is "Travel and Subsistence". Travel and Subsistence incurred in accordance with the Construction Manager's written personnel policy for actual and verifiable relocation and temporary living expenses of personnel required for the Work, in case it is necessary to relocate such personnel from locations further than one hundred (100) miles from the site, when approved by the Owner in advance and in writing, and not in excess of the line item amount shown for this purpose in Exhibit "E" – Construction Manager's Soft Cost & Fee

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior written approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017, to the extent not (1) caused by the Construction Manager, a subcontractor, or anyone for whom either is responsible, or (2) capable of being prevented through timely notice of an unsafe condition to the Owner.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, resulted from causes other than the fault, negligence, or neglect of the Construction Manager or its subcontractors, vendors or suppliers in whole or in part, or, failure of Construction Manager or its subcontractors, vendors or suppliers to comply with all of the requirements of the Contract Documents or the failure of the Construction Manager's personnel to adequately supervise the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recovered recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others. Subcontractors or suppliers.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 losses included in Section 7.7.3, may include settlements made with the prior written consent and approval of Owner. No such losses and expenses shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9: the Work for the purpose of determining Construction Manager's Fee unless such loss requires substantial reconstruction and Construction Manager is placed in charge thereof. In such event, Construction Manager shall be paid for profit and overhead in an amount calculated by the percentage identified in the Contract Documents, for Changes to the Work of the cost of any such reconstruction, provided such substantial reconstruction is not: (i) required due to the fault or negligence of the Construction Manager or failure of Construction Manager to comply with all of the requirements of the Contract Documents, or (ii) incidental reconstruction, which for purposes of this Section 7.7.4 is hereby deemed to mean any reconstruction involving a cost of less than One Thousand Dollars (\$ 1,000).

§ 7.7.5 Any costs which comprise the Cost of Work, which are also set forth in the "General Conditions" portion of Exhibit "E" – Construction Manager's Soft Costs & Fee, shall not exceed the total amount shown in aggregate therein for such expenditures. Such costs shall also be compliant with the allocations specified in "General Conditions Responsibility Matrix" contained in Exhibit "E". However, any single line item in General Conditions, with the sole exceptions of those included in "Weather Protection" and "Travel and Subsistence", may be exceeded if offset by the aggregate of corresponding or greater underages at other line items, and the total cost for General Conditions is not exceeded.

§ 7.7.5.1 Construction Manager's Change Order Requests will include additional General Conditions costs as justifiable, and to the extent the actual expenditures of General Conditions cost items are increased by reason of increase(s) in: the duration of the Work; the quantity of Construction Manager's facilities and equipment required; or number or duration of supervisory personnel on site directly required to enact the requested change. General Conditions costs shall not be increased for additional personnel and labor costs not actually incurred by the Construction Manager or documented to the satisfaction of the Owner.

§ 7.7.5.2 Notwithstanding the above, the Construction Manager has included in General Conditions sufficient supervision and project controls personnel to prepare and process a standard amount of project documentation, including without limitation, requests for information, meeting minutes, Proposal Requests, Change Order Requests, Change Orders, and other Construction Manager's administration and deliverables normally required on similar projects. The Construction Manager will not be additionally compensated above the amount shown in General Conditions for preparing or processing these documents.

§ 7.7.6 The cost of properly and reasonably maintaining access to the Work in spite of, facilitating progress of the Work during, and protecting the Work itself from the impact of inclement weather is "Weather Protection". Weather Protection shall not exceed the total of the line items shown for this purpose in the General Conditions, given the Work is performed during average weather conditions for the Project site, as such average is defined in the Contract documents.

§ 7.7.6.1 Line items in General Conditions that shall be considered, in their aggregate, for the purpose of calculating the Weather Protection maximum costs allowable under this Agreement include weather protection, snow removal, temporary heat, and temporary protection.

§ 7.7.7 The actual costs for General Conditions, Weather Protection, and Travel and Subsistence will be billed on an "as incurred" and actual cost basis, and any unused portion of such amounts will revert to the Owner as savings below the Guaranteed Maximum Price.

§ 7.7.7.1 The Construction Manager shall, without limitation keep such separate and distinct records as are required for the Construction Manager to easily validate the accuracy of the Construction Manager's billing for the costs of General Conditions, Weather Protection, and Travel and Subsistence.

§ 7.7.7.2 In the event the Construction Manager believes General Conditions, Weather Protection, or Travel and Subsistence line item(s) included in the Guaranteed Maximum Price should be increased due to changes in the Work or circumstances beyond the Construction Manager's responsibilities to control under this Agreement; or the Owner or Construction Manager believes such line items should be lowered based on better circumstances for performing the Work than originally anticipated by the Owner and Construction Manager, the Guaranteed Maximum Price shall then be adjusted as provided in the Contract Documents for changes in the Work.

§ 7.7.8 The Contingencies shown in each Control Estimate, and ultimately in Exhibit "A" – Guaranteed Maximum Price Amendment are lump sums provided within the Guaranteed Maximum Price for use by the Construction Manager and Owner as follows:

.1 Preconstruction Contingency

The Construction Manager's "Preconstruction Contingency" is for the Construction Manager's use during the Preconstruction Phase in protecting the Control Estimates and the final Guaranteed Maximum Price from estimating errors and the market conditions at the time of Subcontractor bidding. The initial Preconstruction Contingency in the first Control Estimate will be ten percent (10.0%), which initially will be inclusive of the Contractor's Construction Contingency identified in Section 7.7.8.3 below.

As the Preconstruction Contingency is not provided for the Construction Manager's access or use during the Construction Phase, it shall be reduced to the zero (0) within seventy (70) days after the Owner's execution of Exhibit "A" – Guaranteed Maximum Price Amendment, and the Owners' Contingency will be adjusted accordingly.

.2 Additional Marketplace Risk

After the Owner has executed Exhibit "A" – Guaranteed Maximum Price Amendment, the Construction Manager will award Subcontractors' contracts. Eighty percent (80%) of those subcontracts (by value) will

be awarded within thirty (30) days of the Owner's execution of the Exhibit Y - Guaranteed Maximum Price Amendment; and ninety-five percent (95%) of those subcontracts will be awarded within sixty (60) days of that date. The five percent (5%) of the unawarded subcontracts remaining (60) days after the Owner's execution of the Exhibit "A" - Guaranteed Maximum Price Amendment shall be those bid packages the Owner and Construction Manager agreed in advance are either not sufficiently documented to award, or do not pose a significant risk for remaining unawarded.

Within seventy (70) days after the Owner's execution of the Exhibit "A", a reconciliation of the Guaranteed Maximum Price and the awarded subcontracts will be performed by the Construction Manager, identifying savings beneath the Guaranteed Maximum Price (if any). These savings shall be reallocated to the Owner's Contingency; except as mutually agreed by the Owner and Construction Manager to be collated into "Additional Marketplace Risk" line item(s) in the Schedule of Values. This Additional Marketplace Risk is to (i) protect the Cost of the Work from known and unknown scope gaps between subcontracts, as well as uncommitted commodities subject to future price changes (if any), not to exceed 1.0% of the Guaranteed Maximum Price for the initial fund; and an additional 1.0% of Additional Marketplace Risk to be released one hundred eighty (180) days prior to Substantial Completion; and (ii) protect the Guaranteed Maximum Price from specific Subcontractor(s)' risk profile(s); and (iii) will be allocated accordingly in the Schedule of Values. . The unused portions of the Additional Marketplace Risk line item(s) will be reallocated to the Owner's Contingency using a schedule mutually agreed to by the Owner and Construction Manager concurrently with the creation of such line item(s).

.3 Construction Contingency

The Construction Manager's "Construction Contingency" is for the Construction Manager's use during the construction of the Work, and will not exceed the sum of one percent (1.0%) of the projected Cost of the Work for new construction plus two point five percent (2.5%) of the projected Cost of the Work for renovation(s) to existing building(s). The Construction Manager's Construction Contingency calculations shall not include the Owner's Contingency.

Under no circumstances is the Construction Manager's Construction Contingency to be used by the Owner for increases in the scope, quality or quantity of the Work; nor by the Construction Manager for correcting nonconforming Work; Work items discovered during the Construction Phase not to be coordinated among the Subcontractor's scope of work due to an oversight of the Construction Manager; or similar Construction Manager's errors or omissions.

The Construction Manager's access to the Construction Manager's Construction Contingency shall be approved in writing by the Owner on a per instance basis by the Owner as being in compliance with the above requirements, such approval not to be unreasonably withheld.

.4 Owner's Contingency

The "Owner's Contingency" shall be an amount specified by the Owner; and is for the Owner's exclusive use in absorbing the increased scope of Cost of the Work items (if any) within the Construction Manager's Guaranteed Maximum Price. Any Owner's authorization of use of the Owner's Contingency shall be in writing; and will ultimately require documentation in a Change Order, showing both the amount reallocated to Cost of the Work, and the balance remaining in the Owner's Contingency

§ 7.7.9 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Owner to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean and elsewhere in this Agreement, the term "Related Party" shall mean any party or entity related to or affiliated with the Construction Manager or in which the Construction Manager has direct or indirect ownership or control, including without limitation: (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) officer, director, partner or employee of, the Construction Manager or any entity owned by the Construction Manager has any direct or indirect interest in; (3) any party with an excess of ten

percent (10%) interest in the Construction Manager in the aggregate; (4) any entity which has the right to control the business or affairs of the Construction Manager; or ~~(4)(5)~~ any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If after the Construction Manager having followed the stipulations in this Agreement, any of the costs to be reimbursed are contemplated to arise from a transaction between the Construction Manager and a ~~related party~~, Related Party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the ~~related party~~, Related Party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a ~~related party~~ Related Party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include (unless otherwise specifically stated in Exhibit "E" – Construction Manager's Soft Costs and Fee) the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 Rental costs of machinery and equipment, except as specifically provided herein;
- .6 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- ~~.6~~ .7 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- ~~.8~~ Costs incurred in the performance of Preconstruction Phase Services (unless specifically stated in Exhibit "E" – Construction Manager's Soft costs and Fee);
- ~~.7~~ .9 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- ~~.8~~ .10 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- ~~.11~~ Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than pre-construction services) relating to accounting in Construction Manager's office and even if at the site, except as specifically identified herein;
- ~~.12~~ Interest on Construction Manager's capital or on money borrowed by Construction Manager, including the capital employed by Construction Manager in the performance of the Work.
- ~~.13~~ Amounts required to be paid by Construction Manager for Federal and/or State income, franchise taxes or other business taxes, but not including any applicable sales taxes;
- ~~.14~~ Legal, accounting, or other similar professional services provided by or to Construction Manager, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with Owner, the Architect or any other person or entity relating to the Project or otherwise;
- ~~.15~~ Sales, entertainment, and meal expenses;
- ~~.16~~ Employee vehicle expenses, including fuel above the "Travel & Subsistence" not-to-exceed amount;
- ~~.17~~ General Conditions, Weather Protection and Travel and Subsistence in excess of the line items shown in Exhibit "E" - Construction Manager's Soft Costs and Fee and Exhibit "A" - Guaranteed Maximum Price Amendment;
- ~~.18~~ Costs related to Construction Manager's indemnification obligations;
- ~~.19~~ The cost of Travel and Subsistence not in compliance with the requirements of Section 7.6.12; and
- ~~.9~~ Costs for services incurred during the Preconstruction Phase.
- ~~.20~~ Costs for insurance through a captive insurer owned or controlled by the Construction Manager.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; ~~otherwise, cash discounts shall accrue to the Construction Manager.~~ payments/. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be ~~obtained~~ secured. The Construction Manager shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work from any source including but not limited to its Subcontractors, vendors, or other suppliers of goods, insurance or other services without providing the Owner with at least thirty (30) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds if and when necessary to obtain such discount, rebate or refund on behalf of the Owner in accordance with the requirements of this Section 8.1.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 ~~Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~ Omitted.

§ 9.1.1 ~~When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~ Omitted.

§ 9.2 ~~Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.~~ Omitted.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the ~~Owner.~~ Owner and the Construction Manager and be in accordance with the Construction Management Plan. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to ~~audit~~ audit, inspect and copy, the Construction Manager's records and accounts, including complete documentation supporting actual, direct and "bare" labor costs, job – cost coded labor reports, accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ~~three~~ five (5) years after final payment, or for such longer period as may be required by law. All records shall be maintained in accordance with generally accepted accounting procedures consistently applied. Subcontractors retained by the Construction Manager on a cost-plus basis shall have the same obligation to retain records and permit audits, inspections and copying as required of the Construction Manager under this Agreement.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for ~~Payment~~ Payment, including all supporting documentation as hereinafter provided, submitted to the Architect by the Construction Manager, and upon review and approval by the Owner and Architect and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

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

N/A

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the twenty-fifth (25th) day of a month, and said Application for Payment is approved the Owner shall make payment of the amount certified to the Construction Manager not later than ~~the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than (—) days after the Architect receives the Application for Payment.~~
(Federal, state or local laws may require payment within a certain period of time.) thirty (30) days after the day of approval.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of ~~values.~~ values except as otherwise stated in Section 7.7.5 of this Agreement.

§ 11.1.5.3 When the Construction Manager allocates costs from ~~a contingency~~ the contingencies set forth in Section 7.7.8 of this Agreement to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the ~~Architect.~~ Owner and Architect for review and approval.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.1.1 The Owner and the Construction Manager agree the retainage on each Application for Payment shall be five percent (5.0%).

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five percent (5%)

§ 11.1.8.1.1 ~~The following All~~ items are ~~not~~ subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Not Applicable

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows: specified in Section 9.4.3 of the A201 – 2017, General Conditions.

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

Not Used

§ 11.1.8.3 ~~Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~

~~(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.) Omitted.~~

Not Used

~~§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017. Omitted.~~

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.1.13 Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner, in Owner's sole discretion, against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Agreement. Notwithstanding the above, nothing in this Section shall diminish the Owner's right to find the Construction Manager in default of this Agreement and subsequently making a claim on their performance bond or insurance policy.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section ~~11.2.2.2~~ 11.2.2.2; and
- .4 a complete release of all claims arising out of, related to or connected with Construction Manager's performance of the respective Phase under this Agreement, and any claims of Subcontractors, subject to any claims reserved in accordance with the terms of the General Conditions and an affidavit that so far as Construction Manager has knowledge or information, the release includes and covers all materials and services over which Construction Manager has control for which a claim could be filed, subject to any claims reserved in accordance with the terms of the General Conditions.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

~~§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect. Omitted~~

~~§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, a summary of the Owner's audit findings, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for~~

withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 ~~If the Owner's auditors' report concludes~~ auditors conclude that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. ~~Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.~~

§ 11.2.3 ~~The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~ Omitted.

Not Used

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located, are due and payable within thirty (30) days of the date the Owner receives the Construction Manager's approvable invoice. Amounts unpaid shall bear interest at the legal rate allowed by Texas Government Code Ch. 2251.~~
(Insert rate of interest agreed upon, if any.)

%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. ~~However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.~~

§ 12.1.2 ~~The Architect-Owner~~ will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, ~~unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker services.~~
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/A

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

Init.

[] Arbitration pursuant to Article 15 of AIA Document A201–2017

[**X**] Litigation in a court of competent jurisdiction

[] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner. Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of Exhibit "A," the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of Exhibit "A," the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 ~~The~~ In the event of termination of this Agreement pursuant to Section 13.1.3, the Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse ~~or indemnify~~ the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. ~~If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.~~ Nothing in this Article 13 or in the Contract Documents shall be construed to constitute or authorize a pass through or assignment of the Construction Manager's rights or remedies, at law or in equity, to any Subcontractor, Supplier, or any other related party. For all purposes, the Contract Documents shall not be construed to create any privity of contract between the Owner and any Subcontractor(s), Supplier(s), Related Party, or any other third-party providing services related to this Project.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause Exhibit "A," the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager ~~a termination fee as follows:~~ compensation calculated in the same manner as specified in Section 13.2.2 of this Agreement.

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

Not Used

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, 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 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, 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. Omitted.

§ 14.2.2 The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment. Omitted.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance insurance as specified in Exhibit "B" – Insurance and Bonds for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate for bodily injury and property damage. Omitted.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (\$) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. Omitted.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Omitted.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit. Omitted.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate. Omitted.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
Not Used	

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall ~~purchase and continue to maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, "B" – Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)~~Omitted.~~

Not Used

§ 14.5 Other provisions:

§ 14.5.1 The Construction Manager represents and warrants the following to the Owner (in addition to any other representation and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and final completion of the Work:

- .1 The Construction Manager is financially solvent, capable of obtaining adequate insurance, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 The Construction Manager is able to furnish the physical infrastructure, tools, materials, supplies, equipment and supervision, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 The Construction Manager is authorized to do business in the City of Roanoke, and the State of Texas and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Construction Manager and over the Work and the Project;
- .4 The Construction Manager's execution of this Agreement and performance thereof is within the Construction Manager's duly-authorized powers;
- .5 The Construction Manager's duly-authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated its observations with the requirements of the Contract Documents;
- .6 The Construction Manager possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of this size, complexity and nature of this particular Project and will perform the Work with the care, skill and diligence of such a contractor;
- .7 The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contactor by law with respect to the Construction Manager's duties, obligations, and performance hereunder; and

.8 The Construction Manager acknowledges that the Owner is relying upon the Construction Manager's skill and experience in connection with the proper, timely and diligent prosecution of the Work.

§ 14.5.2 In the event any provision contained in this Agreement conflicts with any provision contained in the Contract Documents, the more stringent provision for the Construction Manager, as interpreted by the Owner, shall govern.

§ 14.5.3 Some or all of the Owner's duties, approvals and actions required under this Agreement may be provided by third parties by mutual agreement of the Owner and such third parties. When notified in writing of the specific duties and responsibilities of such third party, the Construction Manager will recognize the actions and approvals of the third party as sufficient to fulfill the Owner's responsibilities under this Agreement.

§ 14.5.4 The Construction Manager shall provide sufficient supporting documentation in form and with a level of detail wholly acceptable to the Owner and Construction Manager to substantiate any Application for Payment, request for Change to the Contract Sum or Contract Time, and all contract Allowances provided within the Construction Manager's Contract Sum for this scope of work. Failure to timely provide all supporting documentation, in and of itself, may result in rejection of the Application for Payment or requested change to the Contract Sum or Contract Time, or payment for work charged to the Allowance(s).

§ 14.5.5 Proof of purchase and warehouse insurance naming the Owner, Construction Manager and Architect as additional insureds, together with inspection rights for the Owner, Construction Manager and Architect is to be provided for any billed materials by the Construction Manager for the work not physically stored at the Project site.

§ 14.5.6 Time limits set out in or under this Agreement are solely for the protection and benefit of the Owner and create no third-party beneficiary rights in any other party.

§ 14.5.7 Notices. All legal notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when sent via electronic mail to the most recently provided email address, followed by first class mail when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:

Jeriahme Miller
City of Roanoke
Police Chief
500 S. Oak Street
Roanoke, TX 76262
(817) 491-6052
jmiller@roanokepolice.com

And with a copy to City Attorney's point of contact:

Jeff Moore
City of Roanoke
City Attorney
500 S. Oak Street
Roanoke, TX 76262
(214) 747-6100
jmoore@bhlaw.net

If to Construction Manager:

Russ Garrison
SEDALCO, Inc.
President
4100 Fossil Creek Boulevard
Fort Worth, TX 76137
(817) 831-2245

Init.

§ 14.5.8 All Exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.

§ 14.5.9 The numbering and captions of the sections are set forth only for convenience and reference and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

§ 14.5.10 The parties agree that they will execute any further instrument or instruments, and that they will perform any act or acts, which are or may become necessary to effectuate any of the terms or provisions of this Agreement.

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

§ 14.5.12 This Agreement has been created jointly and ambiguity cannot be construed against either party.

§ 14.5.13 This Agreement is and shall be subject to those provisions required of political subdivisions by the laws of the State of Texas. The Construction Manager understands that the Owner is a Texas home rule municipality and that the project is subject to applicable provisions of Texas law including bid requirements, bonding, and final settlement provisions.

§ 14.5.14 Construction Manager understands that certain information, including this Agreement, are public records available for public inspection and copying under the Texas Open Records Act., Texas Government Code Ch. 552, as amended, and other applicable laws.

§ 14.5.15 The Owner represents that there are sufficient funds available to undertake this Project.

§ 14.5.16 No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the governmental or sovereign immunities, rights, benefits, or protections of the Owner.

§ 14.5.17 Construction Manager warrants that the products, processes, techniques and methodologies provided by Construction Manager shall not infringe upon the copyright, patent or other proprietary rights of others.

§ 14.5.18 Construction Manager certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement. Construction Manager warrants that to the best of Construction Manager's knowledge, there exists no actual or potential conflict of interest, and no financial or substantial interest as may be prohibited by Texas law, the Charter, or Code of Ethics of the City of Roanoke between Construction Manager and Owner.

§ 14.5.19 In addition, to the extent that this Agreement (a) must be approved by the City's governing body before it may be signed or (b) has a value of \$1,000,000, or more, Construction Manager shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time Construction Manager submits this signed Agreement to Owner, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The Construction Manager must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the Construction Manager must sign the printed copy of the form and complete the "unsworn declaration" which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the Owner.

The Owner must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the Agreement binds all parties to the Agreement. The Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the Owner.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

<https://www.ethics.state.tx.us/filinginfo/1295/>

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

§ 14.5.20 Prohibition on Contracts with Companies Boycotting Israel.

In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.

Chapter 2270 does not apply to: (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Construction Manager is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.21 Prohibition on Contracts with Companies Boycotting Energy Companies.

In accordance with Senate Bill 13, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Construction Manager is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

§ 14.5.22 Prohibition on Contracts with Companies Boycotting any Firearm Entity or Firearm Trade Association.

In accordance with Senate Bill 19, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against any firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against any firearm entity or firearm trade association.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). In addition, this provision does not apply to: (1) a contract with a sole-source provider; or (2) a contract for which the governmental entity did not receive any bids from a company that is able to provide the required written verification. Unless the Construction Manager is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott any firearm entity or firearm trade association and will not boycott any firearm entity or firearm trade association during the term of this Agreement.

§ 14.5.23 In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

§ 14.5.24 Construction Manager understands and agrees that TIME IS OF THE ESSENCE.

§ 14.5.25 This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

§ 14.5.26 Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 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 Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 ~~AIA Document A133™-2019, Exhibit B, Insurance and Bonds~~
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 ~~AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: Omitted.~~
(Insert the date of the E203-2013 incorporated into this Agreement.)

- .6 Other Exhibits:
(Check all boxes that apply.)

- [] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

Exhibit "C" – Scope of Work
Exhibit "D" – Construction Manager's Project Schedule
Exhibit "E" – Construction Manager's Soft Costs and Fee
Exhibit "F" – Key Personnel
Exhibit "G" – Confidentiality of the Project
Exhibit "H" – Customary and Usual Labor Rates
Exhibit "I" – Rental Rates
Exhibit "J" – Alternates with Costs and Expiration Dates
Exhibit "K" – Unit Costs
Exhibit "L" – Allowances
Exhibit "M" – Schedule of Values
Exhibit "N" – Control Estimate # 01
Exhibit "O" – Escrow and Financing Conditions
Exhibit "P" – Disputed Work Schedule
Exhibit "Z" – Schedule of Exhibits

- [] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals,

Init.

are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the day and year first written above.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

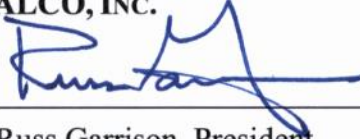
CITY OF ROANOKE, TEXAS

Approved by the Roanoke City
Council _____

By: _____
Cody Petree, Interim City Manager

Date: _____

**CONSTRUCTION MANAGER:
SEDALCO, INC.**

By: 
Russ Garrison, President

Date: 12/20/2022

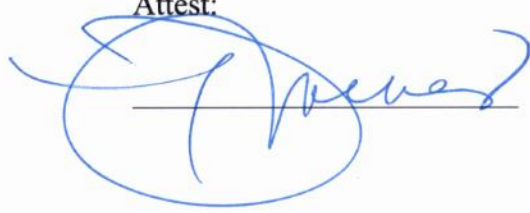
817.831.2245
Telephone Number

RGARRISON@SEDALCO.COM
E-mail Address

75-1952629
Federal Tax ID Number

Attest: _____
April S. Hill, City Secretary

CITY OF ROANOKE
500 S. Oak Street
Roanoke, Texas 76262

Attest: 

APPROVED AS TO FORM:

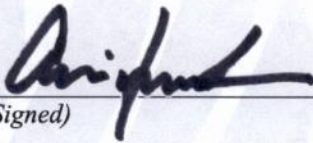
Jeff Moore, City Attorney

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chris Squadra, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 22:24:06 ET on 12/15/2022 under Order No. 2114392363 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.



(Signed)

Chris Squadra, Principal

(Title)

15-DEC-2022

(Dated)

EXHIBIT 'A'

Guaranteed Maximum Price Amendment

To be provided at a later date as mutually agreed by Owner & Contractor.

EXHIBIT 'B'

Insurance & Bonds



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/1/2022

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

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

PRODUCER	CONTACT NAME: Doreen Dare-Mack
Weber Group Advisors	PHONE (A/C, No, Ext): (972) 961-3930
17738 Preston Road, Suite #101	FAX (A/C, No): (972) 961-3931
	E-MAIL ADDRESS: dmack@webergrouppadvisors.com
Dallas TX 75252	INSURER(S) AFFORDING COVERAGE
INSURED	INSURER A: Amerisure Insurance Company
SEDALCO Inc.	INSURER B: Travelers Property Casualty Co of Amer
4100 Fossil Creek Blvd	INSURER C: Indian Harbor Insurance Company
	INSURER D: Amerisure Mutual Insurance Company
Fort Worth TX 76137	INSURER E:
	INSURER F:

COVERAGES

CERTIFICATE NUMBER: 21/22 \$10M Umb

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ XCU Included GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			CPP20738351201	12/31/2021	12/31/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS			CA 20738361101	12/31/2021	12/31/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
D	☒ UMBRELLA LIAB ☒ OCCUR			CU 21162800102	12/31/2021	12/31/2022	EACH OCCURRENCE \$ 10,000,000
B	☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			EX-9R979254-21-NF	12/31/2021	12/31/2022	AGGREGATE \$ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	WC-2103554-05	12/31/2021	12/31/2022	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Pollution Professional - Retro: 4/1/99			PEC000202620 SIR: \$50,000	12/31/2021	12/31/2022	Each Claim & Aggregate: \$5,000,000 Each Claim/Aggregate: \$2M/\$5M

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional Insured: City of Roanoke. See next page for blanket additional insured/coverage information.

CERTIFICATE HOLDER

CANCELLATION

City of Roanoke Texas
500 S Oak Street
Roanoke, TX 75262

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Darrin Weber/DORMAC

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COMMENTS/REMARKS

The General and Auto Liability policies include a Blanket Additional Insured endorsement that provides Additional Insured status to any person or organization as required by written contract or agreement.

The General Liability Additional Insured endorsement provides Ongoing and Completed Operations coverage to any person or organization when there is a written contract or agreement requiring such status.

The General Liability policy includes Primary and Non-Contributory wording in favor of any person or organization as required by written contract or agreement.

The General & Auto Liability and Workers Compensation policies include a Blanket Waiver of Subrogation endorsement in favor of any person or organization as required by written contract or agreement.

The Umbrella policy follows form of the underlying General Liability, Auto Liability and Employers Liability.

30 Days Notice of Cancellation will be provided if required by written contract, except 10 days for non-payment.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS CONTRACTOR'S GENERAL LIABILITY EXTENSION ENDORSEMENT

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This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Under **SECTION I – COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, paragraph **2. EXCLUSIONS**, provisions **1.** through **6.** of this endorsement are excess over any valid and collectible insurance (including any deductible) available to the insured, whether primary, excess or contingent (**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, paragraph **4. Other Insurance** is changed accordingly). Provisions **1.** through **6.** of this endorsement amend the policy as follows:

1. PROPERTY DAMAGE LIABILITY – ALIENATED PREMISES

- A.** Exclusion **j. Damage to Property**, subparagraph **(2)** is deleted.
- B.** The following paragraph is deleted from Exclusion **j. Damage to Property**;
Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

2. PROPERTY DAMAGE LIABILITY – ELEVATORS AND SIDETRACK AGREEMENTS

- A.** Exclusion **j. Damage to Property**, paragraphs **(3)**, **(4)**, and **(6)** do not apply to the use of elevators.
- B.** Exclusion **k. Damage to Your Product** does not apply to:
 - 1.** The use of elevators; or
 - 2.** Liability assumed under a sidetrack agreement.

3. PROPERTY DAMAGE LIABILITY – PROPERTY LOANED TO THE INSURED OR PERSONAL PROPERTY IN THE CARE, CUSTODY AND CONTROL OF THE INSURED

- A.** Exclusion **j. Damage to Property**, paragraphs **(3)** and **(4)** are deleted..
- B.** Coverage under this provision **3.** does not apply to "property damage" that exceeds \$25,000 per occurrence or \$25,000 annual aggregate.

4. PRODUCT RECALL EXPENSE

- A.** Exclusion **n. Recall of Products, Work or Impaired Property** does not apply to "product recall expenses" that you incur for the "covered recall" of "your product". This exception to the exclusion does not apply to "product recall expenses" resulting from:
 - 1.** Failure of any products to accomplish their intended purpose;
 - 2.** Breach of warranties of fitness, quality, durability or performance;
 - 3.** Loss of customer approval or any cost incurred to regain customer approval;
 - 4.** Redistribution or replacement of "your product", which has been recalled, by like products or substitutes;
 - 5.** Caprice or whim of the insured;
 - 6.** A condition likely to cause loss, about which any insured knew or had reason to know at the inception of this insurance;
 - 7.** Asbestos, including loss, damage or clean up resulting from asbestos or asbestos containing materials;
 - 8.** Recall of "your product(s)" that have no known or suspected defect solely because a known or suspected defect in another of "your product(s)" has been found.
- B.** Under **SECTION III – LIMITS OF INSURANCE**, paragraph **3.** is replaced in its entirety as follows and paragraph **8.** is added:
 - 3.** The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of:

- a. Damages under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** because of "bodily injury" and "property damage" included in the "products-completed operations hazard" and

- b. "Product recall expenses".

- 8. Subject to paragraph 5. above [of the CGL Coverage Form], \$25,000 is the most we will pay for all "product recall expenses" arising out of the same defect or deficiency.

5. **NONOWNED WATERCRAFT**

Exclusion **g. Aircraft, Auto or Watercraft**, paragraph (2) is deleted and replaced with the following:

[This exclusion does not apply to:]

- (2) A watercraft you do not own that is:
 - (a) Less than 75 feet long; and
 - (b) Not being used to carry any person or property for a charge;

6. **BLANKET CONTRACTUAL LIABILITY – RAILROADS**

Under **SECTION V – DEFINITIONS**, paragraph **c.** of "Insured Contract" is deleted and replaced by the following:

- c. Any easement or license agreement;

Under **SECTION V – DEFINITIONS**, paragraph **f.(1)** of "Insured Contract" is deleted.

7. **CONTRACTUAL LIABILITY – PERSONAL AND ADVERTISING INJURY**

Under **SECTION I – COVERAGE B.**, paragraph 2. **Exclusions**, paragraph **e. Contractual Liability** is deleted.

8. **SUPPLEMENTARY PAYMENTS**

Under **SECTION I – SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**, paragraph **1.b.** is deleted and replaced with the following:

- 1. b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

9. **BROADENED WHO IS AN INSURED**

SECTION II – WHO IS AN INSURED is deleted and replaced with the following:

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

2. Each of the following is also an insured:

- a.** Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees," other than either your "executive officers," (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insured for:

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

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or volunteer worker as a consequence of paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services except as provided in Provision **10.** of this endorsement.

Paragraphs **(1)(a)**, **(1)(b)** and **(1)(c)** above do not apply to your "employees" who are:

- (i)** Managers;
- (ii)** Supervisors;
- (iii)** Directors; or
- (iv)** Officers;

with respect to "bodily injury" to a co-"employee".

(2) "Property damage" to property:

- (a)** Owned, occupied or used by;
- (b)** Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees," "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b.** Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c.** Any person or organization having proper temporary custody of your property if you die, but only;
 - (1)** With respect to liability arising out of the maintenance or use of that property; and
 - (2)** Until your legal representative has been appointed.
- d.** Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Form.
- e.** Your subsidiaries if:
 - (1)** They are legally incorporated entities; and
 - (2)** You own more than 50% of the voting stock in such subsidiaries as of the effective date of this policy.

If such subsidiaries are not shown in the Declarations, you must report them to us within 180 days of the inception of your original policy.

- f. Any person or organization, including any manager, owner, lessor, mortgagee, assignee or receiver of premises, to whom you are obligated under a written contract to provide insurance such as is afforded by this policy, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises or land leased to you, including common or public areas about such premises or land if so required in the contract.

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

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

- g. Any state or political subdivision but only as respects legal liability incurred by the state or political subdivision solely because it has issued a permit with respect to operations performed by you or on your behalf.

However, no state or political subdivision is an insured with respect to:

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

- h. Any person or organization who is the lessor of equipment leased to you, to whom you are obligated under a written contract to provide insurance such as is afforded by this policy, but only with respect to their liability arising out of the maintenance, operation or use of such equipment by you or a subcontractor on your behalf with your permission and under your supervision. However, if you have entered into a construction contract subject to Subchapter C of Chapter 151 of Subtitle C of Title 2 of the Texas Insurance Code with the additional insured, the insurance afforded to such person(s) or organization(s) only applies to the extent permitted by Subchapter C of Chapter 151 of Subtitle C of Title 2 of the Texas Insurance Code.

No such person or organization, however, is an insured with respect to any "occurrence" that takes place after the equipment lease expires.

- i. Any architect, engineer, or surveyor engaged by you under a written contract but only with respect to liability arising out of your premises or "your work." However, if you have entered into a construction contract subject to Subchapter C of Chapter 151 of Subtitle C of Title 2 of the Texas Insurance Code with the additional insured, the insurance afforded to such person only applies to the extent permitted by Subchapter C of the Chapter 151 of Subtitle C of Title 2 of the Texas Insurance Code.

No architect, engineer, or surveyor, however, is an insured with respect to "bodily injury," "property damage," or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- (1) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
- (2) Supervisory, inspection, or engineering services.

This paragraph i. does not apply if a separate Additional Insured endorsement providing liability coverage for architects, engineers, or surveyors engaged by you is attached to the policy.

If the written contract or written agreement requires primary and non-contributory coverage, the insurance provided by paragraphs f. through i. above will be primary and non-contributory relative to other insurance available to the additional insured which covers that person or organization as a Named Insured, and we will not share with that other insurance.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the end of the policy period;
 - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization;

- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
 - d. Coverage **A** does not apply to "product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed the organization.
4. Any person or organization (referred to below as vendor) with whom you agreed under a written contract to provide insurance is an insured, but only with respect to "bodily injury" or "property damage" arising out of "your products" that are distributed or sold in the regular course of the vendor's business.

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

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement.
- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in "your product" made intentionally by the vendor;
- d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of "your products";
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the "your product";
- g. "Your products" which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
- h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) The exceptions contained in subparagraphs **d.** or **f.**; or
 - (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

This paragraph **4.** does not apply to any insured person or organization from which you have acquired "your products", or any ingredient, part, or container, entering into, accompanying or containing "your products". This paragraph **4.** also does not apply if a separate Additional Insured endorsement, providing liability coverage for "bodily injury" or "property damage" arising out of "your product" that is distributed or sold in the regular course of a vendor's business, is attached to the policy.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

10. INCIDENTAL MALPRACTICE LIABILITY

As respects provision **9.**, **SECTION II – WHO IS AN INSURED**, paragraph **2.a.(1)(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide medical or paramedical services, provided that you are not engaged in the business or occupation of providing such services, and your "employee" does not have any other insurance that would also cover claims arising under this provision, whether the other insurance is primary, excess, contingent or on any other basis.

Under **SECTION III – LIMITS OF INSURANCE**, provisions **11.** through **14.** of this endorsement amend the policy as follows:

11. AGGREGATE LIMITS PER PROJECT

The General Aggregate Limit applies separately to each of your construction projects away from premises owned by or rented to you.

12. AGGREGATE LIMITS PER LOCATION

The General Aggregate Limit applies separately to each of your locations, but only when required by written contract or written agreement. As respects this provision **12.**, your locations are premises you own, rent or use involving the same or connecting lots or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad. However, your locations do not include any premises where you, or others acting on your behalf, are performing construction operations.

13. INCREASED MEDICAL PAYMENTS LIMITS

A. SECTION III – LIMITS OF INSURANCE, paragraph 7., the Medical Expense Limit, is subject to all the terms of **SECTION III – LIMITS OF INSURANCE** and is the greater of:

1. \$10,000; or
2. The amount shown in the Declarations for Medical Expense Limit.

B. This provision **13.** does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded either by the provisions of the Coverage Form or by endorsement.

14. DAMAGE TO PREMISES RENTED TO YOU – SPECIFIC PERILS AND INCREASED LIMIT

A. The word fire is changed to "specific perils" where it appears in:

1. The last paragraph of **SECTION I – COVERAGE A**, paragraph 2. **Exclusions**;
2. **SECTION IV**, paragraph 4.b. **Excess Insurance**.

B. The Limits of Insurance shown in the Declarations will apply to all damage proximately caused by the same event, whether such damage results from a "specific peril" or any combination of "specific perils."

C. The Damage To Premises Rented To You Limit described in **SECTION III – LIMITS OF INSURANCE**, paragraph 6., is replaced by a new limit, which is the greater of:

1. \$1,000,000; or
2. The amount shown in the Declarations for Damage To Premises Rented To You Limit.

D. This provision **14.** does not apply if the Damage To Premises Rented To You Limit of **SECTION I – COVERAGE A** is excluded either by the provisions of the Coverage Form or by endorsement.

E. "Specific Perils" means fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; weight of snow, ice or sleet; or "water damage".

"Water damage" means accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.

15. BROADENED LEGAL LIABILITY COVERAGE FOR LANDLORD'S BUSINESS PERSONAL PROPERTY

Under **SECTION I – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, 2.

Exclusions, j. Damage to Property, the first paragraph following paragraph (6) is deleted and replaced with the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to a landlord's business personal property that is subject to, or part of, a premises lease or rental agreement with that landlord.

The most we will pay for damages under this provision **15.** is \$10,000. A \$250 deductible applies.

Under **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, provisions **16.** through **18.** of this endorsement amend the policy as follows:

16. BROADENED KNOWLEDGE OF OCCURRENCE

Under **2. Duties In The Event Of Occurrence, Offense, Claim, Or Suit**, paragraph **a.** is deleted and replaced and paragraphs **e.** and **f.** are added as follows:

- a.** You must see to it that we are notified as soon as practicable of an "occurrence" or an offense, regardless of the amount, which may result in a claim. Knowledge of an "occurrence" or an offense by your "employee(s)" shall not, in itself, constitute knowledge to you unless one of your partners, members, "executive officers," directors, or managers has knowledge of the "occurrence" or offense. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- e.** If you report an "occurrence" to your workers compensation carrier that develops into a liability claim for which coverage is provided by this Coverage Form, failure to report such an "occurrence" to us at the time of the "occurrence" shall not be deemed a violation of paragraphs a., b., and c. above. However, you shall give written notice of this "occurrence" to us as soon you become aware that this "occurrence" may be a liability claim rather than a workers compensation claim.
- f.** You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":
 - (1) Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;
 - (2) Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under the insurance.

17. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Paragraph **6. Representations** is deleted and replaced with the following:

6. Representations

By accepting this policy, you agree:

- a.** The statements in the Declarations are accurate and complete;
- b.** Those statements are based upon representations you made to us; and
- c.** We have issued this policy in reliance upon your representations.

We will not deny coverage under this Coverage Form if you unintentionally fail to disclose all hazards existing as of the inception date of this policy. You must report to us any knowledge of an error or omission in the description of any premises or operations intended to be covered by this Coverage Form as soon as practicable after its discovery. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

18. TRANSFER OF RIGHTS (BLANKET WAIVER OF SUBROGATION)

Paragraph **8. Transfer of Rights Of Recovery Against Others To Us** is deleted and replaced with the following:

- 8.** If the insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. However, if the insured has waived rights to recover through a written contract, or if "your work" was commenced under a letter of intent or work order, subject to a subsequent reduction to writing with customers whose customary contracts require a waiver, we waive any right of recovery we may have under this Coverage Form.

19. EXTENDED NOTICE OF CANCELLATION AND NONRENEWAL

Paragraph 2.b. of **A. Cancellation** of the **COMMON POLICY CONDITIONS** is deleted and replaced with the following:

- b. 60 days before the effective date of the cancellation if we cancel for any other reason.

Under **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph **9. When We Do Not Renew** is deleted and replaced with the following:

9. When We Do Not Renew

- a. We may elect not to renew this policy except, that under the provisions of the Texas Insurance Code, we may not refuse to renew this policy solely because the policyholder is an elected official.
- b. If we elect not to renew this policy, we may do so by mailing or delivering to the first Named Insured, at the last mailing address known to us, written notice of nonrenewal, stating the reason for nonrenewal, at least 60 days before the expiration date. If notice is mailed or delivered less than 60 days before the expiration date, this policy will remain in effect until the 61st day after the date on which the notice is mailed or delivered. Earned premium for any period of coverage that extends beyond the expiration date will be computed pro rata based on the previous year's premium.
- c. If notice is mailed, proof of mailing will be sufficient proof of notice.
- d. The transfer of a policyholder between admitted companies within the same insurance group is not considered a refusal to renew.

20. MOBILE EQUIPMENT REDEFINED

Under **SECTION V – DEFINITIONS**, paragraph **12. "Mobile equipment"**, paragraph **f. (1)** does not apply to self-propelled vehicles of less than 1,000 pounds gross vehicle weight that are not designed for highway use.

21. ADDITIONAL DEFINITIONS

- 1. **SECTION V – DEFINITIONS**, paragraph **4. "Coverage territory"** is replaced by the following definition:

"Coverage territory" means anywhere in the world with respect to liability arising out of "bodily injury," "property damage," or "personal and advertising injury," including "personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication provided the insured's responsibility to pay damages is determined in a settlement to which we agree or in a "suit" on the merits, in the United States of America (including its territories and possessions), Puerto Rico and Canada.

- 2. **SECTION V – DEFINITIONS** is amended by the addition of the following definitions:

"Covered recall" means a recall made necessary because you or a government body has determined that a known or suspected defect, deficiency, inadequacy, or dangerous condition in "your product" has resulted or will result in "bodily injury" or "property damage".

"Product Recall expenses" mean only reasonable and necessary extra costs, which result from or are related to the recall or withdrawal of "your product" for:

- a. Telephone and telegraphic communication, radio or television announcements, computer time and newspaper advertising;
- b. Stationery, envelopes, production of announcements and postage or facsimiles;
- c. Remuneration paid to regular employees for necessary overtime or authorized travel expense;
- d. Temporary hiring by you or by agents designated by you of persons, other than your regular employees, to perform necessary tasks;
- e. Rental of necessary additional warehouse or storage space;
- f. Packaging of or transportation or shipping of defective products to the location you designate; and
- g. Disposal of "your products" that cannot be reused. Disposal expenses do not include:
 - (1) Expenses that exceed the original cost of the materials incurred to manufacture or process such product; and

- (2) Expenses that exceed the cost of normal trash discarding or disposal, except as are necessary to avoid "bodily injury" or "property damage".

22. REASONABLE FORCE – BODILY INJURY OR PROPERTY DAMAGE

Under **SECTION I – COVERAGE A.**, paragraph **2. Exclusions**, subparagraph **a. Expected Or Intended Injury** is deleted and replaced with the following:

[This insurance does not apply to:]

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

23. BROADENED LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND YOUR WORK

- A. Under **SECTION I – COVERAGE A.**, paragraph **2. Exclusions**, exclusion **k. Damage to Your Product** and exclusion **l. Damage to Your Work** are deleted and replaced with the following:

[This insurance does not apply to:]

k. Damage to Your Product

"Property damage" to "your product" arising out of it or any part of it, except when caused by or resulting from:

- (1) Fire;
- (2) Smoke;
- (3) "Collapse"; or
- (4) Explosion.

For purposes of exclusion k. above, "collapse" means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

l. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard". This exclusion does not apply:

- (1) If the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor; or
- (2) If the cause of loss to the damaged work arises as a result of:
 - (a) Fire;
 - (b) Smoke;
 - (c) "Collapse"; or
 - (d) Explosion.

For purposes of exclusion l. above, "collapse" means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

- B. The following paragraph is added to **SECTION III – LIMITS OF INSURANCE**:

Subject to **5.** above [of the CGL Coverage Form], \$100,000 is the most we will pay under Coverage **A** for the sum of damages arising out of any one "occurrence" because of "property damage" to "your product" and "your work" that is caused by fire, smoke, collapse or explosion and is included within the "product-completed operations hazard". This sublimit does not apply to "property damage" to "your work" if the damaged work, or the work out of which the damage arises, was performed on your behalf by a subcontractor.

24. BROADENED BODILY INJURY COVERAGE

Under **SECTION V – DEFINITIONS**, the definition of "bodily injury" is deleted and replaced with the following:

3. "Bodily injury"

a. Means physical:

- (1) Injury;
- (2) Disability;
- (3) Sickness; or
- (4) Disease;

sustained by a person, including death resulting from any of these at any time.

b. Includes mental:

- (5) Anguish;
- (6) Injury;
- (7) Humiliation;
- (8) Fright; or
- (9) Shock;

directly resulting from any "bodily injury" described in paragraph **3.a.**

c. All "bodily injury" described in paragraph **3.b. shall be deemed to have occurred at the time the "bodily injury" described in paragraph **3.a.** occurred.**

25. DESIGNATED COMPLETED PROJECTS – AMENDED LIMITS OF INSURANCE

When a written contract or written agreement between you and another party requires project-specific limits of insurance exceeding the limits of this policy;

- A.** for "bodily injury" or "property damage" that occurs within any policy period for which we provided coverage; and
- B.** for "your work" performed within the "products-completed operation hazard"; and
- C.** for which we previously issued Amendment Of Limits Of Insurance (Designated Project Or Premises) CG 71 94 either during this policy term or a prior policy term; and
- D.** that designated project is now complete;

the limits of insurance shown in the CG 71 94 schedule will replace the limits of insurance of this policy for the designated project and will continue to apply for the amount of time the written contract or written agreement requires, subject to the state statute of repose of the project location. These limits are inclusive of and not in addition to the replaced limits.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
TEXAS CONTRACTOR'S BLANKET ADDITIONAL INSURED
ENDORSEMENT – FORM A

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Policy Number CPP20738350902	Agency Number	Policy Effective Date 12/31/2019
Policy Expiration Date 12/31/2020	Date	Account Number 20015675
Named Insured SEDALCO, INC.	Agency WEBER GROUP ADVISORS	Issuing Company AMERISURE INSURANCE COMPANY

1. **a. SECTION II - WHO IS AN INSURED** is amended to add as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement relating to your business.
 - b.** The written contract or written agreement must:
 - (1) Require additional insured status for a time period during the term of this policy; and
 - (2) Be executed prior to the "bodily injury", "property damage", or "personal and advertising injury" leading to a claim under this policy.
 - c.** If, however:
 - (1) "Your work" began under a letter of intent or work order; and
 - (2) The letter of intent or work order led to a written contract or written agreement within 30 days of beginning such work; and
 - (3) Your customer's customary contracts require persons or organizations to be named as additional insureds; we will provide additional insured status as specified in this endorsement.
2. The insurance provided under this endorsement is limited as follows:
 - a.** That person or organization is an additional insured only with respect to liability caused, in whole or in part, by:
 - (1) Premises you:
 - (a) Own;
 - (b) Rent;
 - (c) Lease; or
 - (d) Occupy;
 - (2) Ongoing operations performed by you or on your behalf. Ongoing operations does not apply to "bodily injury" or "property damage" occurring after:
 - (a) All work to be performed by you or on your behalf for the additional insured(s) at the site of the covered operations is complete, including related materials, parts or equipment (other than service, maintenance or repairs); or
 - (b) That portion of "your work" out of which the injury or damage arises is put to its intended use by any person or organization other than another contractor working for a principal as a part of the same project.

(3) Completed operations coverage, but only if:

- (a) The written contract or written agreement requires completed operations coverage or "your work" coverage; and
- (b) This coverage part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

However, the insurance afforded to such additional insured only applies to the extent permitted by law.

b. If the written contract or written agreement:

- (1) Requires "arising out of" language; or
- (2) Requires you to provide additional insured coverage to that person or organization by the use of either or both of the following:
 - (a) Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 10 01; or
 - (b) Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 10 01;

then the phrase "caused, in whole or in part, by" in paragraph 2.a. above is replaced by "arising out of".

c. If the written contract or written agreement requires you to provide additional insured coverage to that person or organization by the use of:

- (1) Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 07 04 or CG 20 10 04 13; or
- (2) Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 07 04 or CG 20 37 04 13; or
- (3) Both those endorsements with either of those edition dates; or
- (4) Either or both of the following:
 - (a) Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 without an edition date specified; or
 - (b) Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 without an edition date specified;

then paragraph 2.a. above applies.

d. Premises, as respects paragraph 2.a.(1) above, include common or public areas about such premises if so required in the written contract or written agreement.

e. Additional insured status provided under paragraphs 2.a.(1)(b) or 2.a.(1)(c) above does not extend beyond the end of a premises lease or rental agreement.

f. The limits of insurance that apply to the additional insured are the least of those specified in the:

- (1) Written contract;
- (2) Written agreement; or
- (3) Declarations of this policy.

The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

g. The insurance provided to the additional insured does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of, or failure to render, any professional services, including but not limited to:

- (1) The preparing, approving, or failing to prepare or approve:
 - (a) Maps;
 - (b) Drawings;
 - (c) Opinions;

- (d) Reports;
- (e) Surveys;
- (f) Change orders;
- (g) Design specifications; and

(2) Supervisory, inspection, or engineering services.

- h. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, paragraph 4. **Other Insurance** is deleted and replaced with the following:

4. Other Insurance.

Coverage provided by this endorsement is excess over any other valid and collectible insurance available to the additional insured whether:

- a. Primary;
- b. Excess;
- c. Contingent; or
- d. On any other basis;

but if the written contract or written agreement requires primary and non-contributory coverage, this insurance will be primary and non-contributory relative to other insurance available to the additional insured which covers that person or organization as a Named Insured, and we will not share with that other insurance.

- i. If the written contract or written agreement as outlined above requires additional insured status by use of CG 20 10 11 85, then the coverage provided under this CG 70 85 endorsement does not apply except for paragraph 2.h. **Other Insurance**. Additional insured status is limited to that provided by CG 20 10 11 85 shown below and paragraph 2.h. **Other Insurance** shown above.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization: Blanket where required by written contract or written agreement that the terms of CG 20 10 11 85 apply.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

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- j. The insurance provided by this endorsement does not apply to any premises or work for which the person or organization is specifically listed as an additional insured on another endorsement attached to this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL CHANGE – THIRD PARTY

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
COMMERCIAL GENERAL LIABILITY COVERAGE FORM
COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM
TRUCKERS COVERAGE FORM

Subject to the cancellation provisions of the Coverage Form to which this endorsement is attached, we will not:

1. Cancel;
2. Nonrenew; or,
3. Materially change (reduce or restrict)

this Coverage Form, except for nonpayment of premium, until we provide at least 30 days written notice of such cancellation, nonrenewal or material change. Written notice will be to the person or organization named in the Schedule. Such notice will be by certified mail with return receipt requested.

This notification of cancellation, nonrenewal or material change to the person or organization named in the Schedule is intended as a courtesy only. Our failure to provide such notification will not:

1. Extend any Coverage Form cancellation date;
2. Negate the cancellation as to any insured or any certificate holder;
3. Provide any additional insurance that would not have been provided in the absence of this endorsement;
or
4. Impose liability of any kind upon us.

This endorsement does not entitle the person or organization named in the Schedule to any benefits, rights or protection under this Coverage Form.

SCHEDULE

Name Of Person Or Organization

Any person or organization holding a certificate of insurance issued for you, provided the certificate:

1. Refers to this policy;
2. States that notice of:
 - a. Cancellation;
 - b. Nonrenewal; or
 - c. Material change reducing or restricting coverage;will be provided to that person or organization;
3. Is in effect at the time of the:
 - a. Cancellation;
 - b. Nonrenewal; or
 - c. Material change reducing or restricting coverage; and
4. Is on file at your agent or broker's office for this policy

Mailing Address

The address shown for that person or organization in that certificate of insurance

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS ADVANTAGE COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the

BUSINESS AUTO COVERAGE FORM

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

The premium for this endorsement is \$ _____

1. BROAD FORM INSURED

SECTION II - LIABILITY COVERAGE, A.1. Who Is An Insured is amended by the addition of the following:

- d.** Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or a majority interest, will qualify as a Named Insured. However,
 - (1)** Coverage under this provision is afforded only until the end of the policy period;
 - (2)** Coverage does not apply to "accidents" or "loss" that occurred before you acquired or formed the organization; and
 - (3)** Coverage does not apply to an organization that is an "insured" under any other policy or would be an "insured" but for its termination or the exhausting of its limit of insurance.
- e.** Any "employee" of yours using:
 - (1)** A covered "auto" you do not own, hire or borrow, or a covered "auto" not owned by the "employee" or a member of his or her household, while performing duties related to the conduct of your business or your personal affairs; or
 - (2)** An "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business. However, your "employee" does not qualify as an insured under this paragraph **(2)** while using a covered "auto" rented from you or from any member of the "employee's" household.
- f.** Your members, if you are a limited liability company, while using a covered "auto" you do not own, hire or borrow and while performing duties related to the conduct of your business or your personal affairs.
- g.** Any person or organization with whom you agree in a written contract, written agreement or permit, to provide insurance such as is afforded under this policy, but only with respect to your covered "autos".

This provision does not apply:

 - (1)** Unless the written contract or agreement is executed or the permit is issued prior to the "bodily injury" or "property damage";
 - (2)** To any person or organization included as an insured by an endorsement or in the Declarations; or
 - (3)** To any lessor of "autos" unless:
 - (a)** The lease agreement requires you to provide direct primary insurance for the lessor;
 - (b)** The "auto" is leased without a driver; and

(c) The lease had not expired.

Leased "autos" covered under this provision will be considered covered "autos" you own and not covered "autos" you hire.

- h. Any legally incorporated organization or subsidiary in which you own more than 50% of the voting stock on the effective date of this endorsement.

This provision does not apply to "bodily injury" or "property damage" for which an "insured" is also an insured under any other automobile policy or would be an insured under such a policy, but for its termination or the exhaustion of its limits of insurance, unless such policy was written to apply specifically in excess of this policy.

2. COVERAGE EXTENSIONS - SUPPLEMENTARY PAYMENTS

Under **Section II - LIABILITY COVERAGE, A.2.a. Supplementary Payments**, paragraphs (2) and (4) are deleted and replaced as follows:

- (2) Up to \$2,500 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

Under **SECTION II - LIABILITY COVERAGE, B. EXCLUSIONS**, paragraph **5. Fellow Employee** is deleted and replaced by the following:

5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business. However, this exclusion does not apply to your "employees" that are officers, managers, supervisors or above. Coverage is excess over any other collectible insurance.
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of paragraph a. above.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE AND LOSS OF USE EXPENSE

- A. Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE**, the following is added:

If any of your owned covered "autos" are covered for Physical Damage, we will provide Physical Damage coverage to "autos" that you or your "employees" hire or borrow, under your name or the "employee's" name, for the purpose of doing your work.

We will provide coverage equal to the broadest physical damage coverage applicable to any covered "auto" shown in the Declarations, Item Three, Schedule of Covered Autos You Own, or on any endorsements amending this schedule.

- B. Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions**, paragraph **b. Loss Of Use Expenses** is deleted and replaced with the following:

b. Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision, only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

- (2) Specified Causes of Loss, only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision, only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$30 per day, to a maximum of \$2,000.

C. Under **SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance**, paragraph **b.** is replaced by the following:

b. For Hired Auto Physical Damage, the following are deemed to be covered "autos" you own:

- 1. Any covered "auto" you lease, hire, rent or borrow; and
- 2. Any covered "auto" hired or rented by your "employees" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto", nor is any "auto" you hire from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. LOAN OR LEASE GAP COVERAGE

Under **SECTION III – PHYSICAL DAMAGE COVERAGE, A. COVERAGE**, the following is added:

If a covered "auto" is owned or leased and if we provide Physical Damage Coverage on it, we will pay, in the event of a covered total "loss", any unpaid amount due on the lease or loan for a covered "auto", less:

(a) The amount paid under the Physical Damage Section of the policy; and:

(b) Any:

- (1) Overdue lease or loan payments including penalties, interest or other charges resulting from overdue payments at the time of the "loss";
- (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- (3) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease;
- (4) Security deposits not refunded by a lessor; and
- (5) Carry-over balances from previous loans or leases.

6. RENTAL REIMBURSEMENT

Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions**, paragraph **a. Transportation Expenses** is deleted and replaced by the following:

a. **Transportation Expenses**

- (1) We will pay up to \$75 per day to a maximum of \$2,000 for transportation expense incurred by you because of covered "loss". We will pay only for those covered "autos" for which you carry Collision Coverage or either Comprehensive Coverage or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 24 hours after the covered "loss" and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss". This coverage is in addition to the otherwise applicable coverage you have on a covered "auto". No deductibles apply to this coverage.

- (2) This coverage does not apply while there is a spare or reserve "auto" available to you for your operation.

7. AIRBAG COVERAGE

Under **SECTION III - PHYSICAL DAMAGE, B. EXCLUSIONS**, paragraph 3. is deleted and replaced by the following:

3. We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:
- (1) Wear and tear, freezing, mechanical or electrical breakdown. However, this exclusion does not include the discharge of an airbag.
 - (2) Blowouts, punctures or other road damage to tires.

8. GLASS REPAIR – WAIVER OF DEDUCTIBLE

Section III – PHYSICAL DAMAGE COVERAGE, D. Deductible is amended to add the following:

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

9. COLLISION COVERAGE – WAIVER OF DEDUCTIBLE

Under **Section III - PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended to add the following:

When there is a loss to your covered "auto" insured for Collision Coverage, no deductible will apply if the loss was caused by a collision with another "auto" insured by us.

10. KNOWLEDGE OF ACCIDENT

Under **SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 2. Duties In The Event Of Accident, Claim, Suit Or Loss**, paragraph a. is deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "accident", claim, "suit" or "loss". Knowledge of an "accident", claim, "suit" or "loss" by your "employees" shall not, in itself, constitute knowledge to you unless one of your partners, executive officers, directors, managers, or members (if you are a limited liability company) has knowledge of the "accident", claim, "suit" or "loss". Notice should include:
- (1) How, when and where the "accident" or "loss" occurred;
 - (2) The "insured's" name and address; and
 - (3) To the extent possible, the names and addresses of any injured persons and witnesses.

11. TRANSFER OF RIGHTS (BLANKET WAIVER OF SUBROGATION)

Under **SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions** paragraph 5. **Transfer Of Rights Of Recovery Against Others To Us** is deleted and replaced by the following:

5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. However, if the "insured" has waived rights to recover through a written contract, or if your work was commenced under a letter of intent or work order, subject to a subsequent reduction in writing with customers whose customary contracts require a waiver, we waive any right of recovery we may have under this Coverage Form.

12. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Under **SECTION IV - BUSINESS AUTO CONDITIONS , B. General Conditions** , paragraph 2. **Concealment, Misrepresentation Or Fraud** is amended by the addition of the following:

We will not deny coverage under this Coverage Form if you unintentionally fail to disclose all hazards existing as of the inception date of this policy. You must report to us any knowledge of an error or omission in your representations as soon as practicable after its discovery. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

13. BLANKET COVERAGE FOR CERTAIN OPERATIONS IN CONNECTION WITH RAILROADS

When required by written contract or written agreement, the definition of "insured contract" is amended as follows:

- The exception contained in paragraph **H.3.** relating to construction or demolition operations on or within 50 feet of a railroad; and
- Paragraph **H.a.**

are deleted with respect to the use of a covered "auto" in operations for, or affecting, a railroad.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EARLIER NOTICE OF CANCELLATION
PROVIDED BY US**

Number of Days Notice 60

For any statutorily permitted reason **other than nonpayment of premium**, the number of days required for notice of cancellation is increased to the number of days shown in the Schedule above.

If this policy is cancelled by us we will send the Named Insured and any party listed in the following schedule notice of cancellation based on the number of days notice shown above.

SCHEDULE

Name of Person or Organization

The Name of Person or Organization is any person or organization holding a certificate of insurance issued for you, provided the certificate:

- 1. Refers to this policy;
- 2. States that notice of:
 - a. Cancellation;
 - b. Nonrenewal; or
 - c. Material change reducing or restricting coverage;will be provided to that person or organization;
- 3. Is in effect at the time of the:
 - a. Cancellation;
 - b. Nonrenewal; or
 - c. Material change reducing or restricting coverage; and
- 4. Is on file at your agent or broker's office for this policy.

Mailing Address

The Mailing Address is the address shown for that person or organization in that certificate of insurance.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**WC 42 03 04 B**

(Ed. 6-14)

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

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

The premium for this endorsement is shown in the Schedule.

Schedule1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

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

2. Operations:

3. Premium:

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

4. Advance Premium:

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective

Policy No.

Endorsement No.

Insured

Premium \$

Insurance Company

Countersigned by _____

WC 42 03 04 B

(Ed. 6-14)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EARLIER NOTICE OF CANCELLATION
PROVIDED BY US**

Number of Days Notice 30

For any statutorily permitted reason **other than nonpayment of premium**, the number of days required for notice of cancellation is increased to the number of days shown in the Schedule above.

If this policy is cancelled by us we will send the Named Insured and any party listed in the following schedule notice of cancellation based on the number of days notice shown above.

SCHEDULE

Name of Person or Organization

The Name of Person or Organization is any person or organization holding a certificate of insurance issued for you, provided the certificate:

- 1. Refers to this policy;
- 2. States that notice of:
 - a. Cancellation;
 - b. Nonrenewal; or
 - c. Material change reducing or restricting coverage;will be provided to that person or organization;
- 3. Is in effect at the time of the:
 - a. Cancellation;
 - b. Nonrenewal; or
 - c. Material change reducing or restricting coverage; and
- 4. Is on file at your agent or broker's office for this policy.

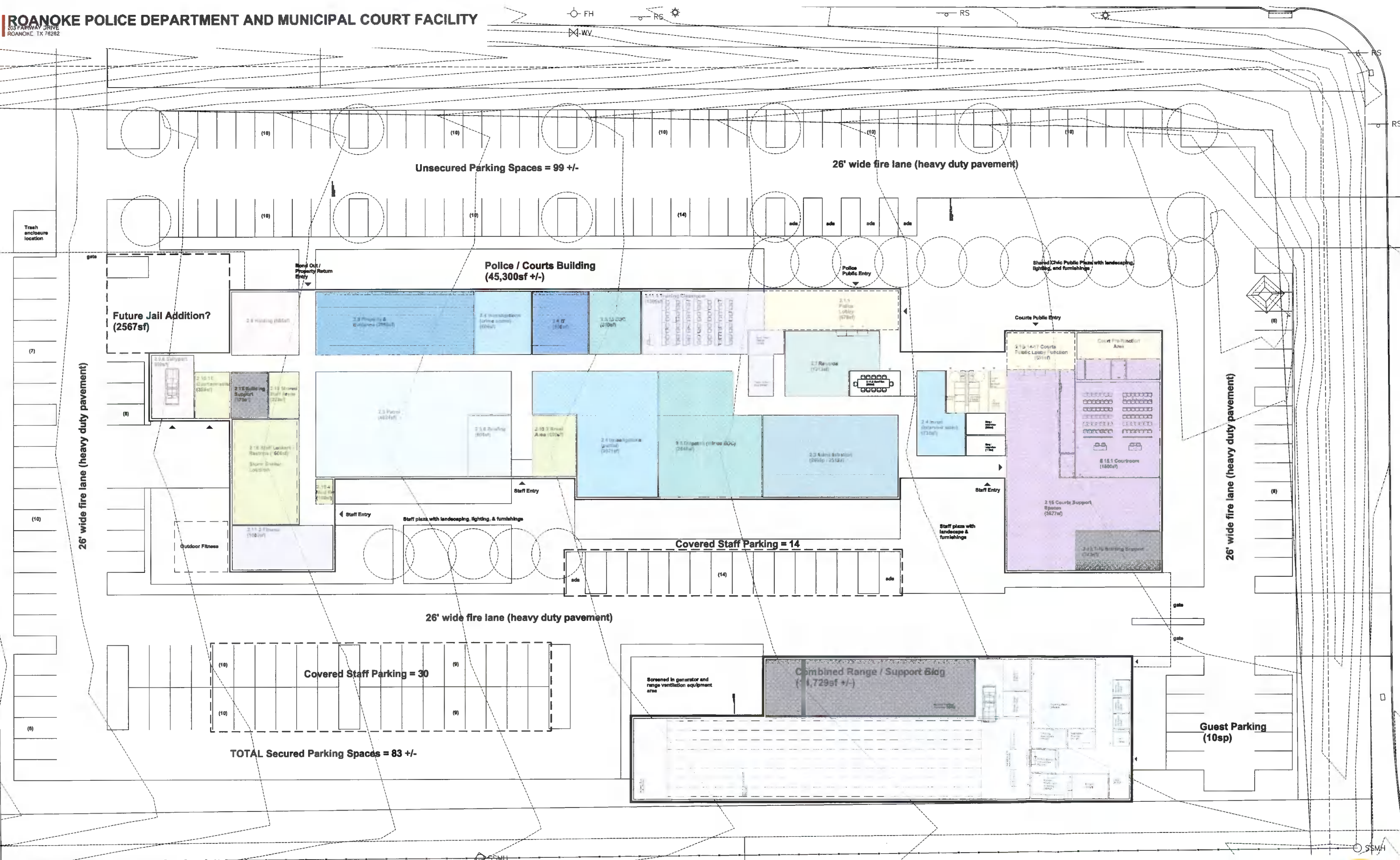
Mailing Address

The Mailing Address is the address shown for that person or organization in that certificate of insurance.

Performance and Payment bonds to be provided within ten (10) business days of signed
Guaranteed Maximum Price Amendment.

EXHIBIT 'C'

Scope of Work



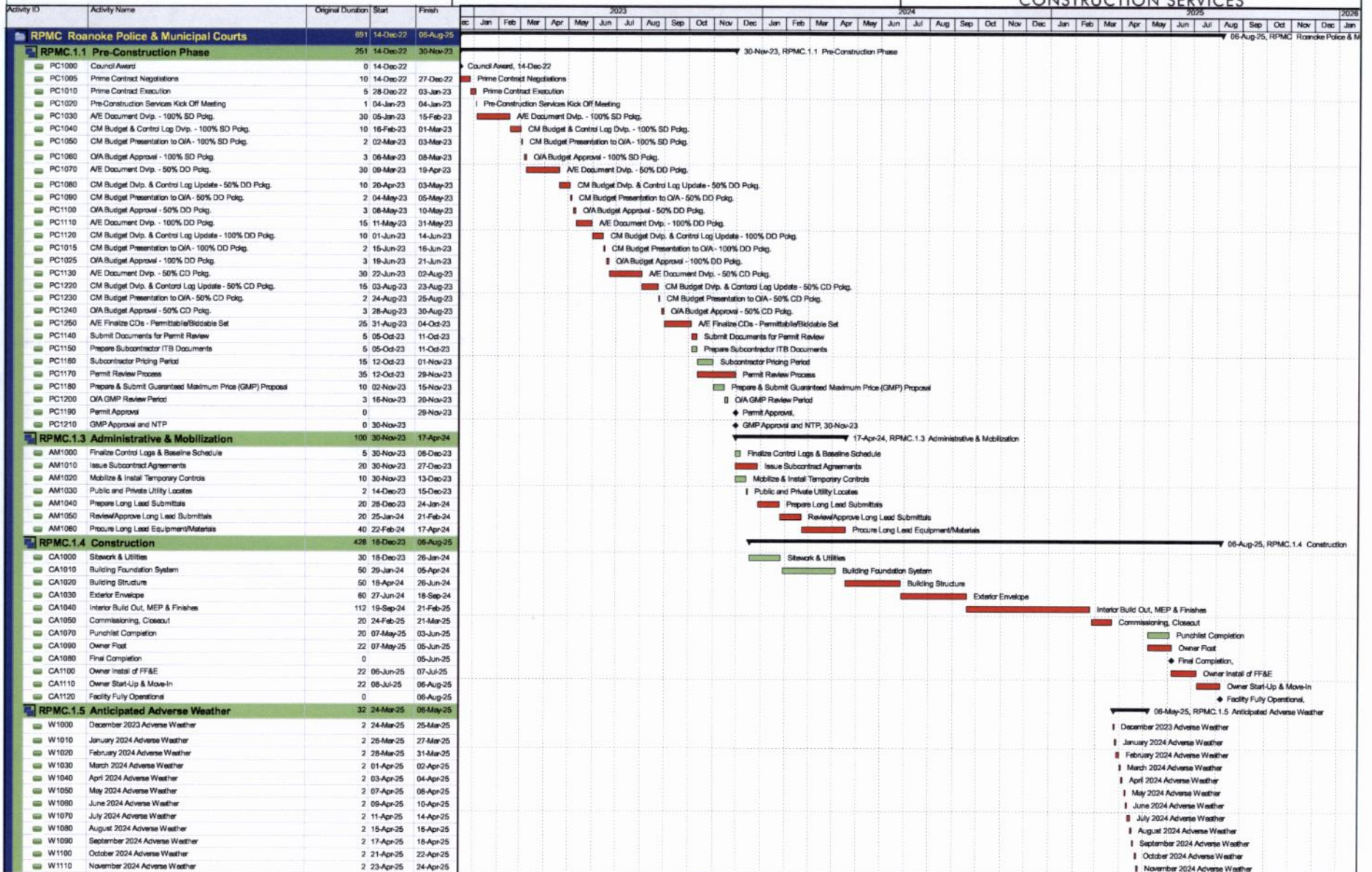
11.2.22 Concept Design Site & Planning Diagram 1"= 40'scale

EXHIBIT 'D'

Construction Manager's Project Schedule

Roanoke Police & Municipal Courts Project
07-Dec-22

Conceptual RFP Schedule
DRAFT



Actual Level of Effort Remaining Work
Actual Work Critical Remainin...

EXHIBIT 'E'

Construction Manager's Soft Costs and Fee

**City of Roanoke's
Police & Municipal Court Facility
CMAR RFP**

Updated on 04 NOV 2022

CMAR's Fee & Cost Proposal Summary

Item #	Description	Total
1.000	CMAR's Fee Summary	
1.A	Construction Team's Preconstruction Fee	50,000
1.B	Construction Team's Construction Fee	1,482,908
1.000	CMAR's Total Fee Proposal	1,532,908
2.000	CMAR's Cost Proposal Summary	
2.A	Insurance	1,106,185
2.B	Onsite Staff	847,764
2.C	Onsite Reimbursable Expenses	426,059
2.000	CMAR's Total Cost Proposal	2,380,008
CMAR's FEE + COST PROPOSAL - Base Contract		3,912,916

**City of Roanoke's
Police & Municipal Court Facility
CMAR RFP
CMAR's Fee Proposal Detail**

Updated on 04 NOV 2022

	Description	Quantity	Unit	Unit Cost	Total Cost
1.000	CMAR's Fee				
1.A	CMAR's Preconstruction Fee				
1.A.1	Construction Cost Estimating & Value Analysis\VE	1	LS	50000	50000
1.A.2	Scheduling, Phasing & Logistics Planning		LS		incl. in 1.A.1
1.A.3	Constructability Reviews		LS		incl. in 1.A.1
1.A.4	Subcontractor Procurement & Scope Validation		LS		incl. in 1.A.1
1.A.5	Meetings, Conference Calls\Video & Travel Time		LS		incl. in 1.A.1
1.A.6	Other Preconstruction Services		LS		N/A
1.A	CMAR's Preconstruction Fee- Subtotal				50000
1.B	CMAR's Construction Fee				
1.B.1	Home Office Overhead	1	LS	1482908	1482908
1.B.2	Home Office Profit		LS		incl. in 1.B.1
1.B.3	Other Construction Fees		LS		incl. in 1.B.1
1.B	CMAR's Construction Fee- Subtotal				1482908
1.A + 1.B	CMAR's Total Fee (Assuming Total Contract of \$40,000,000)				1532908
Percentage of Cost Proposed for CMAR's Fee on Change Orders				3.85%	

**City of Roanoke's
Police & Municipal Court Facility
CMAR RFP**

Updated on 04 NOV 2022

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.000 CMAR's Proposal of Costs to Be Reimbursed (Not to Exceed Topset)					
2.A Insurance					
2.001	Performance & Payment Bonds	1	LS	287040	287,040
2.002	Maintenance Bond	1	LS	58775	58,775
2.003	Builder's Risk Insurance	1	LS	80000	80,000
2.004	General Liability Insurance	1	LS	160000	160,000
2.005	Professional Liability Insurance		LS		incl. in 2.004
2.006	Pollution Liability Insurance		LS		incl. in 2.004
2.007	Excess\Umbrella Liability Insurance		LS		incl. in 2.004
2.008	Other Insurance Requirements		LS		Excluded
2.009	Subcontractor Default Insurance	1	LS	520370	520,370
Note: All bonds & insurance should assume a CMAR's total contract amount for DPSB of \$ 40,000,000.					
2.A	CMAR's Estimated Cost of Insurance - Subtotal				1,106,185
Percentage of Cost Proposed for CMAR's Insurance on Change Orders				2.87%	
2.B CMAR's Onsite Staff					
2.009	Project Manager	16	MO	11875	190,000
2.010	Project Superintendent	16	MO	14800	236,800
2.011	Assistant Superintendent		MO		N/A
2.012	Mechanical/Electrical Coordinator		MO		N/A
2.013	Working Foreman		MO		N/A
2.014	Project Engineer	16	MO	8125	130,000
2.015	Office Engineer	16	MO	8125	130,000
2.016	Field Engineer	3	MO	10900	32,700
2.017	Field Estimator		MO		N/A
2.018	General Laborer		MO		N/A

**City of Roanoke's
Police & Municipal Court Facility
CMAR RFP**

Updated on 04 NOV 2022

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.019	Timekeeper		MO		N/A
2.020	Field Office Manager		MO		N/A
2.021	Warehouse Manager		MO		N/A
2.022	Field Secretary		MO		N/A
2.023	Other On-site Contractor Staff		LS		N/A
2.024	Project Accountant		MO		N/A
2.025	Project Coordinator	6	MO	6300	37,800
2.026	Safety Manager	16	MO	5654	90,464
2.027	QA/QC Manager		MO		N/A
2.B	CMAR's Estimated Cost of Onsite Staff - Subtotal				847,764
2.C	CMAR's Onsite Reimbursable Expenses				
	Mobilization				
2.024	Field Engineering Equipment	1	LS	10961	10,961
2.025	Site Survey		LS		incl. in 2.016
2.026	Layout Within Site		LS		incl. in 2.016
2.027	Office Trailer	16	MO	2790	44,640
2.028	Office Supplies & Equipment	16	MO	750	12,000
2.029	Storage Trailer		MO		Excluded
2.030	Warehouse		MO		N/A
2.031	Set Up Onsite Office	1	LS	4531	4,531
2.032	Set Up Onsite Storage\Laydown Areas		LS		Excluded
2.033	Set Up Onsite Parking Area(s)		LS		Excluded
2.034	Temporary Roadways		LS		Excluded
2.035	Temporary Fencing		LF		Excluded
2.036	Temporary Toilets	16	MO	650	10,400

**City of Roanoke's
Police & Municipal Court Facility
CMAR RFP**

Updated on 04 NOV 2022

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.037	Project Sign	1	EA	1083	1,083
2.038	All Other Temporary Project Site Signage		EA		N/A
Safety					
2.038	Safety Equipment	1	LS	2165	2,165
2.039	First Aid Supplies	16	MO	34	544
2.040	Fire Protection		LS		By Sub
2.041	Fire Extinguishers	25	EA	271	6,775
2.042	Fall Protection		LS		By Sub
2.043	Third Party Safety Inspections		MO		N/A
2.044	Temporary Walkways		LS		N/A
2.045	Barricades		LS		By Sub
2.046	Traffic Control		LS		By Sub
2.047	Security/Watchman Services		MO		N/A
2.048	Temp Walls and Enclosures		MO		N/A
Utilities					
2.048	Install Temporary Electric Service at Site Office		LS		By Sub
2.049	Install Temporary Teledata Service at Site Office		LS		By Sub
2.050	Install Temporary Water & Sewer Service at Site		LS		By Sub
2.051	Install Temporary Gas Service at Site		LS		N/A
2.052	Ongoing Electric Charges for the Site Office	16	MO	650	10,400
2.053	Ongoing Teledata Charges for the Site Office	16	MO	704	11,264
2.054	Ongoing Water & Sanitary District Charges	16	MO	487	7,792
2.055	Ongoing Gas Utility Charges (exluding Temp Heat)		MO		0
Ongoing Expenses					
2.056	Jobsite Cell Phone(s) for Site Staff	16	MO	663	10,608

**City of Roanoke's
Police & Municipal Court Facility
CMAR RFP**

Updated on 04 NOV 2022

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.057	IT Expenses for Staff	16	MO	544	8,704
2.058	Project Schedule Setup & Maintenance		LS		incl. in 2.009 & 2.010
2.059	BIM Model Setup & Maintenance	1	LS	50000	50,000
2.060	Project Extranet Setup & Maintenance		LS		N/A
2.061	Project Photo Documentation	69	WK	94	6,486
2.062	Video\Webcam Documentation		MO		N/A
2.063	Employee Parking		MO		Excluded
2.064	Home Office Travel Costs		LS		N/A
2.065	Moving & Subsistence		LS		N/A
2.066	Additional Plans & Specs during Construction	1	LS	4331	4,331
2.067	Shipping, Couriers, & Postage	109	MO	16	1,744
2.068	Project-specific Delivery & Hauling to/from Site		LS		N/A
2.069	Temporary Radios		LS		N/A
2.070	Temporary Wiring & Lights		MO		By Sub
2.071	Water, Ice & Cups	16	MO	135	2,160
2.072	Ladders & Stairs		LS		By Sub
2.073	Erosion Control		LS		By Sub
2.074	Shoring		LS		By Sub
2.075	Weekly Clean-up	69	WK	232	16,008
2.076	Final Clean-up		LS		By Sub
2.077	Dumpster Rental	16	MO	1624	25,984
2.078	Dumpster Pulls		EA		incl. in 2.077
2.079	Temporary Generator		MO		N/A
2.080	Misc. Power Equipment	1	LS	10826	10,826

The scope of the Contractor's BIM services will be finalized as mutually agreed to by the Owner and Contractor in writing not later than 01 FEB 2022.

**City of Roanoke's
Police & Municipal Court Facility
CMAR RFP**

Updated on 04 NOV 2022

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.081	Equipment Repairs & Maintenance		LS		N/A
2.082	Temporary Partitions		SF		N/A
2.083	Pick-Up Rental	16	MO	2688	43,008
2.084	Automobile Rental		MO		N/A
2.085	Pick-Up Fuel & Maintenance	16	MO	1624	25,984
2.086	Automobile Fuel & Maintenance		MO		N/A
2.087	Water Truck		MO		By Sub
Hoisting & Material Management					
2.088	Forklift Rental		LS		Bu Sub
2.089	Tower Crane Rental/Mobilization/Demobilization		LS		N/A
2.090	Hydro-Crane Rental		WK		N/A
2.091	Other Crane Costs		LS		By Sub
2.092	Material Hoist		WK		By Sub
2.093	Personnel Hoist		LS		N/A
2.094	Erect Hoists		LS		By Sub
2.095	Hoist Landings		LS		By Sub
2.096	Temporary Hoist Operation		MO		By Sub
2.097	Hoisting for Subs		LS		By Sub
2.098	Scaffolding		LS		By Sub
2.099	Other Hoisting & Materials Management Costs		LS		N/A
Temporary Protection of the Work					
2.100	Temporary Site Protection not w/Erosion Control		LS		Excluded
2.101	Temporary Building Protection	69	WK	118	8,142
2.102	Temporary Building Heat not w/Gas Charges	69	WK	130	8,970
2.103	Dewatering System & Other Water Removal		LS		By Sub

**City of Roanoke's
Police & Municipal Court Facility
CMAR RFP**

Updated on 04 NOV 2022

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.104	Snow Removal		LS		N/A
2.105	Other Protection of Work Items		WK		N/A
Testing					
2.106	Soil Testing		LS		By Owner
2.107	Concrete Testing		LS		By Owner
2.108	Masonry Testing		LS		By Owner
2.109	Weld Testing		LS		By Owner
2.110	Other Materials Testing		LS		By Owner
Permits & Fees					
2.111	Building Permit		LS		By Owner
2.112	Plan Check Fee		LS		By Owner
2.113	Water Tap Fees		LS		By Owner
2.114	Sanitary Sewer Tap Fees		LS		By Owner
2.115	Elevator Permit & Inspections		LS		By Sub
2.116	Mechanical & Electrical Permits & Inspections		LS		By Sub
2.117	Health Department Permits & Inspections		LS		By Sub
2.118	Other Government Fees\Permits Required for FCO		LS		Excluded
Other CMAR Onsite Reimbursable Costs					
2.119	Other CMAR's Onsite Costs Needed for the Work	1	LS	80549	80,549
2.C	CMAR's Estimated Onsite Reimbursable Expenses - Subtotal				426,059
2.000	CMAR's Total Proposed Costs to Be Reimbursed				2,380,008

EXHIBIT 'F'

Key Personnel

ORGANIZATIONAL CHART

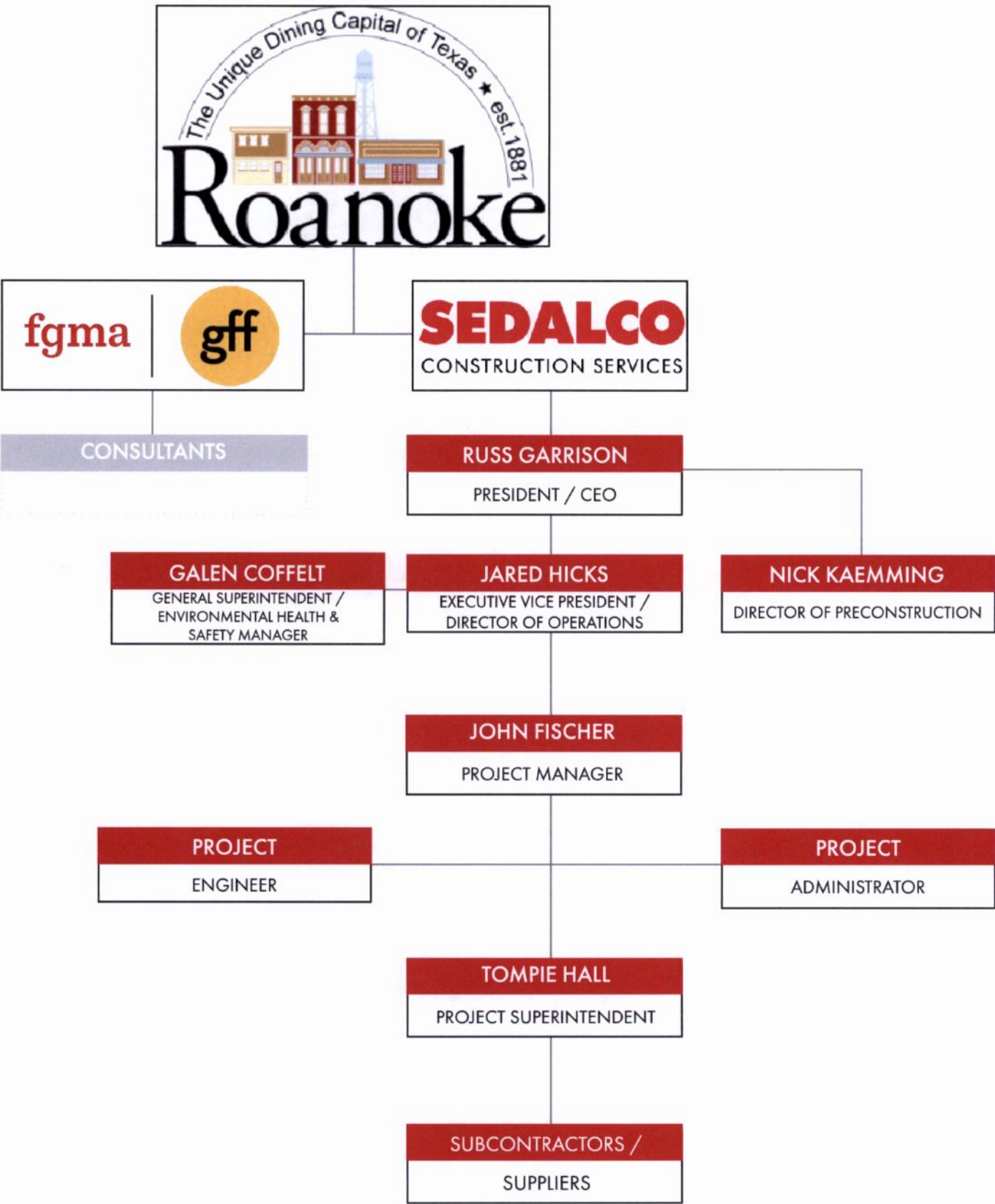


EXHIBIT 'G'

Confidentiality of the Project

To be provided at a later date as mutually agreed by Owner & Contractor.

EXHIBIT 'H'

Customary and Usual Labor Rates

To be provided with Exhibit A – Guaranteed Maximum Price Amendment.

EXHIBIT 'I'
Rental Rates

To be provided with Exhibit A – Guaranteed Maximum Price Amendment.

EXHIBIT 'J'

Alternates with Costs and Expiration Dates

To be provided with Exhibit A – Guaranteed Maximum Price Amendment.

EXHIBIT 'K'

Unit Costs

To be provided with Exhibit A – Guaranteed Maximum Price Amendment.

EXHIBIT 'L'

Allowances

To be provided with Exhibit A – Guaranteed Maximum Price Amendment.

EXHIBIT 'M'

Schedule of Values

To be provided within thirty (30) days of the signed Guaranteed Maximum Price Amendment.

EXHIBIT 'N'

Control Estimate #01

To be provided by a date to be determined by Owner and Contractor.

EXHIBIT 'O'

Escrow and Financing Conditions

To be provided at a later date as if mutually agreed by Owner & Contractor to be necessary.

EXHIBIT 'P'

Disputed Work Schedule

To be provided at a later date as if mutually agreed by Owner & Contractor to be necessary.

**The City of Roanoke's
Police & Municipal Court Facility
A133 Exhibit "Z" - Schedule of Exhibits**

Updated 16 DEC 2022
Printed on 12/16/2022 at 12:05 PM

Description		Prepared By	Status
Exhibits to A133 Owner-Contractor Agreement			
Exhibit "A" –	Guaranteed Maximum Price Amendment	Owner	TBD
Exhibit "B" –	Insurance and Bonds		
	General Liability	Contractor	Attached
	Performance & Payment Bond	Contractor	10 Days after Executed GMP
Exhibit "C" –	Scope of Work	Contractor	Attached
Exhibit "D" –	Construction Manager's Project Schedule	Contractor	Attached
Exhibit "E" –	Construction Manager's Soft Costs and Fee	Contractor	Attached
Exhibit "F" –	Key Personnel	Contractor	Attached
Exhibit "G" –	Confidentiality of the Project	Owner	TBD
Exhibit "H" –	Customary and Usual Labor Rates	Contractor	w/GMP
Exhibit "I" –	Rental Rates	Contractor	w/GMP
Exhibit "J" –	Alternates with Costs and Expiration Dates	Contractor	w/GMP
Exhibit "K" –	Unit Costs	Contractor	w/GMP
Exhibit "L" –	Allowances	Contractor	w/GMP
Exhibit "M" –	Schedule of Values	Contractor	30 Days after Executed GMP
Exhibit "N" –	Control Estimate #01	Contractor	w/GMP
Exhibit "O" –	Escrow and Financing Conditions	Owner	TBD
Exhibit "P" –	Disputed Work Schedule	Owner	TBD
Exhibit "Z" –	Schedule of Exhibits	Owner's Consultant	This Document

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Police & Municipal Court Project
Park & Fairway Drive
Roanoke, TX 76262

THE OWNER:

(Name, legal status and address)

City of Roanoke, Texas
500 S. Oak Street
Roanoke, TX 76262
(817) 491-2411

THE ARCHITECT:

(Name, legal status and address)

FGM Architects
300 Throckmorton Street, Suite 580
Fort Worth, TX 76102
(817) 900-6026

TABLE OF ARTICLES

- | | |
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| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
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| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
| 8 | TIME |
| 9 | PAYMENTS AND COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | INSURANCE AND BONDS |
| 12 | UNCOVERING AND CORRECTION OF WORK |
| 13 | MISCELLANEOUS PROVISIONS |

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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15 CLAIMS AND DISPUTES

Init.

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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), Drawings, Specifications, Addenda issued prior to execution of the Contract, 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 Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contractor shall assist and cooperate in preparing the Agreement, and within five (5) days after notification of award of the Work, having met with the Owner to finalize the Agreement, execute and deliver four (4) copies to the Owner.

§ 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 a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party. The terms "Agreement" and "Contract" shall be used interchangeably to have the same meaning as defined in this Section 1.1.2.

§ 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.~~ supplies, skill, supervision, transportation, support services, facilities and other resources necessary or 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 Work identified by the Contract Documents. The Work may constitute the whole or a part of the Project.

§ 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 the Owner and by Separate Contractors.

§ 1.1.5 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.

§ 1.1.6 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.

§ 1.1.7 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.~~

§ 1.1.7 Design Documents

Design Documents 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. Design Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, the Project Manual and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person 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 decisions.

§ 1.1.9 The Indemnitees

The Owner, which includes the Mayor, members of the City Council, employees, agents, assigns, and other city officers, the Owner's consultants, the Architect, Architect's consultants, and the agents and employees of any of them shall hereafter be known as the "Indemnitees".

§ 1.1.10 Construction Management Plan

The Construction Management Plan is prepared by the Contractor for its use in managing the Work and is not a Contract Document. The Construction Management Plan must include, at a minimum and without limitation, the following separate deliverables, which are subject to review and approval by the Architect and Owner:

- .1 Safety and Logistics Plan;
- .2 Contractor's Construction Schedule;
- .3 Cost Management Plan, Control Estimate and Schedule of Values;
- .4 Quality Management, Commissioning and Turnover Plan; and
- .5 Information Management System.

§ 1.1.11 As-Built Documents

The As-Built Documents are the Drawings, Specifications, and addenda thereto that may be updated by the Contractor to accurately reflect the actual Work in place, including without limitation, the incorporation of Change Orders, responses to the Contractor's requests for information, Architect's supplemental instructions, field modifications, and other similar changes made to the Work during construction. The As-Built documents shall conform to the format and compatibility requirements of Section 1.5.3.

§ 1.1.12 Design-Build Scope

Such portions of the Work, if any, required by the Contract Documents be designed by the Contractor, a Subcontractor, or anyone for whom they are responsible.

§ 1.1.13 Equal to (or Approved Equal)

Products by manufacturers and information about those products other than those products specified in the Contract Documents which the Contractor may submit for substitution as equal to those products specified in the Contract Documents; which may be incorporated in the Work after using the process specified in the Contract Documents for review and acceptance by the Architect and acceptance of same by the Owner.

§ 1.1.14 Force Majeure

An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

§ 1.1.15 Knowledge

The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the Work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent

and prudent contractor familiar with the Work and in accordance with the highest standards in the construction profession.

§ 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. Where a conflict occurs between or within standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence and coordination of the Contract Documents are as follows:

.1 Any addenda and modifications to the Drawings and Specifications take precedence over any earlier Contract Documents.

.2 Should there be a conflict within the Specifications, or within the Drawings, or between the Drawings and Specification, the Architect shall decide which stipulation will provide the best installation and its decision shall be final.

.3 The Drawing and Specifications are intended to coordinate with each other. Anything shown on the Drawings but not mentioned in the Specification or vice-versa, or anything not expressly set forth in either, but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both without any extra charge.

.4 The Drawings, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the Contractor, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. Each Contractor, Subcontractor, and Sub-subcontractor shall properly coordinate its work with that of the Owner and all Separate Contractors. It is not within the scope of the Drawings to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of each Contractor to plan, coordinate, and install its work in such a manner so as to conform to the structure. Any conflict within the Drawings shall be referred to the Architect for disposition prior to the installation of any affected work.

.5 Figured dimensions contained in the Contract Documents shall be accurately followed, even though they differ from scaled measurements. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Architect as to the dimensions to be used. Larger scale Drawings shall have preference over smaller scale drawings, but discrepancies shall be referred to the Architect for interpretation.

§ 1.2.1.1 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.

§ 1.2.2 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.

§ 1.2.3 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.

§ 1.3 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 that are a part of this Contract.~~

§ 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 Design Documents

§ 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. Design Documents are the product of work made for hire. These are and shall remain the sole property of the Owner. The Architect assigns to Owner all remaining proprietary rights that the Architect and its consultants may possess in the Design Documents including, without limitation, all copyright and other intellectual property rights. Disputes between the parties shall not impact this transfer of ownership, neither will a termination of this Agreement. In the event of a dispute between the parties regarding payment for Basic or Additional Services, the Architect is not obligated to deliver additional Design Documents or services for which it claims that it has not been paid, but the Owner's right to use the Design Documents and other services in its possession shall not be restricted.

§ 1.5.2 The Contractor, 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, 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. Project is the property of the Owner, and, without limitation, the Architect may not use the Design Documents for any purpose not related to the Project without the Owner's prior written consent.

§ 1.5.3 When requested by the Owner, the Architect shall furnish to the Owner the most current Design Documents, to include, without limitation all the most current drawings, design and engineering calculations, specifications, and any other information which the Architect or the Architect's consultant(s) have created in connection with or for the Project. At a minimum this information shall be provided in electronic format compatible with the most recent versions of the industry standard software for such information. Specifically, drawings shall be compatible with AutoCADD; design and engineering calculations compatible with MS Excel; and specifications with MS Word. All layers and information shall be fully accessible (not "PDF", "protected", or "plot" files).

§ 1.5.4 Submittal or distribution of the Design Documents or any portion thereof to meet official laws, statutes, ordinances and regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 1.5.5 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Design Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Design Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Design Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

§ 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. In the event notice is provided by mail, it shall be sent certified return receipt requested.

§ 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-Design Documents~~ or any other information or documentation in digital form. The parties will use ~~AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit~~, to establish the protocols for the development, use, transmission, and exchange of digital data ~~data in writing, as mutually agreed.~~

§ 1.7.1 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner, without limitation, all electronic and hard copies of any Project-related materials, records, notices, memoranda, recordings, drawings, specifications, mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without written agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 The representations and warranties contained in the Contract Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

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 Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. the following information to a person, including the Architect or Contractor, who makes a request for information under Texas Government Code Chapter 2253, related to a payment or performance bond: (1) a certified copy of a payment bond and any attachment to the bond; (2) the public work contract for which the bond was given; and (3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.

§ 2.1.3 The Owner may obtain independent review(s) of the Architect's Design Documents, or of any document or other materials submitted by the Contractor, by a separate architect, engineer, contractor, cost estimator or any other consultant they deem necessary and put under contract to or cause to be employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Architect and Contractor shall cooperate with such Owner's other consultants fully and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the Owner to obtain an independent review or imply that the Owner is in any way assuming responsibility for the work of the Architect and Contractor.

§ 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.~~ evidence using the statutory form required by the State of Texas, and customized by the Contractor for this purpose. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and ~~upon~~ within ten (10) business days 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 only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended ~~appropriately~~ 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 in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information. Notwithstanding the above, all Agreements with the Owner shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.

§ 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.

§ 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor ~~to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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.

§ 2.3.5 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.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to ~~Section 1.5.2.~~ Section 1.5.5.

§ 2.3.7 The foregoing are, without limitation and in addition to, the other duties and responsibilities of the Owner specified in Article 6; Article 9; and Article 11.

§ 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~~ by Section 6.1.3 nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

§ 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~~ forty-eight (48) hours from receipt of written notice from the Owner or Architect 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 prior approval of the Architect and the Architect may, The Architect may, at the direction of the Owner, 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 Architect's 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 Extent of Owner Rights

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents; at law; or in equity.

§ 2.6.2 In no event shall the Owner or Architect have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Notwithstanding anything else herein, and without limitation, any review(s), independent or otherwise, or approval(s) by the Owner or Architect of the Design Documents, the Contract Documents, the Contractor's Construction Management Plan(s), the Contractor's Construction Schedule, shop drawings, submittals, meeting minutes or other Contractor's services, deliverables or activities; nor the exercising of any of the rights and authority granted the Owner or Architect in the Contract Documents shall in any way reduce, diminish, or otherwise affect the Contractor's responsibilities, duties and accountability to the Owner for, without limitation, the construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Contract Documents.

§ 2.6.3 The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project for cause but without cost to the Owner. Such requests from the Owner will be made in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. "Cause" may include, but is not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the project, the facility or others, poor management, cause delay or delays, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Contract or 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~~-located, Denton County, Texas. 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. The terms "Contractor" and "Construction Manager" shall be used interchangeably to have the same meaning as defined in this Section 3.1.1.

§ 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 Architect in the Architect's 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. Prior to execution of the Guaranteed Maximum Price, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner and Architect assume no responsibility or liability for the physical condition or safety of the Project site, or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner and Architect shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 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 2.3.4, shall take field measurements of and verify any existing conditions related to that portion of the Work, and shall observe and verify the impact of 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 Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction per Section 12.2. 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.

§ 3.2.3 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 Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the 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~~ authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents in its capacity as a contractor and not as a design professional.

§ 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,

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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 and 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. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.~~ in accordance with the Contract Documents.

§ 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.

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

§ 3.3.4 The Contractor shall carefully check its own work and that of Subcontractors as the Work is being performed.

§ 3.3.5 During the finishing stages of the project, the Contractor shall make frequent inspections of the Work, with the applicable Subcontractor(s) involved, if any, with seven (7) days advance notice to the Architect, and the Contractor shall identify incorrect and faulty Work.

§ 3.3.6 The Contractor shall ensure that incorrect or faulty Work is corrected immediately.

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

§ 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.

§ 3.4.2 ~~Except~~ The Contractor is encouraged to consider products and systems that improve the project and retain the character of the products specified, but do not alter the intent of the project. However, except in the case of minor changes in the Work approved/authorized by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section Sections 3.12.8 or 7.4, the Contractor may make substitutions only by a formal request for substitution of products in place of those specified with the consent of the Owner, after evaluation by the Architect and in accordance with in accordance with the conditions set forth below and elsewhere in the Contract Documents, and a Change Order or Construction Change Directive. The Contractor must submit to the Architect and the Owner, for each proposed substitution:

.1 A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog "cut sheets", warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;

.2 A written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable;

.3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable;

.4 The adjustment, if any, in the time of completion of the Contract and the Contractor's Construction Schedule in the event the substitution is acceptable;

.5 An affidavit stating that (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect;

.6 Proposals for substitutions shall be submitted electronically to the Architect and the Owner's other consultants, if any, in sufficient time to allow no less than ten (10) business days for their respective reviews;

.7 No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein; and

.8 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (1) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (2) specified products are unavailable through no fault of the Contractor; (3) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (4) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (5) when, in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations; and

.9 Whether or not any proposed substitution is accepted by the Owner, the Owner's other consultants, if any (if any), or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect, and the Owner's other consultants for evaluating each proposed substitute.

§ 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. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

§ 3.4.4 All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.

§ 3.4.5 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade; and

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner 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, improper operation, or normal wear and tear and normal usage. If required by the Architect,

the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **THE CONTRACTOR SHALL DEFEND AND HOLD THE OWNER HARMLESS AGAINST ANY CLAIM, DEMAND, LOSS, OR DAMAGE BY ANY BREACH OF THIS WARRANTY, AND CONTRACTOR ACKNOWLEDGES IT SHALL NOT LIMIT SUCH WARRANTY BY THE PROVISIONS OF SECTION 12.2.**

§ 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.~~ Owner and shall commence in accordance with Section 9.8.4.

§ 3.5.3 When written warranties are specified, the document shall include the following information:

Name and address of Project and Owner;

Article, materials, or systems covered;

Name and address of Installer;

Name and address of Contractor; and

Signature of individual authorized to sign contracts for the company issuing the warranty.

§ 3.5.4 The following minimum warranty terms shall be incorporated:

.1 Duration shall be one year or as otherwise specified, dated from the Date of Substantial Completion;

.2 The article, material or system is free from defective materials and workmanship;

.3 Costs of repair or replacement shall not accrue to the Owner, including, without limitation, repair or replacement of other work disturbed by, or because of, repair or replacement; and

.4 The warranty period of one year, or as otherwise specified, shall recommence upon the identification and completion by Contractor and acceptance by Owner of any warranty claim during the initial one-year (1) warranty period.

§ 3.5.5 Warranties which are provided by a manufacturer for its product shall be received by the Contractor, filled out and filed with the manufacturer or other appropriate entity in coordination with the Owner. Certificates or registration stubs shall be included with the record documents submitted for the Owner upon completion of the Work. The Owner shall administrate manufacturer's warranties/guarantees after expiration of the Contractor's warranty.

§ 3.5.6 Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Contract Documents before final completion and written acceptance by the Architect and Owner shall not be construed as evidence of the Architect's or the Owner's acceptance of same, or the commencement of any warranty periods.

§ 3.5.7 The Owner has the privilege of such temporary or trial usage, for such reasonable time as the Owner, or the Architect deem proper. The Contractor shall make no claims for damage or injury to, or breaking of, any parts of such work which may be caused by weakness or insufficiency of structural parts, or by defective materials or workmanship.

§ 3.5.8 The Contractor may, without cost to the Owner, make such trial usage. However, trials shall only be conducted with the Architect's prior approval and under its observation as may be required by either of them. Equipment and/or materials shall be replaced or returned to "as new" condition prior to acceptance by the Owner.

§ 3.5.9 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.5.10 If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one (1) year period following the date of Substantial Completion described in Section 12.2.2.

§ 3.6 Taxes

The Contractor ~~shall~~ shall, to the extent not exempted under Section 13.11.11 herein, pay sales, consumer, use and similar taxes for the Work 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. In no event shall the Owner pay the Contractor for taxes that were not properly due or for which the Owner is exempt from paying under Texas law.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the ~~Contractor-Owner~~ shall secure and pay for the building permit ~~as well as for permit~~. The Owner shall also pay for any applicable gas, water, sewer and electrical service application fees; assessments against the property, including property tax, developmental excise and similar taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. The Contractor shall secure and pay for all 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.

§ 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, regardless of whether such work is in accordance with Contract Documents, and without notice to the Architect that the Contract Documents are at variance with applicable laws, ordinances, rules, or regulations, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the Drawings, Specifications, or other Contract Documents, except where the Contract Documents call for Work or materials of higher standards than those required by codes or ordinances, in which case, the Contract Documents shall govern. Nothing contained in the Contract Documents shall be construed as authority for the Contractor to violate any applicable codes or ordinances in effect at the site.

§ 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 and the Architect before conditions are disturbed and in no event later than ~~14~~ seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, ~~if the Architect determines that if, in the Architect's opinion,~~ 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 determines that If, in the Architect's opinion,~~ 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 and Contractor, stating the reasons. If either party disputes the Architect's ~~determination or recommendation~~, that party may submit a Claim as provided in Article 15.

§ 3.7.4.1 In no event shall any adjustment in the Contract Sum or Contract Time be made for conditions which should have been known to the Contractor or would have been noticed by a Contractor of similar size and experience pursuant to its on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the site which have been made available to the Contractor or have been performed by the Contractor or its Subcontractors; are part of the Contract Documents; or are part of the materials provided by the Contractor to be used in constructing the improvements.

§ 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 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.

§ 3.7.6 The Contractor shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including, but not limited to, all immigration, environmental and safety laws, statutes, rules, codes, orders and regulations.

.1 The Contractor shall also maintain at all times during the term of the this Agreement (and for the time otherwise required by law) all records required by the United States Citizenship and Immigration Services ("USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees and shall respond at all times during the term of this Agreement in a timely fashion to any inspection request related to such I-9 forms by the Contractor, Owner or governmental agency or authority;

.2 Furthermore, during the term of this Agreement, and for the time otherwise required by law, Contractor shall cause its officers, directors, managers, agents, and employees to cooperate fully in all respects with any audit, inquiry, inspection, or investigation that may be conducted by the USCIS of the Contractor or any of its employees or subcontractors;

.3 The Contractor shall immediately, and in any event within two (2) hours of Contractor's first notice of an event described in this Section 3.7.6, notify the Owner in writing and by in-person voice communications (not voicemail) of any unscheduled inspections, raids, investigations, inquiries, visits, or audits conducted by the USCIS, OSHA, or any other governmental agency or authority related to environmental, immigration, or employee safety issues of the Contractor, its agents, employees, its Architect, Subcontractors, or Sub-subcontractors;

.4 The Contractor shall, on a monthly basis during the term of this Agreement, conduct an audit of the I-9 forms for its employees and shall promptly correct any defects or deficiencies that are identified as a result of such audit;

.5 The Owner may, at its sole discretion, terminate this Agreement immediately if, at any time during the term of this Agreement, the Contractor violates or is in breach of any provision of this Section 3.7.6, or the USCIS determines that Contractor has not complied with any of the immigration laws, statutes, rules, codes, or regulations of the United States or any applicable state laws or regulations, or any applicable local ordinances, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and any successor statutes thereto;

.6 If an employee of the Contractor or if the Contractor is later determined to not have valid I-9 information then that employee shall be removed and barred from the Project site at the Contractor's expense; and

.7 The Contractor shall require the Subcontractors, Sub-subcontractors and material suppliers to make the representations and warranties set forth in this Section 3.7.6 and to be bound by the same requirements set forth herein.

§ 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.

§ 3.9 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. Work including, but not limited to, weekends, evenings and nights, or as otherwise reasonably and mutually agreed in writing with the Owner, until all punch list items have been completed to the satisfaction of the Architect. No subcontractor shall perform work on the site without the presence of the Superintendent or Assistant Superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 All of the Contractor's proposed on-site personnel must be approved by the Architect and Owner. The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the Contractor's on-site personnel must be preceded by written notification of the Architect and Owner no less than seven (7) business days before the anticipated event. Such proposed changes must be approved by the Architect and Owner. The Contractor shall designate a second person in charge in writing in the event the Superintendent is temporarily absent due to illness, vacation, or any other cause(s).

§ 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 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.

§ 3.10.1.1 Where the Contract is based on a Stipulated Sum, the Contractor, immediately after being awarded the Work, and before execution of the Agreement, shall meet at a Preconstruction Conference with the Owner for the purpose of reviewing the Contractor's proposed Construction Management Plan; assisting the Owner with further developing the Master Project Schedule; and integrating the Work of the Contractor into that of the Owner and all Separate Contractors, if any.

§ 3.10.1.2 Where the Contract is based on Cost of the Work with a Guaranteed Maximum Price, the Preconstruction Conference to review the Contractor's proposed Construction Management Plan shall take place when mutually agreed between the Contractor and Owner, but in no event later than forty-five (45) days prior to the date of commencement or Notice to Proceed with construction, whichever is earlier.

§ 3.10.1.3 The Contractor's initial Construction Management Plan presented at the Preconstruction Conference shall include, without limitation, the Contractor's proposed, completed deliverables for those components specified in the Contract Documents. The Construction Management Plan and its components shall be provided and presented by the Contractor to the Owner and Architect in a clear, concise format to allow their effective and expedient review. All elements of the Construction Management Plan will be to the most current national standards of the industry for a project of similar size and complexity; the Quality Management, Commissioning and Turnover Plan will conform, at a minimum and without limitation, to the requirements of Sections 3.2, 3.3, 3.4 and 13.5.

§ 3.10.1.4 The Owner, after consultation with the Architect, shall provide comments to Contractor on the Construction Management Plan proposed by Contractor no more than fifteen (15) days after the Preconstruction Conference, and

the Contractor shall revise and resubmit the Construction Management Plan within seven (7) days of receiving comments. As the approval of the Construction Management Plan is required to proceed with the Work, subsequent review(s) and revision(s), if required shall be prompt and thorough. The final Construction Management Plan and its components shall be subject to the approval of the Owner, which approval shall be a requirement precedent to the Contractor's mobilization on site to begin the Work.

§ 3.10.1.5 The Owner's review, comment and approval and Architect's review of the Contractor's Construction Management Plan is for general content in limited areas of specific interest or concern to the Owner and Architect. Such review, comment and approval are not an endorsement of the Contractor's means and methods, nor suitability or effectiveness of the Contractor's Construction Management Plan, for which the Contractor is solely responsible. Such review, comment or approval by the Owner and review by the Architect does not in any way diminish, reduce or relieve the Contractor of any duties, responsibilities or requirements to perform created under this Agreement.

§ 3.10.1.6 As a key component of the Construction Management Plan, the Contractor's Project Schedule will include, but is not limited to, work activities required by each section of the specifications as listed in the Contract Documents to complete the Contract.

§ 3.10.1.7 The Contractor's Project Schedule must include all the following:

- .1 Use precedence format, critical path method scheduling without the use of artificial activity constraints or "negative float";
- .2 Use software, techniques and methods satisfactory to the Owner;
- .3 Provide an electronic and graphic representation of all activities and events that will occur during performance of the Work;
- .4 Identify each subproject, to include, without limitation preconstruction, construction, commissioning, turnover of the Work, and Owner's occupancy;
- .5 Set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Contractual Milestone Dates");
- .6 Upon review by the Architect and written review and acceptance by the Owner of the Contractual Milestone Dates, the Contractor's Project Schedule shall be deemed part of the Contract Documents and attached to the Agreement as a new Exhibit through issuance of a Change Order for the purpose by the Architect; and signing of such Change Order by the Contractor, Architect, and Owner, in that order;
- .7 If not accepted, the Contractor's Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and resubmitted for acceptance;
- .8 Submission of an updated Contractor's Project Schedule with each Application for Payment shall be a mandatory condition precedent to the payment by the Owner to the Contractor pursuant to an Application for Payment, and the Owner shall not be obligated to make payment if the Contractor fails to include an updated Contractor's Project Schedule reflecting the then-current conditions on the Project and the anticipated progress of Work based on those conditions; and
- .9 All requests for change orders, modifications or additional compensation from the Contractor affecting the Contract Time or Contract Sum shall include a detailed schedule with both data and graphics showing the specific effect of the changed, modified or differing condition(s) on the critical path of the Contractor's Project Schedule.

§ 3.10.1.8 The Contractor, prior to preparing the Construction Management Plan and attending the Preconstruction Conference, will have reviewed the sequences, durations, sequencing and dependencies of activities, material deliveries. The Owner may require the Contractor to show separate work activities and Contractual Milestones for, as examples only and without limitation: Substructure Completion; Superstructure Completion; Building Exterior Skin

Completion; Interior Finishes Completion; Owner's Beneficial Occupancy, and other similar dates the Owner, at its sole discretion deems important to the Project.

§ 3.10.1.9 In the event the Contractor does not timely provide the Contractor's Construction Management Plan with an acceptable Contractor's Project Schedule containing such elements, information, and processes in a form and with a level of detail acceptable to the Architect and the Owner, the Owner may, at the Owner's discretion, unilaterally generate the target Contractor's Project Schedule at the Contractor's expense, and impose such schedule, sequences, logic, and/or durations on the Contractor as it deems necessary to complete the Work, or the Owner may declare the Contractor in breach of contract. Whether or not the Owner decides to implement this option, all other contractual provisions relating to breach of contract will continue to be in full force and apply without modification. The Owner may deduct from the Contractor's Application(s) for Payment the amount paid by the Owner for generating the Contractor's Project Schedule.

§ 3.10.1.10 Upon completion of the Master Project Schedule, and signed acceptance by the Owner and all Separate Contractors, the Master Project Schedule shall supersede previously submitted schedules. Each updated Master Project Schedule shall supersede previous updates.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter Contractor shall, at the Preconstruction Conference, and as a sub-system of its Contractor's Project Schedule, prepare an easily isolated, sorted and separately viewed submittal schedule, and thereafter update it as necessary to maintain a current submittal schedule, and shall submit a submittal schedule such schedule(s) for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, Construction Schedule, and (2) allow the 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 an approvable submittal schedule thirty (30) days prior to the date established for commencement of the Work, the Contractor shall not mobilize on site, or be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals; the delay of the Work or time required for review of submittals during the prosecution of the Work.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect Contractor's Project Schedule submitted to the Owner and Architect and incorporated into the approved Master Project Schedule.

§ 3.10.4 The Owner together with the Contractor, will monitor the Master Project Schedule, and incorporate the Contractor's updates to its portions of this overall schedule. As all Separate Contractors are also obligated to follow the Master Project Schedule and their respective schedules therein, they will be required to actively cooperate and participate in the preparation and updating of their portion of this schedule, as well as updating the overall Master Project Schedule by the Owner. The Contractor will be kept updated on all significant Master Project Schedule changes materially affecting the Contractor's Project Schedule.

§ 3.10.5 The Contractor will produce a Short Interval Schedule containing activities for not less than one (1) previous week and the next three (3) weeks, and which focuses on the major weekly work activities of each subsystem. At each weekly meeting this Short Interval Schedule will be reviewed by the Contractor with all affected Subcontractors and the Owner.

§ 3.10.6 In the event of substantial delay, if excusable under the Contract, for which extension of the Contract Time has or will be granted, the Owner will review and may require revision by the appropriate contractor(s) of affected component of the Master Project Schedule as required by the specific applicable situation(s), and with the cooperation of the Separate Contractors on the Project.

§ 3.10.7 The Contractor shall, at mutually agreed intervals, submit to the Owner and Architect a progress report stating, without limitation, labor forces mobilized and working on site; areas worked in or on; percent complete of current work activities; any potential schedule or coordination problems; material deliveries received; site visitors; and other information as required by the Owner.

§ 3.10.8 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Contractor's Project Schedule and shall promptly advise the Owner of any delays or potential delays. The accepted

Contractor's Project Schedule shall be updated to reflect actual conditions as frequently as mutually agreed by the Contractor and Owner; but in no event less frequently than with each Application for Payment; and at other times as may be reasonably requested by the Owner or Architect. In the event any progress report or schedule update indicates any actual or potential delays, the Contractor shall, using both the most currently approved Contractor's Project Schedule as a baseline for comparison, and a written narrative, propose an affirmative plan to correct the delay (hereinafter referred to as the "Proposed Recovery Schedule") which must include the following:

.1 The Proposed Recovery Schedule will show the results of working additional shift or days, adding additional labor, and any of the other actions specified in Section 8.4, if necessary, all as described in the accompanying narrative;

.2 The Proposed Recovery Schedule will be reviewed by the Owner, and the Contractor will promptly and diligently make all adjustments to the Proposed Recovery Schedule reasonably requested as a result of such review;

.3 The Proposed Recovery Schedule shall become the most current, approved Contractor's Project Schedule upon its approval by the Owner, issuance of a Change Order for the purpose by the Architect; and signing of such Change Order by the Contractor, Architect, and Owner, in that order; and

.4 In no event shall any progress report, schedule update or Proposed Recovery Schedule constitute an adjustment in the Contract Time, any Contractual Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.9 In the event either the Owner or Architect determine that the performance of the Work, as of a Contractual Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation those further specified in Section 8.4.

§ 3.10.10 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10 and Section 8.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Contractual Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.11 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of any part of the Owner's organization or any stakeholders or invitees thereof. The Contractor shall, upon the Owner's or Architect's request, reschedule such portion of the Work during hours when the interference to the Owner's organization, or any stakeholders or invitees thereof, will be minimized or eliminated. Any postponement, rescheduling, or performance of the Work under this Section 3.10.11 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1; and an equitable adjustment in the Contract Sum if the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents; and to the extent such rescheduling or postponement is required for the convenience of the Owner.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, available to the Owner, Architect or their designees, 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 Architect and Owner, copy and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall make available to the Owner or Architect for inspection and copying the record copy of the drawings, specifications, addenda, Change Orders and other Modifications, including all such documents maintained by the Contractor in electronic format, upon reasonable request of the Owner or Architect and, in any event, within twenty-four (24) hours of receipt by Contractor of a request from Owner or Architect for such review and/or copying. The Owner or Architect may request the record copy of the As-Built Documents, specifications, addenda, Change Orders and other modifications of the Work to be updated before Substantial Completion to reflect the most current condition of the Project, as additional Cost of the Work paid as a Change Order at the Owner's expense. The Owner or Architect may require the Contractor to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the Owner's

expense.

§ 3.11.1 The Contractor shall provide final electronic files and one "hard" copy of the Drawings and Specifications to the Owner updated to reflect the final condition of the Project with the final Application for Payment as a condition precedent to final payment.

§ 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 Section 4.2.7. Informational submittals upon which the Architect is 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 Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, after Contractor has verified the information contained within said submittals is in accordance with representations required by Section 3.12.6 and in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner 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. Documents and (4) verified any new information contained within said submittals and not in the Contract Documents is in accordance with all applicable Federal, state and local codes or ordinances in effect at the site.

§ 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 approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, 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 Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.9.1 Copies of all approved Shop Drawings, Product Data, Samples and similar submittals shall be preserved in an orderly manner and delivered by the Contractor to the Owner upon Final Completion.

§ 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 in the Contract Documents. 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 who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. 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. The Owner and the Architect 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.

§ 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 Owner and the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

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

§ 3.13 Use of Site, Delivery and Storage

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

§ 3.13.1 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner before using any portion of the site.

§ 3.13.2 The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto, which includes, but is not limited to, the all the following duties and acknowledgements:

.1 The Contractor acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract;

.2 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions;

.3 The Contractor shall be responsible for the mitigation and/or abatement of all noise, dust, fumes, traffic or other by-product of construction activity that, in the opinion of the Owner or the Architect, have an adverse affect on the quality of life or productivity for Project stakeholders, the Owner's current operations, or the Owner's employees. Such mitigation and/or abatement shall be performed in manner and with a result

completely and wholly acceptable to the Owner and Architect;

.4 The Contractor shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the Owner and Architect. Repeat offenses will cause the Owner or Architect to require, through the Contractor, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site;

.5 The Contractor shall, at a minimum, secure the site by erecting and maintaining a 6'-0" chain link fence around the perimeter of the construction site. This fence shall remain intact until such time the site becomes secure in the opinion of the Contractor, as a result of construction progress (by way of example, and without limitation, completion of site grading and backfill, installation of doors and windows, etc.);

.6 The Contractor shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use; and

.7 The Contractor is advised that the project site area is subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.

§ 3.13.3 The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas, which includes, but is not limited to, all of the following duties:

.1 The access to the site shall be maintained in compliance with all local, state, and Federal code and life safety requirements for ingress by first responders and other similar emergency requirements;

.2 The Contractor shall inform the Owner, Architect and any officials referenced in Section 3.13.5 in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to Owner's and Architect's approval, such approval not to be unreasonably withheld;

.3 The Owner shall be responsible for snow removal to the limits of the construction site only so far that the Contractor will have access to the entrance to the construction area; and

.4 Snow removal within the limits of work and/or for the purpose of performing and protecting work by individual contractors is the duty of the Contractor.

§ 3.13.4 During the performance of the Work, the Contractor, its Subcontractors, Sub-subcontractors, suppliers and their employees agree they shall:

.1 Use such entrances to the construction site that may be designated by the Owner;

.2 Perform the Work at such times of the day and days of the week as may be designated by the Owner; and

.3 Accept that these entrances and times may be reviewed and changed from time to time by the Owner.

§ 3.13.5 The Contractor shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Owner to proceed has been given to the Contractor. If the utility service must be interrupted, the Contractor shall, at Contractor's sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the city manager, the mayor, the city or county clerk, etc. as applicable) and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication in a local newspaper, and/or announcement on

local radio or television stations, whichever is most reasonably calculated to give the most effective notice to such utility users.

§ 3.13.6 The Contractor shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed on the job and shall properly store and protect same at the Contractor's expense.

§ 3.13.7 Notwithstanding any other provision herein, the Contractor shall take all necessary measures to store materials on site for which payment has been requested by the Contractor or been made by the Owner so that they shall not deteriorate, be damaged or be stolen, which includes, but is not limited to, all the following:

.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor;

.2 Protection of construction materials and equipment stored at the Project site from fire, weather, burglary, pilferage, vandalism and mischief, damage, and all other adversity; and the care and protection of materials and Work installed in the building is solely the responsibility of the Contractor;

.3 The Contractor shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the Owner; and

.4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.

§ 3.13.8 The Contractor shall not deliver any materials to the site which are not to be installed by same Contractor without fifteen (15) day's advance notice in writing to the Owner of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the Contractor and a representative of the Owner, who shall agree, and the Contractor shall document such agreement in writing:

.1 The materials delivered are undamaged, or if damaged, such damage is documented by digital photo(s);

.2 They are in the quantities shown on the purchase order, invoice or bill of lading accompanying the shipment or delivery or otherwise provided;

.3 The storage conditions are adequate for the purposes; and

.4 The Contractor has accepted responsibility for insurance and ongoing protection per Section 10.2 for such material until it is released to a third party authorized in writing by the Owner to receive it.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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

§ 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. ~~Contract~~ and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about ~~the Project~~ the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner 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 and Architect and their representatives with access to the Work in preparation and progress ~~wherever located at all times wherever located,~~ and shall provide proper and safe facilities for such access.

§ 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 defend and hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. 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.

§ 3.18 Indemnification

~~§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~

CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF CONTRACTOR OR ANY SUBCONTRACTORS, INVITEES, AND ANY OTHER THIRD PARTIES OR PERSONS FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE, IN ANY WAY ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT OWNER FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES FOR INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER THE CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF INDEMNITEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS AN INDEMNITY BY CONTRACTOR FOR THE BENEFIT OF THE OWNER FROM THE CONSEQUENCES OF OWNER'S NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR EMPLOYEE OF ANY OF ITS SUBCONTRACTORS.

IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF THE CONTRACTOR, ANY SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY SUB-CONTRACTOR UNDER WORKMEN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

INDEMNIFIED ITEMS SHALL INCLUDE, BUT NOT BE LIMITED TO, ATTORNEYS' FEES AND COSTS, COURT COSTS AND SETTLEMENT COSTS, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

THE CONTRACTOR IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE ARCHITECT, ANY LICENSED ENGINEER, OR AN AGENT, SERVANT, OR EMPLOYEE OF THE ARCHITECT OR LICENSED ENGINEER FROM LIABILITY THAT MAY ARISE FROM DEFECTS IN THE PLANS, DESIGNS OR SPECIFICATIONS OR NEGLIGENCE ON THE PART OF THE ARCHITECT OR LICENSED ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES ARISING FROM THE CONTRACT AND THE PLANS DESIGNS OR SPECIFICATIONS THAT ARE PART OF THE CONSTRUCTION CONTRACT AS SET FORTH IN CHAPTER 130 OF THE TEXAS CIVIL PRACTICE AND REMEDIES CODE.

§ 3.18.2 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 3.18.1 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. THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS SECTION 3.18 SHALL ALSO SPECIFICALLY INCLUDE, WITHOUT LIMITATION, ALL FINES, PENALTIES, DAMAGES, LIABILITY, SAFETY VIOLATIONS, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES), AND PUNITIVE DAMAGES, IF ANY, ARISING OUT OF, OR IN CONNECTION WITH ANY:

.1 VIOLATION OF OR FAILURE COMPLY WITH ANY LAW, STATUTE, ORDINANCE, RULE, REGULATION, CODE OR REQUIREMENT OF A PUBLIC AUTHORITY THAT BEARS UPON THE PERFORMANCE OF THE WORK BY THE CONTRACTOR, A SUBCONTRACTOR OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE;

.2 MEANS, PROCEDURES, TECHNIQUES, SAFETY PRECAUTIONS, OR SEQUENCES OF EXECUTION OR PERFORMANCE OF THE WORK; AND

.3 FAILURE TO SECURE AND PAY FOR PERMITS, FEES, APPROVALS, LICENSES, AND INSPECTION AS REQUIRED UNDER THE CONTRACT DOCUMENTS, OR ANY VIOLATION OF ANY PERMIT OR OTHER APPROVAL OF A PUBLIC AUTHORITY APPLICABLE TO THE WORK, BY THE CONTRACTOR, A SUBCONTRACTOR, OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE.

§ 3.18.3 THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS ALL OF THE INDEMNITEES SET OUT IN SECTION 3.18.1 FROM AND AGAINST ANY COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY ANY OF THE INDEMNITEES IN ENFORCING ANY OF THE CONTRACTOR'S DEFENSE, INDEMNITY, AND HOLD-HARMLESS OBLIGATIONS UNDER THIS CONTRACT.

ARTICLE 4 ARCHITECT

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The 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, as the Work progresses and 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. The 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. Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, ~~of~~ and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.3.1 NEITHER THE OWNER NOR THE ARCHITECT NOR THE OWNER'S OTHER CONSULTANTS SHALL BE RESPONSIBLE OR LIABLE FOR THE SAFETY PROGRAM(S) DEVELOPED BY THE CONTRACTOR OR ITS SUBCONTRACTORS FOR THE SAFETY OF PERSONS AND PROPERTY, OR FOR COMPLIANCE WITH STATUTES, RULES, REGULATIONS, AND ORDERS APPLICABLE TO CONDUCT THE WORK. SHOULD ANY CONTRACTOR OR THEIR SUBCONTRACTOR(S), OR THE SUB-SUBCONTRACTOR(S) MAKE A CLAIM AGAINST THE INDEMNITEES, OR SHOULD THEY OR ANY GOVERNMENTAL ENTITY BRING ANY ACTION OR LEVY OR FINE OR PENALTY AGAINST THE INDEMNITEES ON ACCOUNT OF ANY SAFETY-RELATED DAMAGE OR VIOLATION OF LAW ALLEGED TO HAVE BEEN SUSTAINED, THE CONTRACTOR AGREES THAT IT WILL HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH VIOLATION, FINE, CLAIM OR SUIT, AND THAT IT WILL REIMBURSE THE INDEMNITEES THE COST OF DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THEREFROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications ~~that relate to or affect about~~ 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 Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.4.1 Failure of Contractor to give the Owner or Architect written notice of Contractor's objections, within three (3) business days, to directives, instructions, interpretations, or minutes from the Owner or Architect, shall constitute final and conclusive consent on the part of the Contractor to such directives, instructions, interpretations, or minutes of the Owner or Architect.

§ 4.2.4.2 Any written notice from the Owner or Architect to the Contractor shall be sufficiently given when delivered to the last known business address of the Contractor, or to its registered or authorized agent, representative, or officer.

Any written notice from the Contractor to the Owner shall be sufficiently given when personally delivered to the Owner's Office, Attn: Project Manager, or at such other address and to the attention of such person as the Owner may from time to time designate in writing.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. 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, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 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. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The 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.~~ Sections 1.2, 3.2.1, 3.3, 3.5, 3.12, and 13.9. The Architect's review shall not constitute approval of safety precautions or 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.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change ~~Directives,~~ Directives and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make ~~determinations and~~ recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret ~~and decide~~ matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 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,~~ interpretations, 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 rendered in good faith.

§ 4.2.13 The Architect's ~~decisions/opinions~~ on matters relating to aesthetic effect will be considered by the Owner when making the Owner's determination on these issues and the Owner's decision will be final if consistent with the

intent expressed in the Contract Documents. Such Owner's determination shall be communicated through the Architect.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests 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 a Separate Contractor or the subcontractors of a Separate Contractor.

§ 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 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.2.5 Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

§ 5.2.6 The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

§ 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 and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner 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. §5.3.1 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 responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner, the Owner's other consultants and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, the Owner's other consultants, and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available for review for 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. Notwithstanding the above, all Agreements with the Owner shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as an Exhibit, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. The Contractor's subcontractors, however, are not intended third-party beneficiaries of this Agreement by pass through, assignment, or otherwise, except as provided in the Contract Documents, and the Owner shall not be bound to Contractor's subcontract agreements.

§ 5.3.3 Whenever the Contractor receives payment pursuant to the Contract Documents, the Contractor shall make payments to each of its Subcontractors of any amounts actually received which were included in the Contractor's Application for Payment to the Owner for such subcontracts unless otherwise allowed to withhold payment by the terms and conditions of the subcontract or as allowed by law. The Contractor shall make such payments within ten (10) days of receipt of payment from the Owner in the same manner as the Owner is required to pay the Contractor under the Contract Documents if the Subcontractor is satisfactorily performing under its contract with the Contractor. Such payments from Owner to Contractor shall be imposed with an express trust to assure that payment is made to all Project Subcontractors, Sub-subcontractors, and suppliers. In addition to the express trust imposed upon such funds and the fiduciary duties incumbent upon the Contractor, Texas Property Code Chapter 162 shall apply.

§ 5.3.4 The Contractor shall monitor the Subcontractors, who shall pay all suppliers, Sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the Subcontractor any amounts actually received which were included in the Subcontractor's request for payment to the Contractor for such persons, within ten (10) days of receipt of payment from the Contractor. The construction payments made by the Contractor to the Subcontractor shall be trust funds as set forth in Chapter 162 of the Texas Property Code. If the Subcontractor fails to make such payments in the required manner, the Subcontractor shall pay said suppliers, Sub-subcontractors, and laborers interest as set forth in Chapter 162 of the Texas Property Code.

§ 5.3.5 At the time the Subcontractor submits a request for payment to the Contractor, the Subcontractor shall also submit to the Contractor a list of the Subcontractor's suppliers, Sub-subcontractors, and laborers. The Contractor shall be relieved of the requirements of this Section regarding payment in ten (10) days and interest payments until the Subcontractor submits such list. If the Contractor fails to make timely payments to the Subcontractor as required by this Section, the Contractor shall pay the Subcontractor interest as calculated under the provisions of Chapter 2251 of the Texas Government Code. Nothing in this Section 5.3 shall be construed to affect the retention provisions of any contract.

§ 5.3.6 The provisions of this Section 5.3 shall be made a part of each contract between the Contractor and each Subcontractor, either expressly or by incorporation by reference to this Section of the Contract Documents.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work ~~is~~ may be 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~~ If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from any increase in direct verifiable costs incurred by such Subcontractor as a result of 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 entity, including the performance bond Surety's takeover or completion contractor, which shall relieve the Owner of any legal responsibility under the subcontract.~~

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the assignment of the Subcontractor to the Owner after suspension and termination of the Contract, as provided in this Section 5.4. This Section 5.4 shall be construed to prohibit a pass through or assignment of rights, unless authorized by the Owner in writing

§ 5.5 Owner Payments to Subcontractors

§ 5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the Contractor.

§ 5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, 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 in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions 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 separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction

schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 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, 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.

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are listed in and identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their ~~activities~~, activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends ~~for on~~ proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of any apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of ~~these~~ apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's 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 Contractor that are not apparent.~~

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 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 or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.2.6 Should the Contractor wrongfully delay or cause damage to the work or property of any Separate Contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such Separate Contractor sues or initiates a judicial proceeding against the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense. The Owner may fund the defense of such proceedings contemplated by this Section but, in any event, if any judgment or award against the Owner arises therefrom, the Contractor shall pay to satisfy it to the extent of Contractor's responsibility.

§ 6.2.7 SHOULD ANY SUCH SEPARATE CONTRACTOR WRONGFULLY DELAYED OR DAMAGED BY THE CONTRACTOR OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE PER SECTION 6.2.6 MAKE A CLAIM AGAINST THE INDEMNITEES, OR BRING ANY ACTION AGAINST THE INDEMNITEES, ON ACCOUNT OF THE DAMAGE ALLEGED TO HAVE BEEN SO SUSTAINED, THE CONTRACTOR SHALL HOLD THE INDEMNITEES HARMLESS AND DEFEND THEM AGAINST ANY SUCH CLAIM OR SUIT, AND SHALL REIMBURSE TO THE INDEMNITEES THE COST INCLUDING, WITHOUT LIMITATION, REASONABLE, ADDITIONAL ATTORNEY'S FEES INCURRED DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES

ARISES THERE FROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.

§ 6.2.8 Should the Contractor be caused damage by any Owner's Separate Contractor(s)'s work, no action will lie against the Owner, and the Owner shall have no liability therefor, but the Contractor may assert its claims for damages directly against such Owner's Separate Contractor and the Owner shall reasonably assist the Contractor.

§ 6.2.9 Inasmuch as the completion of the building within the prescribed time is dependent very largely upon the close and active cooperation of all those engaged therein, it is, therefore expressly understood and agreed that each contractor shall lay out and install its work at such time(s) and in such manner as to not delay or interfere with the carrying forward of the work of the other contractors.

§ 6.2.10 Where the work of one contractor directly affects the conditions of the work of another contractor including, as examples only, and not limited to, providing shoring for backfilling, providing protective covering for painting, providing adequate bracing of door jambs, etc., the contractor performing the work which will adversely affect another contractor's work shall be responsible for providing adequate protection based upon methods used to perform its work.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and/or 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 Architect will allocate the cost among those responsible. responsible, which allocation shall be final.

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 Change Order, 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 Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and reasonably inferable from the intent of the Contract Documents 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. Except as permitted in Section 7.3 or as otherwise provided herein, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect 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 Methods used in determining adjustments to the Contract Sum may include those listed in Sections 7.3.3, 7.3.7 and 7.3.10.

§ 7.2.3 Agreement on any Change Order constitutes a final settlement of all past and future claims, at law or in equity, concerning all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, delays, all direct and indirect costs, any claim for damages associated with such change, and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.2.4 Change Orders Requiring City Council Approval

The Contract Sum shown in the final Exhibit Y – Guaranteed Maximum Price may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Roanoke's City Council is required if a Change Order involves a decrease or an increase of \$50,000.01 or more. The original Contract Sum shown in the final Exhibit Y – Guaranteed Maximum Price may not be increased by more than twenty-five percent (25%) over the entire duration of the Project for any reason; nor may it be decreased by more than twenty-five percent (25%) without the consent of the Contractor, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the Contractor under this Section 7.2, the additional time required to obtain City Council approval shall not be factored into any past or future claim for delays or calculated as a part of the Change Order request.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner 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 Architect 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, or if no such amount is set forth in the Agreement, a reasonable amount calculated using the sum of the actual costs allowed in Sections 7.3.4.1 through 7.3.4.5, and using the percentages as set forth in Section 7.3.12 below. In such case, and also under Section 7.3.3.3, Section 7.3.3, the Contractor shall keep and present, in such form as the Architect 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, and other employee costs approved by the Architect;
- .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;
- .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. Additional, verifiable payroll and subsistence costs incurred by the Contractor, Subcontractor, and Sub-subcontractor of field 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 Architect 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 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 Architect will make an interim ~~determination-recommendation~~ for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect ~~determines, recommends,~~ in the Architect's professional judgment, to be reasonably justified. The Architect's interim ~~determination-recommendation~~ 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-recommendation~~ made by the 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 Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination. The Architect may consult with the Owner in connection with such determination either at the direction of the Owner or at the Architect's discretion. If the Contractor does not ultimately agree with the Architect's determination, the Contractor may assert a Claim in accordance with Article 15.

§ 7.3.12 In Subparagraph 7.3.4, the allowance for the combined total of onsite and offsite overhead and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, fee percentage of the Cost of Work stated in Section 5.1.1 of the AIA A133 Owner-Contractor Agreement plus actual direct jobsite costs associated with the additional work, if any;

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, fee percentage of the Cost of Work stated in Section 5.1.1 of the AIA A133 Owner-Contractor Agreement plus actual direct jobsite costs associated with the additional work, if any;

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.4;

.6 Under no circumstance shall costs of the Contractor's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work under 7.3.4. Conversely, the

Contractor shall be compensated for their labor within the overhead and profit percentage specified in this Section 7.3.12;

.7 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also;

.8 When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any; and

.9 Overtime, when specifically authorized by the Owner and not as a requirement for the Contractor to fulfill its obligations under this Agreement, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 Supporting Information

Notwithstanding the above, requests for an adjustment in the Contract Sum or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner and Architect. The Contractor shall also comply with all provisions of Articles 8 and 15 with respect to claims. The required information shall be provided by the Contractor in less than twenty-one (21) days from the Contractor's request for an adjustment in the Contract Sum or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the Owner or Architect.

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. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

§ 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~~ essence. 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, ~~commence the Work prematurely~~ commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of any additional necessary documents.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Attention is directed to the fact that the Work is urgently needed by the Owner; for this reason it shall be agreed that the Contractor will substantially complete all Work under the Contract within the time established in the Contract Documents and the most recently approved Contractor's Project Schedule. The Contractor shall begin the Work on the date of commencement as defined in the Contract Documents; carry the Work forward with adequate resources; furnish, without limitation such labor, supervision, materials, facilities, and equipment; and work such hours, including night shifts, overtime operations, and Sundays and/or holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the most recently approved Contractor's Project Schedule.

§ 8.2.4 The Contractor shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in the Contract Documents, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the Owner in writing.

§ 8.2.5 The Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the Contractor as well as the respective Separate Contractors.

§ 8.2.6 The Contractor shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.

§ 8.2.7 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 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 or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, ~~unusual delay in deliveries, implementation of Federal law or policies, unusual delay in transportation,~~ unavoidable casualties, 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 binding dispute resolution; ~~mediation;~~ or (5) by other causes that the Contractor asserts, and the Architect determines, ~~the Architect recommends may~~ justify delay, then the Contract Time shall ~~may~~ be extended for such reasonable time as the ~~Architect-Owner~~ may determine.

§ 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 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 Any claims for extension of time shall be made in writing to the Owner and Architect not more than ten (10) days after commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the Contractor should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.

§ 8.3.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at <http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm> or other data as mutually agreed by the Owner and Contractor for the Project area.

§ 8.3.6 In allowing delays for weather, the Owner will be entitled to consider weather conditions prevailing throughout the entire Contract period. The Owner and Contractor will together reconcile actual working days lost and gained over the entire Contract period every ninety (90) days. The Contractor shall then adjust the schedule activities accordingly

for both the Contractor's weather float reserves and Owner's float reserves where those activities are carried in the Construction Manager's Project Schedule (if any).

§ 8.3.7 The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

§ 8.4 Contractor's Obligations After Delay

§ 8.4.1 If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or Contractor's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the Owner after consultation with the Architect that the Work will not be completed within the Contract Time or in accordance with the Contractor's Construction Schedule, due to delays caused by the Contractor or its subcontractors, the Contractor agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the Owner or Architect, as required to substantially eliminate, in the judgment of the Owner, the backlog of Contractor's Work on the Project:

- .1 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;
- .2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;
- .3 Reschedule activities to achieve maximum practical concurrence of accomplishment; and
- .4 Do whatever else is reasonably required by the Owner.

§ 8.4.2 These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Contractor's Construction Schedule.

§ 8.4.3 In the event of a delay, the Owner may also require the Contractor to immediately submit a Proposed Recovery Schedule as specified in Section 3.10.8 above. The Owner may also require the Contractor to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the Owner, or Architect.

§ 8.4.4 Failure of the Contractor to substantially comply with the requirements of this Section 8.4 shall be considered grounds for a determination by the Owner, after consultation with the Architect, that the Contractor is in breach of this Agreement by failing to prosecute the Work and that of the Project so as to ensure its completion within both the Contract Time and the updated Contractor's Construction Schedule.

§ 8.4.5 Likewise, in the event the progress of the Project falls behind the predictions of the Master Project Schedule through no fault of the Contractor, the Owner or Architect may request, and the Contractor may agree to take one or more of the Extraordinary Measures, with the Owner bearing the cost for such measures by Change Order.

§ 8.4.6 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 8.4, except as specifically noted otherwise in Section 8.4.5.

§ 8.5 Owner's Rights After Delay

§ 8.5.1 In the event that any Contractor fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved Contractor's Project Schedule, the Owner or the Architect shall have the right to impose any or all of the following options:

- .1 Require the Contractor to substantiate the capability to get back on schedule within ten (10) business days;
- .2 Require the Contractor to take some or all of the Extraordinary Measures, and do whatever else is required by the Owner or Architect until Contractor confirms, to the satisfaction of the Owner and Architect, the

progress of the Work is in compliance and congruence with the most recently approved Contractor's Construction Schedule, such measures being at no extra cost to Owner and Architect;

.3 Withhold progress payment, or portions thereof, until such time as the Contractor is in compliance with the most recently approved Contractor's Project Schedule; and

.4 Contact or visit the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at Contractor's expense.

§ 8.6 Liquidated Damages

§ 8.6.1 Should the Contractor fail to substantially complete the Work on, or before, the original date set forth in the Contract, or on or before the revised date as granted by extensions to Contract Time, the Owner may at its sole discretion permit the Contractor to proceed, and in such case, there shall be deducted from any monies due or which may become due the Contractor, a sum as specified herein, for each and every calendar day that the Work shall remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the Owner. Liquidated damages are intended to compensate the Owner for the Contractor's failure to meet the deadlines set forth herein, and shall not excuse the Contractor from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The Contractor agrees that the sums in Section 8.6.2 are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no termination has occurred.

§ 8.6.2 Contractor shall pay as liquidated damages to the Owner: the sums shown in the table below for each calendar day that expires after the date set forth in the Contract for Final Completion of the Work.

<u>First Week Late</u>	<u>Second Week Late</u>	<u>Third & Fourth Weeks Late</u>	<u>Every Day After the Fourth Week Late</u>
<u>\$500/day</u>	<u>\$750/day</u>	<u>\$1,000/day</u>	<u>\$2,000/day</u>

§ 8.6.3 The parties acknowledge, covenant, and agree that the daily basis and the amount set forth above for liquidated damages are reasonable because of the unique nature of the Project as a benefit to the public; the fact that inconvenience to the public will be one of the significant impacts of any failure by the Contractor to timely complete the Work; and that it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to the Owner and the public.

§ 8.6.4 Permitting the Contractor to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract. The Contractor acknowledges the Owner receives no benefits from early completion of the Project or the Work, therefore all rights, if any, to an early completion bonus or other increases in the Contract Sum for such early completion are hereby waived by the Contractor.

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 maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

§ 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~~ Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for

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~~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 Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such Schedule of Values and meet with the Architect at the Preconstruction Conference with a proposed as specified in Section 3.10. The Contractor's Schedule of Values will be reviewed by the Owner and Architect in the context of the Contractor's proposed Construction Management Plan, including, but not limited to, the Contractor's Construction Schedule therein. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the Contractor's Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to the Contractor's and Subcontractor's contract amount(s). The Schedule of Values shall allocate the entire Contract Sum to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the Architect may require, and unless objected to by the Owner and Architect may require. This Schedule of Values, unless objected to by the Owner or 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 ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the ~~schedule of values, 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 or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, suppliers and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment; supported by AIA Document G703, Continuation Sheet; and other documentation as reasonably required by the Owner; submitted electronically.~~

§ 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 recommendations~~ of the 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.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and Architect and in compliance with all applicable statutes:

.1 A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;

.2 Duly executed statutory conditional waivers of mechanics' and material suppliers' lien for progress payments with each payment application; and appropriate statutory unconditional waivers of mechanics' and material suppliers' liens for progress payments; and appropriate statutory unconditional waivers for final payments from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment;

.3 An updated Contractor's Construction Schedule per Section 3.10.1.7 clearly showing the actual progress of the Work for each activity against the Work previously scheduled to be completed during the period, and against targeted activities' previously approved completion dates; and

.4 Notwithstanding the above, Applications for Payment shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Architect, and shall include, at a minimum, an updated monthly Contractor's Construction Schedule clearly and graphically comparing the actual "work-in-place" completed to the Work previously projected to be complete for the period. Failure to provide

this information in the proper form may be, in and of itself, grounds for rejection of the Application for Payment, at the discretion of the Architect.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the ~~Owner's title to such materials and equipment or otherwise protect the Owner's interest, and~~ stored materials and equipment which must be properly tagged as to material and job identification; must be available for inspection by the Architect; and such requests for payment must be accompanied by documentary evidence as specified, without limitation, in Sections 3.13 and 11.3.1.4, which supports the request's validity; quantity and value of materials; proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of Insurance or otherwise protects the Owner's interests. Such request shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Such materials shall be:

- .1 Protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, and the Lender;
- .2 Specifically marked for use on the Project; and
- .3 Segregated from other materials at the storage facility.

§ 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, either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs.~~ 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,~~ shall 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 THE CONTRACTOR FURTHER EXPRESSLY UNDERTAKES TO DEFEND THE INDEMNITEES, AT THE CONTRACTOR'S SOLE EXPENSE, AGAINST ANY ACTIONS, LAWSUITS, OR PROCEEDINGS BROUGHT AGAINST THE INDEMNITEES AS A RESULT OF LIENS OR VERIFIED CLAIMS FILED AGAINST THE WORK, THE SITE OF ANY OF THE WORK, THE PROJECT SITE AND ANY IMPROVEMENTS THEREON, PAYMENTS DUE THE SUBCONTRACTOR, THE PROJECT BOND OR ANY PORTION OF THE PROPERTY OF ANY OF THE INDEMNITEES (REFERRED TO COLLECTIVELY AS "LIENS OR VERIFIED CLAIMS" IN THIS SECTION 9.3.4). THE CONTRACTOR HEREBY AGREES TO INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH LIENS OR VERIFIED CLAIMS AND AGREES TO PAY ANY JUDGMENT OR LIENS OR VERIFIED CLAIMS RESULTING FROM ANY SUCH ACTIONS, LAWSUITS, OR PROCEEDINGS.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect ~~determines~~ recommends is properly due, and notify the Contractor 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 Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, 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 entitled to payment in the amount certified. The foregoing representations 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 Architect.

However, the issuance of a Certificate for Payment will not be a representation that the 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.

§ 9.4.3 Certification will be issued for ninety-five percent (95%) of the amount requested by the Contractor and approved by the Architect to be properly due until the Contractor is ninety-five percent (95%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that, should the Contractor at any time fail to keep current with the approved progress schedule, fail to assure payment to Subcontractors, Sub-subcontractors and suppliers as required hereunder; or fail to promptly and diligently correct Work that does not comply with the Contract Documents, certification of ninety-five percent (95%) shall automatically again become effective and shall apply as long as the Contractor lags behind such progress or fails to assure such payment.

§ 9.4.4 Early Release of Retention at Owner's Option

§ 9.5 Decisions to Withhold Certification

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

- .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~~ Subcontractors, Sub-subcontractors and suppliers or 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;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; Documents;
- .8 Contractor's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;
- .9 failure to fully execute the Contract with all associated documents as required;
- .10 bond claims, or liens, filed for any portion of the Work; or
- .11 failure of the Contractor to comply with any provisions of the Contract Documents, including without limitation Section 8.4.

§ 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. Omitted

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld: withheld less all associated damages, costs and expenses, suffered or accrued by the Owner or Architect. In the event the Architect nullifies a previously issued Project Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Contractor shall promptly reimburse to the Owner amounts the latter had previously paid pursuant to the nullified project Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until and unless the reasons for nullification of the previously issued project Certificate for Payment have been remedied and all associated damages, costs, and expenses of Owner and Architect have been paid by the Contractor.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, 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 Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 The Contractor shall not stop work or terminate the Contract if the Architect should refuse to issue any certificate because the Application for Payment does not conform with the requirements of Sections 9.3, 9.4, 9.5 or any other portion of these General Conditions, as supplemented herein.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a 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 Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, Sub-subcontractor and supplier, no later than ~~seven~~ ten (10) days after receipt of payment from the ~~Owner~~, Owner the amount to which the ~~Subcontractor~~ Subcontractor, Sub-subcontractor and supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's ~~portion of the Work~~, Sub-subcontractor's and supplier's portion of the Work, unless otherwise allowed by the provisions of the subcontract or by law. The Contractor shall notify Owner in advance and in writing of any payment(s) to be withheld from any Subcontractor. The Contractor shall, by appropriate agreement with each Subcontractor, Sub-subcontractor and supplier, require each ~~Subcontractor~~ to make payments to ~~Sub-subcontractors~~ their Sub-subcontractors and suppliers in a similar manner.

§ 9.6.3 The Architect 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 Architect and Owner 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 (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 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~~ any Work.

§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments~~ The Contractor shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner unless allowed by the terms and conditions of the subcontract, as stated in Section 3.17 of the AIA – A133 2019 or by law. The Contractor shall notify Owner in advance and in writing of any payment(s) to be withheld from any Subcontractor. Sums withheld by the Owner from the Contractor for deficiencies solely attributable to the Contractor shall not be grounds for the Contractor to withhold sums due to any Subcontractor. All sums paid to the Contractor for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the Contractor for payment to those persons to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the Contractor for Work properly performed by Subcontractors or ~~provided by~~ and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. ~~Nothing~~ However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of ~~trust, or trust~~ or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 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.

§ 9.6.9 To the extent Contractor has received payment in accordance with the terms of this Agreement, the Contractor agrees to keep the Work and the site of the Project and all project bonds free and clear of all bond claim and verified claims related to labor and materials furnished in connection with the Work.

§ 9.6.12 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, at the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after 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 Architect or awarded by binding dispute resolution, Architect, then the Contractor may, upon seven (7) additional days' written notice to the Owner 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 that the Owner can occupy or utilize the Work for its intended use, all major systems are operational, and all safety features are completed and Owner's receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the Owner. In addition to the other requirements of the Contract Documents, and without limitation, the Contractor must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the Contractor shall be deemed to have achieved Substantial Completion.

§ 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 Architect a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. 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. The Contractor will also provide the Architect a comprehensive list of all claims previously and properly made in writing and identified by the Contractor as unsettled at the time of Substantial Completion.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect 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 Contractor's 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 to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare 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.

§ 9.8.6 The Contractor's acceptance of payment per Section 9.8.5 shall constitute a waiver for all purposes of all claims or causes of action by the Contractor against the Owner and the Architect, except those previously and properly made in writing and identified in the list provided by the Contractor as unsettled at the time of Substantial Completion per Sections 9.8.2.

§ 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 and~~ such occupancy or use is consented to by the insurer ~~and as required under Section 11.3.1.5,~~ provided it is 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 shall 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.~~ Owner.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, 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 receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that ~~to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's 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 Architect's final 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. All warranties and guarantees required under Section 3.5 or otherwise required pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise ~~satisfied,~~ satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in full 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 effect;~~ (3) a written statement satisfactory to the Owner that the insurance will 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) Documents; (4) consent of surety to final

payment; (5) 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~~, Contract for Construction, to the extent and in such form as may be designated by the Owner, by the Owner and Owner's lender; (6) certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are complete and accurate in all respects; and (7) evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including, but not limited to, (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the ~~Owner~~, Owner and Owner's lender (if any), the Contractor may furnish a bond satisfactory to the Owner and Owner's lender (if any) 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~~ attorneys' fees.

§ 9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local authorities having jurisdiction.

§ 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 Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the 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 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.

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

- .1 ~~liens, Claims, bond claims, Claims, liquidated damages,~~ security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; ~~or~~
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final ~~payment~~ payment;
- or
- .5 gross negligence, willful misconduct, or fraudulent concealment in connection with the performance of the Contract.

§ 9.10.5 ~~Acceptance Application for and acceptance~~ of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee against the Owner or Architect except those previously made in

writing and identified by that payee as ~~unsettled at the time of final Application for Payment~~ arising after the waiver given at Substantial Completion payment described in Sections 9.8.2 and 9.8.6.

§ 9.10.6 In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, through no fault of the Contractor, subject to authorized extensions, will result in the Contractor being responsible for excess Architect's and other Owner's consultant(s)' fees beyond their original scope of services required to achieve final completion ("Excess Fees"). Excess Fees will be deducted from the amount due the Contractor.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor's and all Subcontractors' Safety Programs shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations.

§ 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 all of the following:

- .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; and
- .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.

§ 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 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. personnel, and the Contractor shall give the Owner and the Architect reasonable advance written notice of such planned activities.

§ 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 and 10.2.1.3 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 and 10.2.1.3. 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 or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either 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 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, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Contractor shall immediately report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately electronically, as well as by telephone or messenger to the Owner and the Architect.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 Hazardous materials include any material in such quantity, concentration, and physical or chemical characteristics including, but not limited to, ignitability or toxicity, so as to be capable of posing an unreasonable risk to health, safety and/or property if released into the atmosphere, transported, stored, or disposed of. 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 and Architect of the ~~condition~~ condition in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the 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 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 and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor 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~~ Order duly processed and approved, the Contract Time shall be extended ~~appropriately~~ appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and ~~start-up~~ start-up, both as specified in Article 7. The term "rendered harmless" shall be interpreted to mean, without limitation that levels of hazardous materials, including, but not limited to, asbestos and polychlorinated biphenyls, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

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

§ 10.3.4 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.

~~§ 10.3.5 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.~~

~~Omitted.~~

~~§ 10.3.6 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.~~

THE CONTRACTOR SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE 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.

§ 10.4 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.

§ 10.5 Site Visits

Anyone other than the Owner's designated representatives, the Architect, the Architect's consultants, and the Owner's other consultants visiting the job site who is not employed by a Contractor shall be required to register with the Contractor's site office before proceeding onto the job site.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance and Bonds

~~§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents in a company or companies lawfully authorized to do business in Texas and as further qualified in Paragraph 11.6, such insurance as will protect the Contractor and the Indemnitees 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 including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities exempt by statute from the requirements of Section 11.1.1.1, but required by the Contract Documents to provide the insurance required by that Section;
- .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, including pollution clean-up if hauling hazardous materials; and

.7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than ten (10) years following final payment.

.8 Claims for damages to the Work, and/or materials and equipment used/stored at the Work, as may be covered under any Builder's Risk insurance policy.

§ 11.1.2 ~~The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Contractor's Commercial General Liability Insurance should be written on ISO Form CG 00 01 10 01 or its equivalent and provide the following:~~

.1 Premises/operations (Including X-C-U coverages);

.2 Independent contractors;

.3 Products and completed operations with a per project aggregate limit, which coverage shall be maintained for a period of ten (10) years from the date of the Final Payment;

.4 Personal injury (libel, slander, false arrest) liability with employment exclusion deleted;

.5 Blanket Contractual, including, but not limited to, a specified provision for the Contractor's obligations under Section 3.18 of the Contract Documents;

.6 Broad form property damage including, but not limited to, completed operations;

.7 Primary and Non-Contributory endorsement in favor of Indemnitees; and

.8. Contain a Waiver of Subrogation in favor of Indemnitees.

§ 11.1.3 ~~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. Professional Errors and Omissions Liability Insurance is required for all licensed and certified professionals, including, but not limited to, contractors, engineers, architects, design-build and design professionals as follows:~~

.1 The retroactive date preceding the date of the contract; and

.2 An extended reporting period of three (3) years past substantial completion.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.1.5 The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in this Article 11, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work; and for such duration as

required in the Contract Documents; policies of insurance issued by a responsible carriers acceptable to the Owner, and in form and substance satisfactory to the Owner, that afford the coverages set forth in the Schedule of Insurance, attached to the Contract and made a part of it as Exhibit "X" – Construction Manager's Insurance Certificate(s). All such insurance shall be written on an occurrence basis, with the sole exception of Professional Errors and Omissions Liability Insurance. In the event professional liability coverage is not available on "an occurrence" basis, a "claims made" basis policy with effective and retroactive dates prior to the effective date of the Contract Documents and an extended reporting period of at least three (3) years beyond Substantial Completion or as otherwise required by the Contract Documents, whichever is greater, may be substituted with the written consent and approval of the Owner and Architect. The Contractor's completed operations coverage shall be maintained 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.

§ 11.1.6 The Contractor agrees to deliver to the Architect, for transmittal to the Owner with a copy to the Architect within ten (10) days of the date of the Owner-Contractor Agreement and prior to bringing any equipment or personnel onto the site of the Work or the Project site, and thereafter upon renewal or replacement of each required policy of insurance, certified copies of all required insurance policies procured by the Contractor under or pursuant to this Article 11 or, with the written consent of the Owner and Architect, Certificates of Insurance in form and substance satisfactory to the Owner and Architect evidencing the required coverages with limits not less than those specified in Section 11.1.11 below and all endorsements as required in Article 11 herein. The coverage afforded under any insurance policy obtained under or pursuant to this Section 11.1 shall be primary to any valid and collectible insurance carried separately by any of the Indemnitees. Furthermore, all policies and Certificates of Insurance shall expressly provide that no less than thirty (30) days prior written notice (ten (10) days for non-payment of premium) shall be given the Architect and Owner in the event of material alteration, cancellation, nonrenewal or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance. 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 11.1.5. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

§ 11.1.7 Certificates of Insurance with the following or similar wording are not acceptable: "Failure to notify the certificate holder shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."

§ 11.1.8 In no event shall any failure of the Architect to receive certified copies or certificates of policies required under Paragraph 11.1.6 or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the Contractor's obligations to obtain insurance pursuant to this Article 11.

§ 11.1.9 When any required insurance, due to the attainment of normal expiration date or renewal date, shall expire, the Contractor shall furnish to the Architect Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy forty-five (45) days prior to renewal date. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differ in any way from the previous policy, the Contractor shall also furnish the Architect with a certified copy of the renewal or replacement policy unless the Owner provide the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and Architect and written by carriers acceptable to the Owner and Architect.

§ 11.1.10 Any Aggregate limit under the Contractor's liability insurance, shall by endorsement, apply to this Project separately.

§ 11.1.11 The Contractor shall notify the Owner and Architect in writing of any reduction in collectible limits (aggregate limits) by an amount in excess of Fifty Thousand Dollars (\$50,000), and the Contractor shall promptly procure, at no expense to the Owner, such additional coverage as necessary to restore the valid and collectible limits of such insurance to that required under the Contract Documents.

§ 11.1.12 The Contractor shall cause each Subcontractor to procure insurance consistent with the Contractor's insurance requirements as specified in the Contract Documents and satisfactory to the Owner and Architect and name each of the Indemnitees as additional insureds under the Subcontractor's commercial general liability, automobile and umbrella excess liability policies. The additional insured endorsement included on the Subcontractor's commercial general liability policy shall state that coverage is afforded the additional insureds with respect to claims arising out of all on-going and completed operations performed by or on behalf of the Contractor. Each policy shall contain a Waiver of Subrogation in favor of the Indemnities, provide for forty-five (45) day notice of cancellation or non-renewal, and be primary without contribution if the additional insureds have other insurance that is applicable to the loss. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance shall not be reduced by the existence of such other insurance.

§ 11.1.13 The Indemnitees shall be shown as "Additional Insureds" on the commercial general liability, automobile liability and umbrella (excess) liability policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided listing the Indemnities as Additional Insureds, using ISO forms CG2010, CG2037, CA0070, CA0032 or their equivalents, and approved as to form by Owner.

§ 11.1.14 A "waiver of subrogation" clause in favor of the Owner will be attached to the workers compensation, commercial general liability, umbrella (excess) liability, automobile and any applicable property insurance policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided showing waivers of subrogation in favor of the Indemnities using ISO forms CG2404, CA0070, CA0032, WC0003 or their equivalents, and approved as to form by Owner.

§ 11.1.15 The Owner reserves the right to review the insurance requirements during the effective period of its Agreement with the Contractor, and provide a written request for the Contractor to make any reasonable and commercially available adjustments to insurance coverages and/or limits when deemed reasonably prudent by the Owner based upon its unilateral interpretation of changes in statutory law, court decisions or the Owner's potential increase in exposure to loss.

§ 11.1.16 Neither Contractor, Subcontractor, Sub-subcontractor, nor any of their insurance carrier's liability obligations shall be limited to the minimum limits of coverage of insurance maintained or required to be maintained by the Contract Documents.

§ 11.2 Owner's Liability Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the

Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation Property Insurance

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. Contractor shall purchase and maintain "builder's risk" property insurance, or comparable coverage, for the full replacement cost value thereof, for (i) the Work that is to be done, (ii) all insurable items of Work, title to which has been acquired by Owner in accordance with the Contract Documents and (iii) all materials to be incorporated in the Work, if such materials are in or upon the Premises, or in transit to Premises, whether or not title has been acquired by Owner. Such insurance shall not cover any property owned, leased, or otherwise used in connection with the Work by Contractor, Contractor's subcontractors or the agents or employees of them, that is not forming a permanent part of the Project. This insurance shall include the interests of Owner, Contractor, and Subcontractors and shall provide coverage against loss for "direct physical damage" (previously known as "all risk" coverage) including, but not limited to, without duplication of coverage, fire, extended coverage, vandalism and malicious mischief, theft, collapse, earthquake, flood, sprinkler leakage, windstorm, testing and startup, temporary buildings and debris removal including demolition and increased cost of construction occasioned by enforcement of any applicable legal requirements.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

Any coverage related to the builder's risk property insurance maintained by Contractor for time including delay in opening and/or extra expenses shall inure to the benefit of Owner only. Owner shall be the only party insured under such policy, with the sole exception that the Contractor may be entitled to payment of its fee and general conditions associated with the reconstruction, less any deductible.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.3.3 The Contractor's insurance shall cover against loss for "direct physical damage" (previously known as "all risk" coverage) with sufficient limits to protect the full replacement cost value of the Work.

§ 11.3.4 If by the terms of the property insurance there is a deductible amount, in the event of a loss covered by such insurance, Contractor shall be responsible for all deductibles per occurrence which shall be considered a Cost of the Work for all insurable items of Work and materials to be incorporated in the Work, title to which has not been acquired by Owner in accordance with the Contract Documents. Except for Contractor's deductible risk, Owner is bearing all

risk of loss to the Property for which Owner, Contractor, and others have an insurable or financial interest during construction, and, in the event of a loss to the property during construction, Owner agrees to rely solely to the proceeds of the Builder's Risk Insurance which Contractor has agreed to furnish.

§ 11.3.5 To the extent permitted by law, Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) Owner's Separate Contractors, 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 or other property insurance applicable to the Work. Owner or Contractor, as appropriate, shall require of Owner's Separate Contractors, if any, and the subcontractors, sub-subcontractors, agents, and employees of any of them, by written appropriate agreement, similar waivers each in favor of other parties enumerated herein.

§ 11.3.6 To the degree allowed by the insurer, Owner and Contractor shall each have its policies endorsed to provide for a waiver of the right of subrogation against the other respective party.

§ 11.3.7 Any loss insured pursuant to this Section 11.3 Property Insurance is to be adjusted by Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. Contractor shall pay each Subcontractor a just share of any insurance monies received by Contractor, and by appropriate written agreement, shall require each Subcontractor to make payments to its Sub-subcontractors in similar manner.

§ 11.3.8 Upon request, Owner shall make available for inspection by Contractor a copy of all policies to be furnished by Owner.

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Contractor must furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Such bonds shall be issued in an amount equal to the total Contract Sum by a surety company licensed in the state where the Project is located, with a current A.M. Best rating of at least A- X, included on the U.S. Treasury Department's listing of approved sureties, and acceptable to the Owner and Architect, or as expressly agreed otherwise by the Owner and Architect in writing.

.1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment and shall satisfy the requirements Texas Government Code Chapters 2253 and 2269.

.2 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.

.3 Every Bond under this Section 11.4.1 must display the Surety's Bond Number and a rider including the following provisions, which shall be attached to each Bond:

- a. The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents;
- b. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived; and
- c. The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

§ 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 Bond Form shall be "Performance Bond" - AIA Document A312, 2010 Edition, pages one through four, together with "Payment Bond" - AIA Document A312, 2010 Edition, pages one through four.

§ 11.4.4 Additional Performance and Payment Bonds may be recommended by the Architect and required by the Owner, at the Owner's sole discretion, from any Subcontractor. The Owner will pay such actual, additional expenditures as Cost of the Work using the process specified in Article 7 for Changes in the Work. All such bonds shall be in form and substance satisfactory to the Owner and Architect.

§ 11.4.5 The Contractor shall deliver the required bonds to the Owner no later than three (3) business days following the date of the Agreement is entered into, or if the Work is to be commenced prior to the date the Agreement is entered into, in response to a notification of award. The Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§ 11.4.6 The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~Omitted.~~

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have ~~14~~fourteen (14) days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6 Insurance Companies

All insurance coverage procured by the Contractor shall be provided by insurance companies having current policyholder ratings no lower than "A- X" by A.M. Best and acceptable by the Owner and Architect, or as expressly agreed otherwise by the Owner, Contractor and Owner in writing. Such companies must be licensed to do business in the State of Texas. [see comments in section 11.4.1 in re-desired rating by City]

§ 11.7 Failure to Purchase Insurance

If one or more of the Indemnitees, or the Contractor is damaged by the failure of either the Owner or the Contractor to purchase or maintain the insurance required under this Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees and court and settlement expenses) properly attributable to the failure.

§ 11.8 Insurance Limits Required

The following insurance limits are the minimums to be carried by the Architect, the Architect's consultants, the Owner's other consultants, the Contractor, and the Subcontractors, Sub-subcontractors, and suppliers, unless higher limits are required by their respective Agreements or Texas law (in which case those limits shall control):

.1 Automobile Liability

\$1,000,000 Combined Single Limit

.2 Commercial General Liability

Init.

\$1,000,000 Per Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury
\$ 500,000 Fire Damage
\$ 5,000 Medical Payments

.3 Professional Errors & Omissions Liability

Amount equal to the Contract Sum and all subsequent increases;
\$3,000,000 Occurrence & Aggregate Minimum
\$3,000,000 Occurrence & Aggregate Maximum

.4 Worker's Compensation

Statutory Limits
\$1,000,000 Employers Liability

.5 Umbrella or Excess Liability

\$25,000,000 Occurrence & Aggregate Maximum
\$5,000,000 Occurrence & Aggregate Maximum (for Subcontractors)

.6 Contractor's Pollution coverage

\$1,000,000 Occurrence or Claim
\$2,000,000 Policy Aggregate

.7 Builder's Risk (where applicable)

100% of the total value of the work

§ 11.8.1 Limits for primary policies may differ from those shown when Umbrella or Excess Liability insurance is provided, as long as all coverage is equal to or greater than the minimum limits required herein.

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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's 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 Architect has not specifically requested to examine prior to its being covered, the 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 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, specifically including but not limited to additional testing and inspections, the cost of uncovering and replacement, and replacement; the cost of any additional supervision, material, labor, equipment, rental charges, home office overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work of both the Contractor and the Project, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions; as well as compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.1.1 If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to

be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable or for which the Contractor is otherwise responsible.

§ 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, or within such longer period of time as may be prescribed by law, 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. ~~During~~ If the condition is reasonably discoverable, during the one-year period for correction of Work, if and the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Section 2.5, and charge the reasonable costs to the Contractor.

§ 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 also be extended~~ by the period of time between Substantial Completion and the actual completion of that ~~portion~~ the corrective Work performed by the Contractor pursuant to this Section 12.2, but only with respect to the corrected portions 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. Omitted.

§ 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. Omitted.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate 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. These costs specifically include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office overhead, and other expenditures necessitated to rectify the non-complying conditions, protect adjacent Work, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions.

§ 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.

§ 12.2.6 The Contractor's obligations under this Section 12.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract.

§ 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. In the event final payment has been made by the Owner subsequent to accepting such non-conforming Work, the Contractor shall pay the Owner for the reduction in the Contract Sum occasioned by such acceptance.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the ~~law of laws of the state of Texas. Venue on any dispute arising out of this Contract shall be in Denton County, Texas, which is the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4. located and where performance is primarily to occur.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the 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 the Contract, or any rights under the contract, in whole or in part without the 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.

§ 13.2.3 Written Notice

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

§ 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, 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 Quality Management 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. 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 Architect timely notice of when and where tests and inspections are to be made so that the 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. As required by the provisions of Texas Government Code, Section 2269.058(a), the Owner shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the Owner. To the extent that any of the provisions of this Section 13.4 or other provisions of this Agreement conflict with any of the provisions of Section 2269.058(a) such conflict is unintentional, and the provisions of the Texas Government Code shall control.

§ 13.4.2 If the 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 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 Architect of when and where tests and inspections are to be made so that the 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 such 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, Documents ("Failed Work"), all costs made necessary by such failure, the Failed Work, including those of repeated procedures and compensation for the Architect's services and expenses, and expenses and all costs specified in Section 12.2 shall be at the Contractor's expense. The Contractor also agrees all costs of testing, inspection, and approval services required for the correction of the Failed Work and the cost of such similar services related to remedial operations performed to the Failed Work shall be borne by the Contractor.

§ 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 Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 It is the intent of the Construction Documents to require the Contractor to control the quality of the Work using the processes specified in the Contractor's Quality Management, Commissioning, and Turnover Plan contained within the most recent Construction Management Plan approved by the Owner and Architect. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work in the Work and shall conform to the most recently approved Contractor's Construction Schedule.

§ 13.4.7 The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the Contractor's, as is the obligation to provide the Work and a complete and functional project per the Contract Documents. Notwithstanding anything herein, or in subsequently approved Quality Management, Commissioning and Turnover Plans, the Owner's review and Architect's approval of such plan(s) does not relieve the Contractor in any way of this responsibility.

§ 13.4.8 The Contractor shall be in charge of scheduling; re-scheduling (when required); and confirming adequate distribution of reports and other findings from all testing and inspections of the Work. This responsibility includes, but is not limited to, scheduling the testing services of a certified testing laboratory which, by statute shall be contracted to and paid for by the Owner. The certified testing laboratory shall be acceptable to the Architect; and shall perform the tests as called for in the Contract Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:

.1 The frequency and type of Quality Control testing shall be established by the Contractor and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Contract Documents. The type and amount of testing required by the Contract Documents shall be seen as the minimums required, and shall be increased, if in the opinion of the Contractor, more testing is needed to meet the requirements of the Contractor.

.2 The Contractor shall concurrently provide the Architect copies of all test results it receives within three (3) business days of receipt of same.

.3 The Owner shall provide such Quality Assurance testing as it and the Architect mutually agree to be adequate for their own needs. The Owner shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the Owner, or lack thereof shall in no manner affect the responsibilities of the Contractor or Architect under this Agreement.

§ 13.4.9 The Contractor shall facilitate and conduct weekly (or more frequent if necessary) meetings on site for the coordination of all mechanical, electrical and special systems installation activities and possible interference(s) above ceilings, in mechanical rooms, etc. The mechanical trades shall typically have preference in the event of conflicts, and therefore the mechanical contractor's coordinator will usually lead each meeting, unless the Contractor decides another trade or the Contractor should take the lead. The Architect shall be informed of the meetings at least seven (7) days in advance, and the appropriate Architect's consultants should be invited to attend by the Contractor, as supplemented and coordinated by the Architect.

§ 13.4.10 The Contractor's Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes and

Contractor will review, in detail, the steps for completing testing of all building systems with the Owner and Architect. This plan shall be coordinated with and shall be made part of the Contractor's Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate Owner's and Architect's consultant(s), representatives of the Owner, and at their option, the Architect and the Owner.

§ 13.4.11 When heating, air conditioning, ventilating, exhaust, or other items of mechanical, electrical or other similar equipment are installed, or other systems or equipment requiring testing as may be specified in the Contractor's Quality Management, Commissioning and Turnover Plan, it shall be the responsibility of the Contractor, Subcontractor or Sub-subcontractor installing such equipment to operate it for a period of time satisfactory to the Owner prior to acceptance and before the start of Warranty. The duration of such operation shall be as the Owner, Owner's consultant(s), Architect's consultant(s), Owner's employees and other Owner's representatives (the Turnover Team) shall reasonably require for proper testing of the respective system and thorough instruction of the Owner's operating personnel.

§ 13.4.12 All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the Owner's operating personnel on each system's operations and maintenance shall be provided by the Contractor, Subcontractor or Sub-subcontractor responsible for providing and installing the equipment. Such tests and instruction shall be in meetings held solely for this purpose (the Turnover Meetings), which shall be coordinated and managed by the Contractor, who shall show their dates in the Contractor's Construction Schedule at least sixty (60) days prior to occurrence. The Contractor shall schedule the Turnover Meetings at times reasonably convenient for the Owner's consultant(s), Architect's consultant(s), Owner's employees and other Owner's representatives that the Owner and Architect agree are necessary to attend for each system. The Architect may attend such Turnover Meetings at its discretion.

§ 13.4.13 The Contractor shall provide a digital video record to the Owner, with copies to the Architect of all meetings for the purpose of Owner operational staff instruction or training; as well as commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.

§ 13.4.14 The Contractor shall prepare a digital video record of the project for the Owner with copies to the Architect at such stages as shall be indicated by the Architect for the purpose of documenting the location of piping, conduit, equipment, or other construction to be concealed at a later date; recording key inspections and tests; providing evidence of unforeseeable conditions encountered by the Contractor on site; and other construction issues as the Architect may reasonably require from time to time.

§ 13.4.15 The Contractor shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Contractor shall notify the Architect in writing immediately upon completion of this marking, and the Architect will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the Owner. The Architect will then give permission for removal in writing to the Contractor. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

§ 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 from time to time at the place where the Project is located as set forth in the provisions of Texas Government Code, Chapter 2251 or its successor statute.

§ 13.6 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work.

§ 13.7 Release of Retainage at Substantial Completion

Notwithstanding any other provision in the Contract Documents to the contrary, upon Substantial Completion of the Work the Owner shall be entitled to retain from the Contract Sum due to the Contractor an amount equal to the greater of: (a) the product obtained by multiplying eight (8) times the total cost of completion of the Punch List items as estimated by the Architect; or (b) twenty-five thousand dollars (\$25,000), whichever is greater.

§ 13.8 Measurement

Before ordering any material or doing any Work, the Contractor shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Architect for consideration before proceeding with the Work. The Contractor shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the Owner and Architect of these prior to commencing any Work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

§ 13.9 Expediting Materials

The Contractor shall immediately, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work, and shall submit to the Architect evidence that such orders have been placed in accordance with the Contractor's Construction Schedule.

§ 13.10 Addressing the Owner's Additional Needs and Concerns

§ 13.10.1 Notwithstanding the above, the Owner has a unique set of stakeholders and organizational structure that creates special challenges the Contractor must completely and successfully address to the satisfaction of the Owner and Architect in the performance of the Work under this Agreement. The actions that shall be taken to address these special challenges include, but are not limited to, the following:

.1 The Contractor shall provide the Superintendent once per month for a scheduled meeting with the Owner for a progress update on the project if requested by the Owner. A walk-through of the site may be held as a part of this meeting, which shall be scheduled for 4pm or shortly thereafter on a standard business day.

.2 The Contractor may be required to provide the Superintendent for one meeting per month with the Architect for the purpose of assisting the Owner in preparing City Council agenda items and assisting City staff in preparing presentations to the City Council for the benefit of the public. The actual preparation and submission of the City Council of any agenda or work session item shall be performed by the Owner.

.3 In addition to the meetings required to complete the Project, it is anticipated the Owner may request tours from time to time of the project and the site. The Contractor shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Owner.

§ 13.11 Additional Provisions

§ 13.11.1 In the event that any provision herein is held to be unlawful, against public policy, or a violation of the Charter or Ordinances of the City of Roanoke, Texas, such provision shall be modified to make it valid, or if modification is not possible, such provision shall be deleted and the remainder of this Agreement shall remain in full force and effect.

§ 13.11.2 Each party hereto agrees to, without limitation, perform all acts; provide all services, material, equipment, labor and supervision; and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.11.3 All exhibits referred to in the Contract Documents are, by reference, incorporated herein for all purposes.

§ 13.11.4 The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of the Contract Documents.

§ 13.11.5 Any specific requirement in this Contract that require responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Contract Documents or the applicable subcontract.

§ 13.11.6 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written document signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific material restated in the written document signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.

§ 13.11.7 The Contractor shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.11.8 The Contractor shall provide Owner with copies of all notices received by Contractor from Subcontractors, Sub-subcontractors, and/or suppliers to Contractor.

§ 13.11.9 The Owner is a Texas home-rule municipality and as such is generally exempt from taxation under Texas law, which may include the purchase of items, materials, or supplies purchased on behalf of the Owner for this public works project. Contractor shall confirm that the Owner is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the Owner.

§13.11.10 Owner affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by Owner to Contractor subject to the terms and conditions of the Contract Documents. In the event that Owner approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by Contractor, (other than that contemplated by the Contract Documents under any remedy-granting provision), Owner will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the Owner's governing body.

§ 13.11.11 In the event the Owner is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the Contractor shall notify the Owner and Architect of such requirement(s) in writing not less than thirty (30) days in advance and attach a copy of the specific advertising and noticing required.

§13.11.12 The Contractor shall, in addition to compliance with the requirements of Section 3.7.6 and without limitation, not knowingly employ or contract with an undocumented worker to perform any of the Work under this Agreement. The Contractor shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an undocumented worker to perform work under this Agreement or (ii) fails to certify to the Contractor that the Subcontractor will not knowingly employ or contract with an undocumented worker to perform work under this Agreement.

§13.11.12.1 The Contractor shall comply with any reasonable request of the Texas Workforce Commission made in the course of an investigation pursuant to state law.

§13.11.12.2 In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Contract Document the Owner may be entitled to for a breach of the Agreement, if the Owner terminates this Agreement, in whole or in part, due to Contractor's breach of the obligations set forth above in this Section 13.11.12 Contractor shall be liable for actual and consequential damages to the Owner.

§ 13.11.13 It is the express intention of the parties that this Agreement is not to be construed as a waiver of any immunities or defenses of the Owner under Texas law.

§ 13.11.14 Notwithstanding any other provision in the Contract Documents to the contrary, public property is protected from forced sale and therefore may not be made the subject of a mechanic's lien. Nothing in the Contract Documents shall be construed to allow a mechanic's lien on public property owned by the Owner. The Owner does not waive its immunities or right to object to or contest such a lien.

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 Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, 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 (7) days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination, including other costs allowed by the law.

§ 14.1.4 If the Work is stopped for a period of ~~60~~ sixty (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 or entities 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' written notice to the Owner and the 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~~ Contractor:

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 ~~repeatedly~~ 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~~ Documents; or
- .5 contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, 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' written 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 Architect's, Architect's consultants', and Owner's other consultants' 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. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.4.1 The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

§ 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 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, be as specified in Article 7.~~ 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 the Contract.

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of written 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 Upon~~ such termination for the Owner's convenience, the ~~Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~ Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Contract Documents and Owner's further instructions, and other documented and verifiable costs reasonably incurred in good faith by the Contractor as a direct result of termination. The Contractor waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, lost opportunity costs, and potential and actual unabsorbed overhead costs. The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims that the Owner has against the Contractor under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract.

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.law.

§ 15.1.3 Notice of Claims

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

~~§ 15.1.3.1~~ Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party 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.

§ 15.1.3.1 Claims Made After Final Payment

After Final Payment, Claims made by the Contractor that have not otherwise been waived pursuant to this Contract, must be initiated within one hundred and eighty (180) days from the date of Final Payment by written notice to the Owner as a condition precedent to the Contractor's right to sue on the Contract.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision recommendation by the Initial Decision Maker is required.

§ 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 and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 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. Damages available to the Contractor are limited to those set forth in the Texas Local Government Code, Subchapter I, Section 271.153 or its successor statute(s).

§ 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; the Contractor shall provide written notice as required by Sections 8.3.4. and 8.3.5.

§ 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 in accordance with Section 8.3.5.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the 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 mutual waiver is applicable, without limitation, to all consequential damages due to either party'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

Omitted.

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. 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 shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide 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) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve 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. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 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. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties 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 be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

~~§ 15.2.6~~ Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

~~§ 15.2.6.1~~ Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

~~§ 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~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, Contract shall be subject to mediation as a condition precedent to binding dispute resolution filing suit in a state district court having competent jurisdiction per the Contract Documents. If a statute of limitations is at issue, then suit may be filed by either party to toll the statute, but the suit shall then be stayed pending completion of the agreed mediation. If the parties cannot agree on a mediator, then the court may appoint one upon application of either party.

~~§ 15.3.2~~ The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation mediation. A request for mediation, shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~§ 15.3.3~~ Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.proceedings.

~~§ 15.3.4~~ The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements-Written agreement(s) reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 15.4.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a

written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

§ 15.4.4 Consolidation or Joinder

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

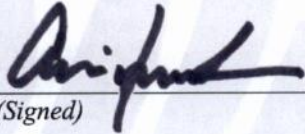
§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration,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

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chris Squadra, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 12:45:57 ET on 12/16/2022 under Order No. 2114392519 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.



(Signed)

Chris Squadra, Principal

(Title)

16-DEC-2022

(Dated)