

Request for Proposals
Construction Manager-at-Risk
for
Karnes County EMS
Administration/Training Center
County of Karnes

Kenedy, Texas

Project #1066-0524

November 15, 2024



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COUNTY OF KARNES
KENEDY, TEXAS
NOVEMBER 15, 2024**

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**Request for Proposals
Construction Manager-at-Risk
Karnes County
Administration/Training Center**

Construction Manager-at-Risk: Karnes County (The Owner) has determined, as required under Section 2269.053(a) of the Texas Government Code, that the construction procurement method which provides the best value for the County for a construction project titled “**Karnes County EMS – Administration / Training Center**” (The Work) is the use of a Construction Manager-at-Risk, as per Subchapter D of Chapter 2269, Contracting and Delivery Procedures for Construction Projects of the Texas Government Code.

Therefore, Karnes County is seeking to select a Construction Manager-at-Risk, hereafter known as a CM-at-Risk, using a **one-step process**.

The selected CM-at-Risk will assist Karnes County and its Architect by providing both pre-construction and construction services. The Architect for the project is:

**Rawley McCoy & Associates, PLLC
311 E. Constitution, Suite 210
Victoria, Texas 77901
361-573-1642**

Proposals must be received no later than **2:00 p.m., Tuesday, December 3, 2024**. Proposals received after the stated time and date will be returned unopened. Submit **one original and four copies** of the proposal packet to the following address:

**Karnes County EMS
Attn: Casey Ebrom
707 West Main Street
Kenedy, Texas 78119**

Proposals must be clearly marked on the outermost envelope or package **CM-at-Risk Proposal**. Proposals will be publicly opened after receipt and the name of the proposer and proposal amounts will be read aloud. All proposals shall be ranked in accordance with the weighted selection criteria as detailed in the RFQ.

Responses to this Request for Proposals must be submitted as outlined in the RFP.

No submissions may be withdrawn for a period of forty-five (45) days subsequent to the deadline for receipt without the prior written consent of the County.

PROJECT DESCRIPTION

New Administration/Training Center Building consists of the demolition of one existing 2800 square foot metal building and foundation in its entirety, one 625 sqft fuel depot concrete foundation and retaining walls and various site utilities and areas of concrete and asphalt site paving to allow for new construction and site paving. The new construction consists of a 10,610 square feet Pre-Engineered Metal Building with masonry veneer wainscot and interior gypsum board and metal stud finish out. The new building will be located on County property connected to the existing Karnes County EMS building. The existing concrete paved parking at the existing building is scheduled to remain. The estimated construction cost budget for the project at this time including Construction Manager-at-Risk fees is **\$3,500,000.00** and the anticipated duration of the construction phase of the project is **Twelve (12) months**. Respondents must be willing to commence pre-construction services on the project immediately upon receipt of an executed contract. Respondents must be willing to demonstrate competence in phasing the project in an effort to commence actual work on the project as soon as possible. Respondents shall use the estimated construction cost and project time duration stated herein as the basis for determining and/or computing the Cost Proposal portions of the evaluation criteria of their proposals.

SCHEMATIC PLANS

A schematic floor plan and site plan proposed at this time for the project are attached to indicate general information and are subject to change.

SAMPLE LEGAL DOCUMENTS

Karnes County intends to use AIA Document A133 – 2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor, as amended, where basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price and AIA A201-2017, as amended and/or supplemented as attached along with Special Requirements as attached.

Even though attached and used as a basis for RFP response and therefore possibly evaluation and ranking all of the above mentioned documents will still remain negotiable during contract negotiations with ranked proposers and all the way up to the point of accepting the CM-at-Risk's Guaranteed Maximum Price (GMP).

SELECTION PROCESS AND CRITERIA

Pursuant to Section 2269.055(a) of the TEXAS GOVERNMENT CODE, in determining the award of a contract, Karnes County may consider:

- (1) the price;
- (2) the offeror's experience and reputation;
- (3) the quality of the offeror's goods or services;
- (4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- (5) the offeror's safety record;
- (6) the offeror's proposed personnel;

- (7) whether the offeror's financial capability is appropriate to the size and scope of the project; and
- (8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Pursuant to Section 2269.055(b) of the TEXAS GOVERNMENT CODE, in determining the award of a contract, Karnes County shall:

- (1) consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and
- (2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

The proposal selection criteria for ranking respondents/offerors will be based on two main categories: cost proposal and qualifications. Within each of those main categories the information submitted by the respondent/offeror will be evaluated in the following subcategories and weighted as outlined for each subcategory as follows:

<u>Cost Proposal (40% of total)</u>		<u>Max Points</u>	<u>Percent</u>
1.	Fixed fee for pre-construction services	100	10%
2.	Fixed fee for General Conditions	100	10%
3.	Percentage of Construction Cost fee for Construction Phase of project.	200	20%
Total Cost Proposal Points		400	40%
<u>Qualifications (60% of total)</u>			
1.	Experience, reputation and quality of services based upon responses from listed references and possibly unlisted references.	250	25%
2.	Experience completing projects as CM-at-Risk and CM-at Risk methodology.	200	20%
3.	Experience of personnel listed.	100	10%
4.	Bonding capability & proof of insurance	Pass/Fail 50	5%
Total Qualification Points		600	60%
Total Ranking Points		1000	100%

Cost proposal subcategories will be ranked by awarding up to 100 or 250 points as the highest, as the case may be, to the lowest proposal in each subcategory and a percentage of 100 to every other proposal divided into the low number and multiplied by

100. It should be clearly understood by all respondents/offerors, that if a cost proposal number in any of the three subcategories listed is substantially lower than the numbers proposed by all other respondents/offerors, or outside the realm of what one would consider prudent and responsible in terms of normal business practice, thus casting suspicion, doubt, or uncertainty that a respondent/offeror could actually provide the services anticipated sufficiently and in fulfillment of the scope of the proposed contract, the evaluation committee may choose to adjust the numerical ranking outcome before assigning points under the weighting system. In other words, the intent is that: "The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation". Karnes County is not seeking the "cheapest price" but instead "the best value" to the County.

Qualification subcategories will be ranked subjectively by the County in a fair and impartial manner, acting as a single body, based upon information provided in the RFQ. The County may score firms equally on certain subcategories if they choose. The minimum point increment that can be awarded in any subcategory is (.5). The bonding capability & proof of insurance subcategory will be awarded on a pass/fail system where all respondents who provide letter of intent as described in the RFQ will receive the maximum of 50 points and those who do not will receive zero (0) points.

The anticipated Selection Schedule is as follows:

- | | | |
|----|---|--------------------------------------|
| 1. | RFQ's Available | November 22, 2024 |
| 2. | Proposals Due | December 3, 2024 |
| 3. | Committee Meeting | December 4, 2024 |
| 3. | Reference Contact Period | December 4, thru
December 9, 2024 |
| 4. | Commissioner Court Ratification or Rejection of Ranking | |
| | Committee's Number One Ranked Respondent | December 10, 2024 |
| 6. | Public Notification of Court Action | December 10, 2024 |

Note: The County may alter the schedule if it is determined that a schedule alteration would better allow the County to select the best possible firm.

SUBMISSION REQUIREMENTS

COST PROPOSAL

1. Provide a fixed fee for your Company's Pre-Construction Phase services on this project as defined in AIA Document A133 – 2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor where basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.
2. Provide a fixed fee for the cost of your Company's General Conditions for this project. The General Conditions cost shall include every expense that the CM-at-Risk anticipates during the course of this project. The final costs for General Conditions may be renegotiated and/or finally established at time of acceptance of CM-at-Risk's GMP (Guaranteed Maximum Price). After construction phase begins, requests for additional General Condition's expenses will be denied.

- a. The itemized list of List of General Condition Costs for purposes of this evaluation shall be as follows and shall be computed for the presently anticipated time of project construction phase duration of twelve (12) months.

- 1) Superintendent (full time)
- 2) Superintendent's Truck and Fuel
- 3) Workmen's Compensation for on-site staff
- 4) Employee Benefits for above
- 5) SS and Unemployment Taxes for above
- 6) Field Office
- 7) Safety
- 8) Small Tools & Equipment
- 9) Drinking Water
- 10) Phone Service
- 11) First Aid Supplies
- 12) On-site e-mailing Capability (Computer and Data Service)
- 13) Storage Buildings
- 14) Sanitary Facilities
- 15) Waste Containers
- 16) Materials Handling
- 17) Dimensional Control
- 18) Site and Building Layout
- 19) Site and Building Security
- 20) Temporary Water Hookup and Disconnect (Assume water is available to site and will be paid for directly by Owner)
- 21) Temporary Electrical Hookup and Disconnect (Assume arrangements will be made and paid for by Owner to bring have their Retail Electric Provider (REP) bring power to the site and that all temporary power for construction will be paid for directly by Owner)
- 22) Project Sign
- 23) Temporary Construction Fencing
- 24) Temporary Lights
- 25) Record and As-Built Drawings
- 26) Clean-up, General
- 27) Clean-up, Final
- 28) Closeout Documents

*Proposer shall also list in their fixed fee proposal, any additional anticipated General Condition Costs not listed above as outlined in the General Conditions and Supplementary General Conditions of this RFP.

3. Provide a percentage of construction cost fee for your Company's services for the Construction Phase of this project. At the time of acceptance of the CM-at-Risk's GMP (Guaranteed Maximum Price) this percentage of construction cost fee will be converted to a fixed fee based upon the cost of the work as defined by the GMP. The percentage of construction cost fee stated in this RFQ response shall, just as with the General Conditions, be negotiable during contract negotiations with ranked offerors and all the way up to the point of accepting the CM-at-Risk's GMP.

4. Provide the total cost of your Company's CM-at-Risk services broken down in the following three categories: (See enclosed Proposal Form)
 - a. Total of fixed fees for Pre-Construction Phase services.
 - b. Total of fixed fees for General Conditions.
 - c. Provide your percentage of construction cost fee for your Company's services for the Construction Phase of this project.

QUALIFICATIONS

1. Company Information:
 - a. Name
 - b. Principal Office Address
 - c. Principal Office Phone Number
 - d. Legal Description of Business Operation (i.e. Sole Proprietor, Partnership, Corporation, etc.)
 - e. Year Founded
 - f. Years of operation under current business legal status and company name.
 - g. Years of operation under other business legal status's and/or company names since the year company was founded.
2. Experience:
 - a. How many projects has your firm completed as a Construction Manager-at-Risk during the last five (5) years? Include the following information for each of those projects:
 - 1) Name of Project
 - 2) Type of Facility
 - 3) Size in Square Feet
 - 4) Guaranteed Maximum Price (GMP)
 - 5) Actual Final Price
 - 6) Contract Completion Date
 - 7) Actual Completion Date
 - 8) Owner's Name (contact person) and Phone Number
 - 9) Architect's Name (contact person) and Phone Number
 - b. How many projects does your firm have under contract/construction currently as the Construction Manager-at-Risk? Include the following information for those projects:
 - 1) Name of Project
 - 2) Type of Facility
 - 3) Size in Square Feet
 - 4) Guaranteed Maximum Price (GMP), if under construction, or the current estimated cost, if not under construction yet.
 - 5) Contract Completion Date, if under construction, or the estimated completion date, if not under construction yet.
 - 6) Owner's Name (contact person) and Phone Number

- 7) Architect's Name (contact person) and Phone Number
- c. In addition to the projects listed in paragraph 2b above, how many projects does your firm have under contract/construction currently that are not Construction Manager-at-Risk projects? Include the following information for those projects:
 - 1) Name of Project
 - 2) Project Delivery Method (i.e. Competitive Bid, Competitive Sealed Proposal, Design-Build, etc.)
 - 3) Type of Facility
 - 4) Size in Square Feet
 - 5) Contract Price
 - 6) Contract Completion Date
 - 7) Percentage of Construction Completed
 - 8) Owner's Name (contact person) and Phone Number
 - 9) Architect's Name (contact person) and Phone Number
 - d. Name any subcontractors or material suppliers in which your company has some ownership and list the categories of work or materials these companies might provide pricing for on this project.
 - e. Within the past five (5) years has any officer of your company ever been an officer of another company when that company failed to complete a construction project? If yes, Please explain.
 - f. Claims, lawsuits or settlements:
 - 1) Are there any judgments, claims, arbitration proceedings, mediations, suits or any other methods of dispute resolution pending, outstanding, filed, demanded or otherwise engaged against your company or any of its officers? If so, please explain.
 - 2) Has your company filed, claimed, demanded, been sued or been a party to any judgments, claims, arbitration proceedings, mediations, lawsuits or any other methods of dispute resolution within the last five (5) years, **including those proceedings to which you may have reached a settlement without admitting liability**? If so, please explain.
 - 3) Has your company ever failed to complete a project that it has been awarded? If so, please explain.
3. Bonding Capacity & Proof of Insurance:
 - a. Provide letter of intent from bonding agent indicating Company's ability to provide 100% payment and performance bonds on the Construction phase of this project as outlined in the attached sample General Conditions, Supplementary General Conditions and/or Special Conditions for this project.

- b. Letter of intent should also indicate that the Company's bonding company is licensed to provide bonds in the State of Texas and is listed on the United States Treasury list of bonding companies.
 - c. When a Company's bonding agent provides a letter of intent at this stage of the RFQ process, it should be clearly understood that after contract negotiations with ranked offeror's are complete and at the time of contract award the following paragraphs of Section 2267.258 of the TEXAS GOVERNMENT CODE must be followed:
 - (1) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the project budget, as specified in the request for qualifications.
 - (2) The construction manager shall deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.
 - d. Provide current Insurance Certificate showing that your Company carries the minimum insurance coverages as outlined in the attached sample General Conditions, Supplementary General Conditions and/or Special Conditions for this project.
 - e. If, for some reason, a current Insurance Certificate indicates that your Company does not carry all of the insurance coverages that will be required by the Owner on this project or the level of coverages, you must provide a letter from your various insurance companies or agents stating that if awarded a contract your Company could provide the coverages required.
4. CM-at-Risk Methodology:
- a. Describe your company's approach to working with the Owner and Architect during pre-construction (including bidding) and construction phases of the project.
 - b. Describe specific projects in which you have implemented "fast track" scheduling and project "phasing" techniques in an effort to commence actual work on the project as quickly as possible and achieve rapid overall project delivery. Include examples of projects in which certain portions of a building achieved substantial completion with Owner occupancy prior to completion of the entire project.

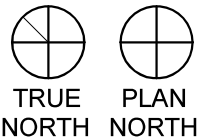
- c. Describe your methodologies for cost estimating, cost control and scheduling of the project for both pre-construction and construction phases of the project.
 - d. Provide itemized General Conditions, including prices, for three (3) similar sized projects where you acted as CM-at-Risk.
- 5. Personnel:
 - a. Identify the Company Officer-in-Charge, Project Manager, Estimator, on-site Superintendent and any other key personnel you propose to use on this project.
 - b. Provide a resume for each individual.
 - c. Provide a list of projects where the proposed Project Manager and on-site Superintendent have worked together in the past.
- 6. References:
 - a. List name and phone numbers for not more than four (4) references each for previous Owners and Architects on previous projects.

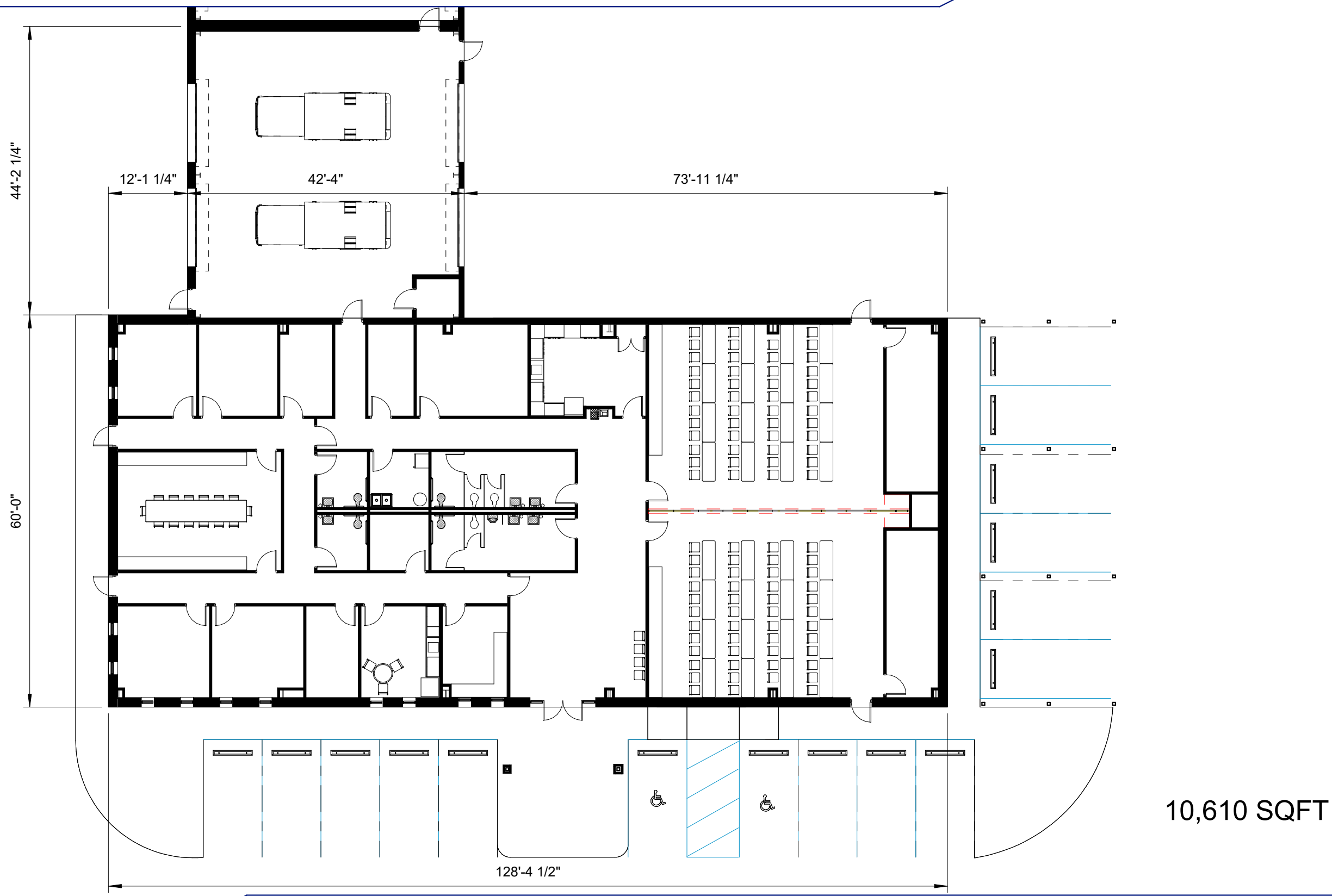
ADDITIONAL DOCUMENTS

- 1. A "Conflict of Interest Questionnaire", "Non-Collusion Statement", "Certificate of Authority and Incumbency" and "Governmental Certifications" are included in the RFP and must be completed and returned bound in the Proposal.
- 2. A "Proposal Form" is included in the RFP for respondent/offeror state fees requested under **Cost Proposal (40%) total**, and must be completed and returned bound in the proposal.



KARNES COUNTY EMS
ADMINISTRATION / TRAINING CENTER







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 TBD day of TBD in the year two-thousand and twenty-four (2024).

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

BETWEEN the Owner:

(Name, legal status, address, and other information)

Karnes County of Texas
101 North Panna Maria Ave., Suite 101
Karnes City, Texas 78118

and the Construction Manager:

(Name, legal status, address, and other information)

TBD

for the following Project:

(Name, location, and detailed description)

Karnes County EMS Administration/Training Center

The Architect:

(Name, legal status, address, and other information)

Rawley McCoy & Associates, PLLC
Architects & Interior Designers
311 E. Constitution St., Suite 210
Victoria, Texas 77901
(361) 573-1642

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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.

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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.)

To be determined.

§ 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.)

To be determined.

§ 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:

Not known at this time.

.2 Construction commencement date:

Not known at this time.

.3 Substantial Completion date or dates:

Not known at this time.

.4 Other milestone dates:

None.

§ 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.)

§ 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.)

None.

§ 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.

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

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

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

N/A

§ 1.1.10 The Owner shall retain the following consultants and contractors:

Init.

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User Notes:

(1496611119)

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

.1 Geotechnical Engineer:

TBD

.2 Civil Engineer:

TBD

.3 Other, if any:

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

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

Rawley McCoy & Associates, PLLC
Architects & Interior Designers
311 E. Constitution St., Suite 210
Victoria, Texas 77901
(361) 573-1642

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

TBD

§ 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.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

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

§ 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.

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

Init.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (being the AIA A201-2017 as modified by the parties for this Project), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in 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 (GMP) proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the 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, the General Conditions shall control. When the terms "Contractor", "Construction Manager-at-Risk" or "CM-at-Risk" are used in any of the Contract Documents they shall mean the same as Construction Manager.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the fiduciary relationship of trust and confidence established by this Agreement and covenants with the Owner to 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 timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement.

§ 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 Construction Manager-at-Risk, or CM-at-Risk.

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 foregoing notwithstanding, the Construction Phase cannot commence and no construction services may be performed until the Payment and Performances Bonds, and the Construction Managers insurance, required by the Contract Documents, have been provided by the Construction Manager and approved by the Owner. 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, 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 as the Architect may require.

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect on an on-going, as necessary basis and with the Architect and Owner on a monthly basis during the Design Development Phase and the Construction Document Phase to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Project Manager and the Estimator shall be present at, no less than (2) two, meetings per month with the Architect and Owner during the pre-construction phase, and the CM shall prepare and promptly distribute written minutes from these monthly meetings to all attendees. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative 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 Design Review

The Construction Manager shall review the Schematic Design Documents, Design Development Documents, Construction Documents, Drawings, Specifications and other Contract Documents as they are developed and completed. These documents may be developed at different rates for different components of the Project. The Construction Manager shall promptly report in writing to the Owner and the Architect any errors, inconsistencies, incomplete information or other questions or deficiencies that the Construction Manager has discovered and that need to be resolved for the successful completion of the Work, paying particular attention to coordination issues, and shall recommend changes and alternatives. Design review activities are to be a cooperative and collaborative effort with the Architect and its consultants. The Construction Manager's review shall be made in the Construction Manager's capacity as a contractor and not as a licensed design professional.

§ 3.1.3.4 Constructability

The Construction Manager shall work with the Owner and Architect to prepare a constructability plan for the Project to reduce cost, save time, improve quality, reduce risk and improve the overall process of Project delivery. A primary objective of these efforts will be to assist the Owner to ensure that the final GMP does not exceed the Owner's budget and the Project is completed on time. The Construction Manager shall perform actions designed to minimize adverse effects of labor or material shortages or delays, time requirements for procurement installation and construction completion and factors related to construction cost. As part of this effort, the Construction Manager shall participate in formal constructability 95% reviews following completion of the Design Development Documents and when the Construction Documents are 90% complete. The Construction Manager shall confirm that a formal constructability review has been completed prior to solicitation of the first Subcontractor bid package.

§ 3.1.3.5 Value Engineering

The Construction Manager will participate in value engineering the design documents at 50% of the Design Development Phase and on a continuing basis with the Architect in subsequent phases up to 95% Construction Documents. At the completion of each of its reviews, the Construction Manager will provide the Owner and Architect with a formal record of its findings and recommendations and answer their questions to determine the advisability of changes. Value engineering will include selecting building systems, with final selection of systems to occur prior to the start of the Construction Documents Phase.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, 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 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 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.

§ 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.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, 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 The Construction Manager will collaborate with the Architect and Owner on cost estimates throughout the Preconstruction Phase, and will prepare detailed cost estimates at 100% Schematic Design, 100% Design Development, 75% Construction Documents, 95% Construction Documents Phase (the "GMP" estimate"), and following completion of the Construction Documents Phase. 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 of increasing detail and refinement and allowing for the further development of the design until such time as Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, 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.

§ 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 prepare and submit a subcontracting plan to the Owner and the Architect for review and approval prior to conclusion of the Design Development Phase. The subcontracting Plan shall identify all Subcontractors bid packages, scopes of work, timing of solicitation of bid packages to meet the Construction Schedule, major coordination issues, and means to possibly enhance the opportunity for local businesses to participate in performing the work (e.g.; through development of multiple work packages).

§ 3.1.12 Procurement

The Construction Manager shall prepare, 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 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.

§ 3.1.12.1 The Construction Manager shall identify and estimate the value of any items that require off-site storage together with proposed locations for storage acceptable to Owner. These locations shall be selected to provide a maximum of protection and minimum of cost and delay associated with delivery to the site.

§ 3.1.12.2 If authorized by the Owner, an Application for Payment may include a request for payment for material delivered to the Project site and suitably stored for completed preparatory Work, provided the Construction Manager and Owner can mutually agree upon insurance and ownership issues or concerns before such request for payment is made.

§ 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.

§ 3.2 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 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.

§ 3.2.2 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 upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a 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.

§ 3.2.5 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.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work, as provided in the Agreement but not included in a Change Order. The foregoing notwithstanding, the contingency consent cannot be used to pay or reimburse Construction Manager for costs or expenses which Construction Manager is required to pay without reimbursement as defined in Article 6, under the Contract Documents, or for which Construction Manager is liable under the terms of the Contract due to the fault, negligence or default of the Construction Manager, Subcontractors, suppliers or anyone for whose acts any of them may be liable. The estimated Cost of the Work shall also include an amount approved by the Owner as an Owner's Contingency for the Owner's exclusive use to cover unexpected costs which change the scope of the Work.

§ 3.2.4.1 The Construction Manager shall advertise and receive competitive proposals for work exceeding \$50,000. The management fee for general conditions will be included in the Construction Manager's base fee. If the Construction Manager is capable and desires to perform a portion of the direct work, the Construction Manager will be considered on the basis of a subcontract with a guaranteed maximum price competitively bid for that portion of the work.

§ 3.2.5 The Construction Manager shall issue a report to Owner and Architect with its proposal stating that the Construction Documents are generally consistent with the Guaranteed Maximum Price assumptions. The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and 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.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, as defined in Article 6, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 3.2.8.1 Any Additional Services paid to Architect by Owner under Paragraphs 6.3 and 6.7 of AIA Document B103- 2017, Standard Form of Agreement Between Owner and Architect will be reimbursed to Owner by Construction Manager.

§ 3.2.9 Construction Manager shall take all actions required to obtain sales, use and other tax exemptions under Texas Law in connection with the Work as described in the General Conditions.

§ 3.2.10 The date of commencement of the Work shall be as stated in Section §8.1.2 of the AIA A201-2017 Supplementary General Conditions.

§ 3.2.11 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date established in the Guaranteed Maximum Price Amendment (the "Contract Time"), subject to adjustment as provided in the Contract Documents. Substantial Completion is defined in accordance with Paragraph 9.8.1 of the AIA Document A201-2017 as 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, which shall include receipt of all applicable permits and approvals necessary to designated portion thereof to be deemed substantially complete, also defined as the date that the Owner can operate the Project with a minimum of interference

from the Contractor and only minor punch list items should remain to be completed and Contractor shall have provided all Project Record documents including, but not limited to, Operations and Maintenance Manuals and As-Built drawings to the Owner.

§ 3.2.12 Final Completion is defined as the date when all the Work under the Contract Documents has been fully performed, including all punch list items, and is acceptable to the Architect/Engineer and the Owner.

§ 3.2.13 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 the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.14 The Construction Manager shall 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.

§ 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 the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence 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 Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 The Construction Manager shall review and inspect the Work of the Subcontractors on a regular basis for defects and deficiencies in their Work and for conformance with the Drawings, Specifications and other Contract Documents, and shall stop the Work of Subcontractors if necessary. The Construction Manager shall provide notification at regularly scheduled progress meetings of any major defects or deficiencies and recommend remedial action. The Construction Manager shall take the lead role in negotiating and resolving any disputes with Subcontractors and obtain the Owner's concurrence or approval of all settlements before executing change orders with Subcontractors.

§ 3.3.3 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.

The reports shall:

- .1 Include information concerning both the entire Project and each Subcontractor bid package
- .2 Identify variances between scheduled and probable completion dates, and recommend action required to meet scheduled completion dates
- .3 Review the Construction Schedule for portions of the Project not started or incomplete and recommend to the Owner alternate procedures or adjustments to meet the scheduled completion dates
- .4 Portions of the Work in progress, number of workers on site, identification of equipment on site, accidents or Injuries on site

- .5 Document all significant changes in the Construction Schedule, whether the Owner approves of the change and the reasons for them
- .6 Record in writing and by photographs the progress of the Project
- .7 Identify significant problems in scheduling together with recommended corrective action
- .8 A daily log containing a record for each day of weather
- .9 Provide summary reports for each Construction Schedule update
- .10 Document any outstanding RFI's and risks associated with delayed responses
- .11 List outstanding submittals and risks associated with delayed responses
- .12 Document any outstanding Change Orders and any risks associated with delayed responses
- .13 The status of permits that the Construction Manager is required to obtain or assist in obtaining

§ 3.3.4 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.

§ 3.3.5 Cost Control

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. 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.

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 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 and to which the Owner has no reasonable objection. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. All such information furnished shall be considered confidential in nature and shall not be disclosed to third parties without Owner's express written consent.

§ 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, 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.

§ 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.

§ 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.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™–2017, 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. 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 pay the Construction Manager a fixed fee of _____ for the remainder of the preconstruction phase services referenced above, until an approval of a GMP. Limitations on services described in Sections 3.1 and 3.2 are:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

- .1 Maximum of (2) meetings per month with the Owner and Architect at the Owner's location.
- .2 Maximum of (2) estimate updates per month.
- .3 Maximum of (2) schedule updates per month.
- .4 Personnel to attend the meetings during the pre-construction phase are a minimum of one (1) estimator and the project manager. Others may attend at the discretion of the Construction Manager.
- .5 Unlimited phone or video conferences are included in the fixed pre-construction fee.

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

N/A

§ 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.

§ 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 thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

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

%

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.)

To be determined.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work shall be pursuant to Article 7 of AIA Document A201-2017.

§ 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 pursuant to Article 7 of AIA Document A201-2017. Subcontractor's overhead and profit requests for increases in the cost of their portion of the work will be evaluated on a case-by-case basis by the Construction Manager, the Owner and the Architect and accepted by mutual agreement.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the rates set forth in Section 7.5.2.

§ 6.1.6 The Cost of the Work shall include the General Conditions, both fixed and non-fixed, proposed by Construction Manager as part of its proposal to Owner which are incorporated herein by reference, adjusted to the extent necessary by Change Order, or in an express provision of this Agreement, to reflect the terms of this Contract, based on the actual costs incurred by Construction Manager subject to the Guaranteed Maximum Price limitation provided herein. The amount charged for On-Site Project Management as described in the General Conditions shall be based on the actual time spent by such persons in performing the Work for this Project.

§ 6.1.6.7 General Conditions - Fixed Costs; shall mean the cost of facilities and services necessary for the proper execution and completion of the Work which do not become a permanent part of the Work. These indirect costs shall be a fixed amount billable without breakdown or itemization on a monthly basis. These costs shall not be subject to audit by the Owner under various paragraphs in the Article 7 of this agreement.

§ 6.1.6.7 General Conditions - Fixed Costs shall include at a minimum of the following items. This list of items is subject to negotiation at the time of execution of the A133-2009 Exhibit A, GMP Amendment.

- .1 Site Superintendent
- .2 Project Office Cost (contractor owned, leased, or rented; including set-up and delivery)
- .3 Project Office equipment and Furnishing (contractor owner, leased, or rented)
- .4 Temporary Storage Trailers/Units (contractor owned, leased, or rented; including set-up and delivery)
- .5 Project Office Supplies (to include drinking water)
- .6 Project Office and Site Security
- .7 Project Office Computers, Plotters, Internet, and Phone Service (including mobile) costs
- .8 Jobsite Safety (including safety training, personnel, first aid supplies, fire extinguishers, and other OSHA or company required safety equipment and PPE)

- .9 Contractors comprehensive general liability insurance, including umbrella coverage
- .10 Contractors automobile liability insurance, including umbrella coverage as well as Workmen's Compensation for on-site staff
- .11 Truck or other vehicle costs for on-site Superintendent (contractor owned, rented or leased)
- .12 Project Sign
- .13 Construction progress photos
- .14 Project meeting expenses
- .15 Project schedule updates, including logs of possible weather delays and effect on critical construction path
- .16 Small tools and supplies
- .17 Payroll taxes and insurance on above labor expenses
- .18 Employee Benefits for Site Superintendent

§ 6.1.6.8 General Conditions - Non-Fixed Costs, shall mean the cost of facilities and services necessary for the proper execution and completion of the Work which do not become a permanent part of the Work. These indirect costs are variable in nature and some may not be incurred for the duration of the project. Therefore, the cost of these items shall be billed on a monthly basis as incurred with invoice, cancelled check, or other proof of expense backup. These costs shall be subject to audit by Owner under various paragraphs in Article 7 of this agreement.

§ 6.1.6.9 General Conditions - Non-Fixed Costs shall include at a minimum the following items. This list of items is subject to renegotiation at the time of execution of the A133-2009 Exhibit A, GMP Amendment.

- .1 Performance and Payment Bonds
- .2 Builder's Risk Property Insurance, plus deductibles in case of a claim
- .3 Temporary jobsite fencing and barricades
- .4 Dumpsters and waste removal
- .5 Temporary toilets
- .6 Temporary lighting, both site and building interior
- .7 Fuel for vehicles included in 5.1.7.10 and on-site equipment
- .8 Building permit, licenses and inspection fees
- .9 SWPP plans, permits, and plan maintenance
- .10 Bid or proposal advertising
- .11 Temporary power and water, if not provided by the Owner
- .12 On-site engineering and layout
- .13 Site cleanup, on-going and final
- .14 Building cleaning, on -going and final
- .15 Temporary equipment and/or screening
- .16 Printing of Bid Documents
- .17 Materials Handling
- .18 Dimensional Control

§ 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.)

None other.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum, including the sum of the Cost of the Work and Construction Manager's Fee, shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time.

§ 6.2.1 To the extent the Cost of the Work and the Construction Manager's Fee exceeds the Guaranteed Maximum Price; the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

§ 6.2.2 To the extent that the Cost of the Work and the Construction Manager's Fee is less than the Guaranteed Maximum Price, the Construction Manager shall not be entitled to the difference or any portion thereof.

§ 6.2.3 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 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 Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work, as agreed upon by the Construction Manager and Owner.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction and the applicable provisions of the Agreement.

§ 6.3.3 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.

§ 6.3.4 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.

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. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. 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 this approval prior to incurring the cost. Owner shall be deemed to have approved such costs only if the Construction Manager has provided Owner with a written breakdown of the costs prior to incurring such costs, and the approximate dollar amounts attributable thereto, and Owner has approved such costs in writing.

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

§ 7.2 Labor Costs

§ 7.2.1 Only those 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.

§ 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 and when specifically listed in Fixed General Conditions costs (refer to Section 6.1.6.7).

§ 7.2.2.1 No wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at a location other than the site shall be charged to the Cost of the Work. Non-field office-based Construction Manager management and support personnel are expected to provide service and advice from time to time throughout the job and their time devoted to project matters is considered to be covered by and included in the Construction Manager's Fee.

§ 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 and only if approved in advance writing by the Owner or incorporated in the final GMP Proposal, and only for that portion of their time required for the Work, and not included in the Fixed General Conditions costs.

§ 7.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 and comply with any of Owner's requirements with regard to labor burdens, and not included in the Fixed General Conditions costs..

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and 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, 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 spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 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 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.

§ 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.

§ 7.6 Miscellaneous Costs

§ 7.6.1 This project is tax exempt and no taxes of any kind will be paid by the Owner.

§ 7.6.2 Fees of 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.

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

§ 7.6.4 Costs of document reproductions and delivery charges.

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

§ 7.6.6 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.

§ 7.6.7 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.

§ 7.6.8 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.

§ 7.7 Other Costs and Emergencies

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

§ 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 a direct result of Owner's gross negligence or willful misconduct, and was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 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 Construction Manager 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 (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) any entity which has the right to control the business or affairs of the Construction Manager; or (4) 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 any of the costs to be reimbursed arise from a transaction between the Construction Manager and a 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, 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 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 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 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 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;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

§ 7.9.2 The Cost of the Work shall not include costs due to the fault or negligence of the Construction Manager, its Subcontractors, or any other person or entity employed by the Construction Manager or Subcontractors, or under contract with them or performing work on the Project on behalf of them or under their supervision, or for whose acts the Construction Manager or its subcontractors may be liable, including, but not limited to the costs of correcting damaged, defective or non-conforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and repairing damage to property not forming part of the Work. The Construction Manager specifically acknowledges and agrees that it shall receive no compensation, and the Cost of the Work shall not include, any costs incurred by the Construction Manager in repairing or correcting, or supervising the correction or repair of: defective or non-conforming Work performed or supplied by an Subcontractor, material supplier, or any other person or entity employed by the Construction Manager, under contract with the Construction Manager, or performing Work on the Project on behalf of or under the supervision of the Construction Manager or Construction Manager's personnel and the Construction Manager's sole remedy with respect to the recovery of such costs shall be whatever remedies are contained in the Construction Manager's subcontract agreements with its subcontractors, suppliers and other persons or entities providing Work on the Project.

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. 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.

§ 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 by other appropriate agreements with the Construction Manager. The selection of Subcontractors and the performance of Work by the Construction Manager shall be in accordance with the following provisions:

- .1 The Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the Work other than minor work which may be included in the General Conditions of the Contract for Construction.
- .2 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not the Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if the Construction Manager were a subcontractor.
- .3 The Construction Manager, the Owner Representative, and the Architect shall receive and open all subcontractor bids or proposals in a manner that does not disclose the contents of the bids or proposals during the selection process to a person not employed by the Construction Manager, Architect, Engineer or

Owner. The Construction Manager shall review and evaluate all bids or proposals, and shall recommend to the Owner a list of bidders to which the Construction Manager proposes to award subcontracts for the Project Work.

- .4 In the event that the Owner requires that the Construction Manager award any portion of the work to a bidder not proposed by the Construction Manager, the Owner shall compensate the Construction Manager by change in price, time, or guaranteed maximum cost for any additional work or risk that the Construction Manager may incur by reason of the Owner's requirements.
- .5 The Construction Manager shall deliver a copy of all advertising, solicitation documents, bids, proposals, evaluations of proposals and all documents relevant to the Guaranteed Maximum Price proposal to the Owner with the proposal.
- .6 The Construction Manager shall deliver to the Owner and Architect all bids or proposals received with the Guaranteed Maximum Price Proposal.

The Construction Manager shall include specific notices of the following statutory requirements in the information to bidders:

- .1 The successful bidder's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406; and
- .2 A notice of the sales tax exemption for the project and the procedure for obtaining any required exemption verification or certificates.

§ 9.1.2 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.

§ 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.

Nothing herein shall prevent the Construction Manager from including other notices required or allowed by law.

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. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting 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 years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, 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 twenty-fifth (25th) day of the month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the fifteenth (15th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above,

payment of the amount certified shall be as provided in Section 5.2.2 above, subject to the terms and conditions of the Contract Documents. No payments shall be deemed delinquent or subject to attachment of interest unless made beyond the time limits prescribed by State law.

§ 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.

§ 11.1.4.1 As a condition precedent to any progress payment or other payments under this Agreement and contemporaneously with the submission of each Application for Payment, beginning with the second Application for Payment, the Construction Manager shall furnish to the Owner: (a) partial releases of mechanics' and materialmen's liens, in the form required under the Texas Property Code, covering all sums due through the effective date of the prior Application for Payment duly executed and acknowledged by the subcontractors and suppliers who have furnished materials or services or performed labor of any kind in connection with the Project; and (b) final releases of mechanics' and materialmen's liens, in the form required under the Texas Property Code, covering all sums due through the effective date of the prior Application for Payment duly executed and acknowledged by the subcontractors and suppliers who have completed their work, whether furnishing materials or services or labor or all of the foregoing, of any kind in connection with the Project; provided, however, that in the event there is a bona-fide dispute between the Construction Manager and any party who has furnished materials or services or performed labor and such party refuses to sign a partial or final release, as applicable, executed by such party as contemplated by this Subparagraph 11.1.4.1; however, the Construction Manager shall certify to the Owner the amount then owed to such party, which amount shall be withheld, unless, with respect to a Lien Claim, Construction Manager has bonded around the Lien Claim as provided by the Contract Documents. At the time that each payment is made by Owner to Construction Manager, the Construction Manager shall contemporaneously furnish to the Owner a partial release of the Construction Manager's liens, in the form required under the Texas Property Code, covering all sums due the Construction Manager through the date of the Application for Payment which has been paid by the Owner, which partial release shall be duly executed and acknowledged by the Construction Manager.

§ 11.1.4.2 Prior to final payment by the Owner to the Construction Manager, the Construction Manager shall submit to the Owner: (a) final releases in full of mechanics' and materialmen's liens in the form required under the Texas Property Code, executed by all subcontractors and suppliers in connection with the Work and final payment shall not be due hereunder until such releases are delivered to the Owner; provided, however, the Construction Manager shall not be required to furnish the Owner a final release executed by any subcontractor or supplier who has filed a Lien Claim if the Construction Manager has bonded around the Lien Claim as provided by the Contract Documents and the Texas Property Code, and (b) the Construction Manager's final release of liens in the form required under the Texas Property Code, duly executed and acknowledged by the Construction Manager; and (c) within ten (10) days of final payment, unconditional final lien releases in full from Construction Manager and of mechanics and materialmen's liens in the form required under the Texas Property Code executed by all Subcontractors and Construction Manager's suppliers in connection with the Work.

§ 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.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 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 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Begin with that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2017;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of ten percent (10%). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2017.

§ 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.)

Ten percent (10%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

General Conditions – Fixed and Non-Fixed

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(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.)

§ 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.)

§ 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.

§ 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.

§ 11.2 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.
- .4 the surety has consented to final payment,
- .5 Construction Manager has provided all warranties, instructions, training, and satisfied all requirements for finalizing out the Project required by the Contract Documents; and
- .6 all other conditions precedent to final payment expressly set forth in the Contract Documents have been satisfied.

§ 11.2.1.7 The Owner's final payment to the Construction Manager shall be made no earlier than 31 days and no later than 45 days after all conditions to payment set out in this Section 11.2 have been met, unless Owner has received a notice under Subchapter C of Chapter 53 of the Texas Property Code from a Subcontractor (which for purposes hereof shall include a supplier) of any tier. In such an event, Owner may withhold payment until the earlier of the following: (1) Construction Manager has provided Owner with an unconditional lien waiver and release from the claimant in the form required under the Texas Property Code; (2) in the event a lien affidavit has been filed, Contractor has furnished a statutory lien release bond acceptable to Owner releasing such claim against the Owner and claim for a lien; or (3) Construction Manager has furnished such other security acceptable to Owner, in Owner's sole discretion, which indemnifies Owner from any such claim for payment or claim of a lien that might be asserted by such claimant.

§ 11.2.1.8 As additional conditions precedent to final payment, Construction Manager shall furnish to Owner a final bills paid affidavit which shall be in such form reasonably acceptable to Owner that conforms to the provisions of the Contract and applicable law and which acknowledges that the final payment requested by the Construction Manager constitutes the full and final amount due and owing to the Construction Manager under the Contract and which truthfully states that all bills have been paid and covered by an unconditional release from each unpaid Subcontractor (which for purposes hereof shall include a supplier), except for such unpaid claims that are fully set forth in the affidavit. Construction Manager shall also furnish a final release and waiver of the Construction Manager's constitutional and statutory mechanic's lien or any other claim for payment conditioned only to the extent of the final payment requested by the Contractor. As a further condition of final payment, upon Owner's request, Construction Manager shall furnish an all bills paid affidavit and release and waiver of lien from each Subcontractor who furnished labor and/or materials to the construction of improvements hereunder. Such final bills paid affidavit and release of lien from the respective Subcontractor shall be conditional only upon receipt of payment of the specified amount of the final payment owed to the Subcontractor which

matches the amount disclosed to be due to the Subcontractor in the Contractor's final bills paid affidavit required above. At Owner's election, Owner may issue a joint check payable to the Construction Manager and the respective Subcontractor for the amount owed to the Subcontractor. In such case, the Construction Manager and the Subcontractor shall unconditionally release the Owner with regard to all payment due for the Work performed by the Subcontractor. If any Subcontractor or supplier refuses to furnish such a release or in the event that a claim for payment or lien has been asserted by a Subcontractor furnishing work to the Project, Construction Manager shall furnish a statutory lien release bond reasonably acceptable to Owner which releases such claim against Owner and lien, if any, under applicable law, or Construction Manager shall furnish such other security acceptable to Owner, in Owner's sole discretion, which indemnifies Owner from any such claim for payment or claim of a lien that might be asserted by such Subcontractor.

§ 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.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, 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 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 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.

§ 11.4 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.

(Insert rate of interest agreed upon, if any.)

%

§ 11.5 No Waiver Notwithstanding anything in the Contract Documents to the contrary, the Owner does not waive, and hereby expressly affirms, Owner's rights and obligations to withhold any progress payment or other payments under this Agreement in accordance with Chapter 53 of the Texas Property Code. Should Owner withhold any payment in accordance with Chapter 53 of the Texas Property Code, such withheld payment shall not be considered a breach of this Agreement.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 The Architect 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.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)
None other.

§ 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.)

- ☐ Arbitration pursuant to Article 15 of AIA Document A201–2017
- ☒ 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.

§ 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 actually performed 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 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 actually performed 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 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 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 and Owner has not already reimbursed Contractor for these costs in accordance with Section 13.1.5 of this Agreement. 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.

§ 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 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:

(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.)

§ 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.

§ 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.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance 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 one-million dollars (\$1,000,000) for each occurrence and two-million dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 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 one-million dollars (\$1,000,000) 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.

§ 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.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than one-million dollars (\$ 1,000,000) each accident, one-million dollars (\$ 1,000,000) each employee, and one-million dollars (\$ 1,000,000) policy limit.

§ 14.3.1.5 This paragraph eliminated per request of Construction Manager.

§ 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
None other	

§ 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 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, 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.)

§ 14.5 Other provisions:

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 Other Exhibits:

(Check all boxes that apply.)

☒ [X] Supplementary and other Conditions of the Contract

- .6 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, 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.)

None.

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Karnes County EMS Administration/Training Center

THE OWNER:

(Name, legal status and address)

Karnes County of Texas
101 North Panna Maria Ave., Suite 101
Karnes City, Texas 78118

THE ARCHITECT:

(Name, legal status and address)

Rawley McCoy & Associates, PLLC
Architects & Interior Designers
311 E. Constitution St., Suite 210
Victoria, Texas 77901
(361) 573-1642

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ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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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.

§ 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.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 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.

§ 1.1.8 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.

§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.1.1 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.

§ 1.4 Interpretation

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

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

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

§ 1.5.2 The Contractor, 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.

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without 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, 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.

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.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Following 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 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 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.

§ 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.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the 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.

§ 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 any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the 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. 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.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner 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.

§ 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.

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

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner 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.

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

§ 3.6 Taxes

The Contractor shall 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.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

§ 3.7.5 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.

§ 3.8 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. 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 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 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.

§ 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.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the 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, 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 be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

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

delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of 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, 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.

§ 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.

§ 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.

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. 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 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.

§ 3.14 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. 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.

§ 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 with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

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

§ 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.

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, 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.

§ 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, 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.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the 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.

§ 4.2.5 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, 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. 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, 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 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, 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 on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 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.

§ 5.3 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.

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

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 related to insurance and waiver of subrogation.

§ 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.

§ 6.2 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, 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 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 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 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.

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by 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 may be issued by the Architect alone.

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

§ 7.2 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.

§ 7.3 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. In such case, and also under Section 7.3.3.3, 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 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 for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the 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.

§ 7.4 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.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

§ 8.2.3 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, 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; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect 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.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least 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, 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, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.2 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 shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven 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 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.

§ 9.5 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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .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.

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

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

§ 9.5.4 If the Architect 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.

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

§ 9.6.3 The 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 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.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by 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 contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or 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.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven 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, then the Contractor may, upon seven additional days' 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.

§ 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. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the 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.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor 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.

§ 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 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.

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

§ 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, 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.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; 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.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 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, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor 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, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 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.

§ 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.

§ 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.

§ 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.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's 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.

§ 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.

§ 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.

§ 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

§ 11.2.1 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.

§ 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

§ 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.

§ 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.

§ 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.

§11.5 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.

§ 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 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.

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, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if 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.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner 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.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of 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.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. 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.

§ 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 procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 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 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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 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.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons 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' 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

- .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.

§ 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' 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 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.

§ 14.3 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. 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 notice from the Owner of such termination for the Owner's convenience, the Contractor shall

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

§ 14.4.3 In case of such termination for the Owner's convenience, the 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.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by 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.

§ 15.1.3.2 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 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 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.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

§ 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

§ 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, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 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 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.

§ 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 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.

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SECTION 00 73 00 – SUPPLEMENTARY GENERAL CONDITIONS

The Conditions of the Contract and applicable requirements of Division 01 govern this section.

These Supplementary General Conditions modify, change, delete from or add to the AIA General Conditions of the Contract for Construction referred to in Section 00 72 00 of the General Documents for this Project.

Where any article, paragraph, sub-paragraph or clause of the AIA General Conditions is modified or deleted by the Supplementary General Conditions, the unaltered provisions or that article, paragraph, sub-paragraph or clause shall remain in effect.

- A. Certain Articles of the AIA General Conditions are modified by, supplemented by or replaced by requirements of the Supplementary General Conditions, Such revisions and replacements shall take precedence over the AIA Document A 201 and shall apply to all work under the Contract.
- B. All portions and provisions of AIA Document A 201 that have not been changed, modified and/or deleted by the Supplementary General Conditions shall remain in full force. certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

SUPPLEMENTARY GENERAL CONDITIONS to the GENERAL CONDITIONS of the CONTRACT for CONSTRUCTION A201-2017

ARTICLE 1 GENERAL PROVISIONS

§1.1 Basic Definitions

Delete §1.1.1 in its entirety and in lieu of substitute the following: §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 proposals, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulable electronic operations involving computers. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail. The Contractor is independently responsible for reviewing the Contract Documents. The Architect and Owner shall be responsible to deliver to the Contractor any Contract Documents prepared by them. If the Contractor believes that a Contract Document has not been delivered to it, then

the Contractor shall give written notice thereof to the Owner before proceeding with the Work. The failure to obtain or review any such document shall not relieve or excuse the Contractor from compliance with its terms or the terms of any other Contract Document. By execution of the Contract, Contractor represents that it has obtained, read and understands all of the Contract Documents and that it can and will comply with all the provisions therein.”

Delete §1.1.2 in its entirety and in lieu of substitute the following: §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. After execution of the original Contract Documents, the Contract may thereafter be amended or modified only by a written 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.

No Change to § 1.1.3 The Work

No Change to § 1.1.4 The Project

No Change to § 1.1.5 The Drawings

No Change to § 1.1.6 The Specifications

No Change to § 1.1.7 Instruments of Service

No Change to § 1.1.8 Initial Decision Maker

Add §1.1.9 to read: §1.1.9 The terms “bids” or “bidding” shall include any kind of competitive purchasing under the Texas Government Code Chapter 2269.

§ 1.2 Correlation and Intent of the Contract Documents

No Change to §1.2.1

No Change to §1.2.1.1

Add §1.2.1.2 to read: §1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained an interpretation in writing from the Architect as to what shall govern before the submission of Contractor’s Proposal. Such conflicts in the Contract Documents do not give the Contractor a “right to choose” which of the conflicting items or terms

within the documents the Contractor wishes to use or follow. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

No Change to §1.2.2

Delete §1.2.3 in its entirety and in lieu of substitute the following: §1.2.3 Technical terms not specifically defined in the Contract Documents shall have the meanings given in AIA Document "Glossary of Construction Industry Terms", July 1982 edition. Technical terms not defined as above and used to describe items of the Work and which so applied have a well-known technical or trade meaning, shall be held to have such recognized meaning.

Add §1.2.4 to read: §1.2.4 The Contractor agrees that the later refinement or description of any Work set forth in, or reasonably inferable from, the Contract Documents, whether by written specifications, directions or clarifications, shall not entitle the Contractor to any increase in the Contract Sum unless: (1) such later description involves a Change in Scope; and (2) the Owner has authorized the Contractor to proceed with such Work in advance and in writing in a signed Change Order or Construction Change Directive.

Add §1.2.5 to read: §1.2.5 Relation of Specifications and Drawings

The Drawings and Specifications are correlative and have equal authority and priority. Should they disagree in themselves, or with each other, base the proposals on the most expensive combination of quality and quantity of work indicated. The appropriate method of performing the Work, in the event of the above-mentioned disagreements, will be made by the Architect.

Add §1.2.6 to read: §1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on the Project by the Architect. It is assumed and will be required that all workmanship be "First Class" and in compliance with current approved standards and codes for that particular phase of the work. No careless or slovenly work of any form will be accepted.

Add §1.2.7 to read: §1.2.7 When the Work is governed by reference to standards, building codes, insurance requirements, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

Add §1.2.8 to read: §1.2.8 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements in the Contract Documents.

No Change to § 1.3 Capitalization

No Change to § 1.4 Interpretation

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

Delete §1.5.1 in its entirety and in lieu of substitute the following: **§1.5.1** In relation to this Agreement, 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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

No Change to §1.5.2

§ 1.6 Notice

No Change to §1.6.1

No Change to §1.6.2

No Change to § 1.7 Digital Data Use and Transmission

No Change to § 1.8 Building Information Models Use and Reliance

ARTICLE 2 OWNER

§ 2.1 General

Delete §2.1.1 in its entirety and in lieu of substitute the following: **§2.1.1** The Owner is Karnes County and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Except as otherwise stated specifically in the Contract Documents the Architect does not have the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

Delete §2.1.2 in its entirety and in lieu of substitute the following: **§2.1.2** The Contractor acknowledges that no lien rights exist with respect to public property in the State of Texas and shall state such in all contracts, purchase orders or other forms of agreement with subcontractors or material suppliers on this project and furthermore inform them that a statutorily required Labor and Material Payment Bond is provided on the Project and that any

claims for non-payment for Labor and Material must be made to the issuer of the bond. The Contractor must provide all subcontractors or material suppliers with contact information relative to the issuer of the Labor and Material Payment Bond for this Project upon issuance of a contract, purchase order or other form of agreement procuring labor and/or materials from any person or entity providing such for the Project.

Add §2.1.3 to read: §2.1.3 The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of any such consultant.

§2.2 Evidence of the Owner's Financial Arrangements

Delete §2.2.1 in its entirety and in lieu of substitute the following: §2.2.1 Pursuant to the requirements of Texas Business and Commerce Code, the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

Delete §2.2.2 in its entirety

Delete §2.2.3 in its entirety

Delete §2.2.4 in its entirety

§2.3 Information and Services Required of the Owner

No Change to §2.3.1

No Change to §2.3.2

No Change to §2.3.3

No Change to §2.3.4

Delete §2.3.5 in its entirety and in lieu of substitute the following: §2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

Delete §2.3.6 in its entirety and in lieu of substitute the following: §2.3.6 The Owner shall provide the contractor with one complete set of bid/construction documents in electronic PDF format as well as any subsequent addenda or other documents to be used by Contractor for distribution during the bid process and for construction of the Project. The documents shall be provided by the Architect on behalf of the Owner.

Add §2.3.7 to read: §2.3.7 Owner's personnel may, but are not required to be present at the construction site during progress of the Work to assist the Architect in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used

in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

Delete §2.4 in its entirety and in lieu of substitute the following: §2.4 Owner's Right to Stop the Work If the Contractor fails to correct nonconforming or defective Work as required by Section 12.2, or fails to complete the Work in time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order 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 any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

Delete §2.5 in its entirety and in lieu of substitute the following: §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 five-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor 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 payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

Delete §3.1.2 in its entirety and in lieu of substitute the following: §3.1.2 The Contractor shall perform the Work in a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

Delete §3.1.3 in its entirety and in lieu of substitute the following: §3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by activities of Owner or Owner's Consultants, if applicable, conducted in accordance with the Contract Documents, 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.

Add §3.1.4 to read: §3.1.4 The Contractor shall not be a general agent of the Owner and shall not have authority to act on behalf of the Owner, except as otherwise provided herein. Neither the Contractor nor the Architect shall direct any change in the Work, regardless of its impact on the cost or time for completion, without the prior written approval of the Owner."

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

No Change to §3.2.1

No Change to §3.2.2

Add §3.2.2.1 to read: §3.2.2.1 The Contractor must employ a surveyor registered in the State of Texas to set and maintain a benchmark for all building and site work, and to perform all work relating to site grading including but not limited to; setting building layout and corner locations, pier and footing locations, utility locations and flowlines where applicable, finish grade and finish floor elevations, specifically at all points where new meets existing construction.

.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner.

.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions and elevations relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

No Change to §3.2.3

No Change to §3.2.4

Add §3.2.5 to read: §3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any known utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to known lines, cables, pipes, and pipelines, and upon completion of the Work shall return all laydown areas and parking lots to their pre-construction condition.

Add §3.2.6 to read: §3.2.6 The Contractor shall keep a log of all RFI's to be submitted on a standard form to be used for the duration of the project, which shall be consecutively numbered, beginning with the number 1.

Add §3.2.7 to read: §3.2.7 The Owner shall be entitled to deduct the Contract Sum amounts paid to the Architect for Additional Services to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.3 Supervision and Construction Procedures

No Change to §3.3.1

Add §3.3.1.1 to read: §3.3.1.1 The Contractor shall assign a superintendent who shall make decisions in behalf of the Contractor and its Subcontractors. The superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

No Change to §3.3.2

No Change to §3.3.3

Add §3.3.4 to read: §3.3.4 The Contractor shall be responsible for the overall coordination, scheduling and supervision of the Work. The Contractor shall establish on-site lines of authority and communication necessary to coordinate the Construction Schedule and sequencing of the Work, establish delivery schedules and priorities, establish procedures and processing of field decisions, submittals, Change Orders and Applications for Payment.

Add §3.3.4.1 to read: §3.3.4 .1 The Contractor shall hold regular progress meetings at the times, places and frequencies mutually agreed upon by Owner and Contractor. The Contractor shall require Subcontractors and Sub-subcontractors to attend progress meetings as appropriate for the current stage of the Work. The Contractor shall keep minutes of each meeting and shall circulate the minutes to the Owner, the Architect, all Subcontractors, and such other persons as may be appropriate, within a reasonable time after the meeting is concluded.

Add §3.3.5 to read: §3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work and shall in no way affect Contractor's independent contractor status as described herein.

Add §3.3.6 to read: §3.3.6 The Contractor shall review contractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with whom the Contractor does not have a contractual

relationship, or their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

Add §3.3.7 to read: §3.3.7 Contractor acknowledges that the Work may be performed in connection with a public facility which is currently occupied and in use. It is imperative that Contractor's operations and the performances of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and shall take all steps necessary to protect and guard the safety of the employees, customers, visitors or other invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

Add §3.3.8 to read: §3.3.8 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, *et seq.* The final dollar amount for such procedures must be clearly stated in a separate line item in the final contract sum as enumerated in the Schedule of Values which are part of the Applications of Payment.

Add §3.3.9 to read: §3.3.9 In the event Contractor falls behind schedule at any time, for any reason, the Owner shall be entitled to direct acceleration or resequencing of the Work to get back on schedule. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that the Scheduled Completion Date cannot be met by

resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.4 Labor and Materials

No Change to §3.4.1

Delete §3.4.2 in its entirety and in lieu of substitute the following: §3.4.2 Substitutions will not be accepted unless approved through the procedures set forth in the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum, regardless of acceptance or rejection, amounts paid to the Architect to evaluate the Contractors proposed substitutions. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to make agreed upon changes in the Drawings and Specifications made necessary by the Owner's acceptance of such substitutions.

Delete §3.4.3 in its entirety and in lieu of substitute the following: §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. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees, patients, visitors or other invitees of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

Add §3.4.4 to read: §3.4.4 Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates which states: (a) For a contract for a public work awarded by a political subdivision of the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by: (1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed; or (2) using the prevailing wage rate as determined by the United

States Department of Labor in accordance with the Davis- Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments.

Add §3.4.4.1 to read: §3.4.4.1 In accordance therewith, the Owner will establish a scale of prevailing wages which shall be incorporated in the Project specifications, and not less than this established scale must be paid on the Project.

§ 3.5 Warranty

No Change to §3.5.1

Delete §3.5.2 in its entirety and in lieu of substitute the following: §3.5.2 The Contractor agrees to assign to the Owner at the Time of Substantial Completion of the entire Work, or portion of the Work, any and all manufacture's warranties relating to materials and labor used in the Work and further agrees to complete the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents. All warranties shall be issued in the name of the Owner.

Add §3.5.3 to read: §3.5.3 Contractor's express Warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

Add §3.5.4 to read: §3.5.4 The warranties provided in Section §3.5 shall be in addition to and not in limitation of any other Warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, as per the Texas Civil Practice and Remedies Code, Section 16.009. which allows Owner (Claimant) to present a written claim during the time period of 10 years from Substantial Completion plus a two (2) year extension from the date claim is presented as applicable to suit as enumerated.

Add §3.5.5 to read: §3.5.5 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.3 and 3.5.4 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

Add §3.5.6 to read: §3.5.6 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve phased construction work, both new construction

and renovation work for the Owner. Each phase of the work may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one-year warranty on each phase of the work which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one month prior to the expiration of the one-year warranty period on each phase of the work which has been substantially completed. Prior to termination of the one-year warranty period, Contractor shall accompany the Owner and Architect on re-inspection of the building, in the phases of completion if applicable, and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within five (5) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one-year warranty period at least one month prior to the expiration date, Contractor's Warranty obligations in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

Add §3.5.7 to read: §3.5.7 The General Warranty of work as per §3.5.5 and §3.5.6 shall be covered by a Maintenance Bond as per §11.1.2.7 for the time period of the guarantee.

Add §3.5.8 to read: §3.5.8 Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, or portions of the work unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the latter of the date the Work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

§3.6 Taxes

Delete §3.6 in its entirety and in lieu of substitute the following: §3.6 Taxes The Owner qualifies for exemption from State and Local Sales Tax pursuant to the provisions of the Texas Limited Sales, Excise and Use Tax Act. Taxes normally levied on the purchase, rent or lease of all materials, supplies, and equipment used or consumed in the performance of this contract may be exempted by issuing to suppliers an exemption certificate in lieu of the tax. The exemption certificate complies with State Comptroller of Public Accounts Ruling No. 95-0.07. Any such exemption certificate issued in lieu of the tax shall be subject to the provisions of the State Comptroller of Public Accounts Ruling No. 95-0.09 as amended to be effective October 2, 1968. The Contractor shall pay any and all other taxes for the Work provided by the Contractor

which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contractor will not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas County is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

Delete §3.7.1 in its entirety and in lieu of substitute the following: **§3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Owner shall pay fees for public or private water, gas, electrical, and other utility services at the site. The Contractor shall secure and arrange for all necessary utility connections at Owner's cost and expense if properly reimbursable per Articles 5 and 6 of AIA Document A101 – 2017 Standard Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum.

Delete §3.7.2 in its entirety and in lieu of substitute the following: **§3.7.2** In performing its obligations hereunder, the Contractor shall comply fully with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the Owner of such compliance.

Delete §3.7.3 in its entirety and in lieu of substitute the following: **§3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, insurance requirements, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. To the fullest extent permitted by law, contractor agrees to indemnify, defend and hold harmless the Owner, their respective officers, employees, agents and consultants (whether past, present or future) and the Architect, the architect's consultants, and their respective officers, employees, agents and consultants (whether past, present or future), collectively the "indemnities") from and against from and against all claims, fines, penalties, or liabilities from, arising out of such work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such work.

§3.7.4 Concealed or Unknown Conditions

Delete §3.7.4 in its entirety and in lieu of substitute the following: **§3.7.4 Concealed or Unknown Conditions** Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or Unknown surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including,

without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions").

Add §3.7.4.1 to read: §3.7.4.1 Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof.

Add §3.7.4.2 to read: §3.7.4.2 Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract Sum, or both. Except as provided to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which could not be known to the Contractor and which differ substantially from those indicated 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 10 days after first observance of the conditions.

Add §3.7.4.3 to read: §3.7.4.3 The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner and the Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, or both, the adjustment shall be subject to mediation pursuant to Article 15.

No Change to §3.7.5

Add §3.7.6 to read: §3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

Add §3.7.7 to read: §3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, insurance requirements, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall

provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

§ 3.8 Allowances

No Change to §3.8.1

No Change to §3.8.2

Delete §3.8.3 in its entirety and in lieu of substitute the following: §3.8.3 Materials and equipment under an allowance shall be selected by the Owner within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

Add §3.8.4 in its entirety and in lieu of substitute the following: §3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

§ 3.9 Superintendent

Delete §3.9.1 to read: §3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Project Manager or Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within sixty (60) days of Substantial Completion.

No Change to §3.9.2

No Change to §3.9.3

Add §3.9.4 to read: §3.9.4 Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent.

§ 3.10 Contractor's Construction and Submittal Schedules

No Change to §3.10.1

No Change to §3.10.2

No Change to §3.10.3

Add §3.10.4 to read: §3.10.4 The construction schedule shall be in a detailed precedence – style critical path method (“CPM”) format satisfactory to the Architect that shall also (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) 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 “Milestone Dates”). Upon review and acceptance by the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner and Architect of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and /or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and Architect and authorized pursuant to Change Order.

Add §3.10.5 to read: §3.10.5 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract and represented in previous Schedules of the Work presented by the Contractor, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (1) working additional shifts of overtime, (2) supplying additional manpower, equipment and facilities, and (3) other similar measures (hereinafter referred to collectively as “Extraordinary Measures”). Such 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 construction schedule, and;

.1 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 the Subparagraph §3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph §3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor’s performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.11 Documents and Samples at the Site

No Change to: § 3.11 Documents and Samples at the Site

Add §3.11.1 to read: §3.11.1 In addition to documents and samples at the site, Contractor shall at all times maintain other job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents, with five (5) working days of request by Owner, Architect, or their respective agents and should make them electronically available at the site if not physically available.

§ 3.12 Shop Drawings, Product Data and Samples

No Change to §3.12.1

No Change to §3.12.2

No Change to §3.12.3

No Change to §3.12.4

No Change to §3.12.5

No Change to §3.12.6

No Change to §3.12.7

No Change to §3.12.8

No Change to §3.12.9

No Change to §3.12.10

No Change to §3.12.10.1

No Change to §3.12.10.2

Add §3.12.11 to read: §3.12.11 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examinations of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals as per Section §4.2.3 of AIA B103-2017 Owner -Architect Agreement.

§3.13 Use of Site

Delete §3.13 in its entirety and in lieu of substitute the following: §3.13 Use of Site The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, insurance requirements, rules and regulations, and lawful orders of public

authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on site or on public thoroughfares adjacent or near to the Project site.

Add §3.13.1 to read: §3.13.1 Only materials and equipment which are to be used directly in the Work shall be brought to, and stored on the Project Site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project Site. As between Owner and Contractor, protection of construction materials and equipment stored by Contractor at the Project Site from weather, theft, damage, and all other adversity is solely the Contractor's responsibility.

Add §3.13.2 to read: §3.13.2 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project Site related to the Project for the purpose of advertising to the public the nature of the Project and the entities performing the Work on the Project (i.e., Project signs) without the prior written consent to the Owner.

Add §3.13.3 to read: §3.13.3 The Contractor and its Subcontractors and Sub-subcontractors shall use the Project Site only for purposes necessary to the performance of the Work and shall limit and restrict such use, as may be directed by the Owner, so as not to unreasonably interfere with the Owner's use and occupancy of the Project Site and any surrounding areas. The Contractor acknowledges, that as between Owner and Contractor, the Owner shall have no responsibility for safety at the Project Site, and that the Owner shall not be responsible or liable for Contractor's compliance with applicable Laws and regulations (including OSHA rules) relating to the safety of employees, persons or property of Contractor and its Subcontractors, at any tier, at the Project Site or adjacent properties, and the Contractor will require that this responsibility be discharged by the Contractor, Subcontractors and Sub-subcontractors performing the Work.

§ 3.14 Cutting and Patching

No Change to §3.14.1

No Change to §3.14.2

§ 3.15 Cleaning Up

Delete §3.15.1 in its entirety and in lieu of substitute the following: §3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract and shall, not less than weekly or at any time accumulation of waste or rubbish becomes a safety issue, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials, and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to,

any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

No Change to §3.15.2

Add §3.15.3 to read: §3.15.3 Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; clean roofs; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from site.

§ 3.16 Access to Work

Delete §3.16 in its entirety and in lieu of substitute the following: §3.16 Access to Work

Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on inspections of the Work in preparation or progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

No Delete to §3.17 Royalties, Patents and Copyrights

§3.18 Indemnification

Delete to §3.18.1 in its entirety and in lieu of substitute the following: §3.18.1 to the fullest extent permitted by law, contractor waives and releases all claims against and shall indemnify, defend and hold harmless the Owner, elected officials, employees, agents and consultants (whether past, present or future) and the Architect, the architect's consultants, and their respective officers, employees, agents and consultants (whether past, present or future), collectively the "indemnities") from and against all claims, damages, losses, liens, causes of action, suits, proceedings (whether administrative, civil, criminal, investigative or legislative) , judgments, costs and expenses, including attorney's fees and expert witness fees directly or indirectly arising out of, caused by, or resulting from (in whole or in part) the performance of the work, the contract documents, or any act or omission of contractor, any subcontractor, or anyone directly or indirectly employed by them, or anyone that they control or exercise control over (collectively the "liabilities"). The Architect and the architect's consultants shall be indemnified only to the extent allowed by law. This is not intended to cover the architect's and the architect's consultants' professional liabilities. The obligations of construction manager under this indemnification shall apply to liabilities even if such liabilities are caused in part by the negligence of any indemnitee. The Contractor shall promptly advise owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at the contractors expense, shall assume on behalf of Owner (and the other indemnitees) and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to owner; provided, however, that owner shall have the right, at its option, to be represented therein by advisory counsel of its own selection and at its own expense. In the event of failure by the Contractor to fully perform in accordance with this indemnification

paragraph, owner, at its option, and without relieving construction manager of its obligations hereunder, may so perform, but all costs and expenses so incurred by owner in that event shall be reimbursed by contractor to owner, together with interest on the same from the date any such expense was paid by owner until reimbursed by contractor, at the rate of interest provided to be paid on judgments under the laws of the State of Texas. This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts. The contractor's insurance shall not be required to indemnify the named indemnities for actions in which the Contractor is not partially or wholly responsible for. It is intended and agreed that this indemnity provision satisfies the 'express negligence rule'.

Delete to §3.18.2 in its entirety and in lieu of substitute the following: §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 this section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under insurance policies, workers' compensation act or insurance, disability acts or insurance or other employee benefit acts or related insurance.

Add §3.18.3 to read: §3.18.3 Contractor shall be responsible for and shall hold indemnitees free and harmless from liability resulting from loss of or damage to Contractor's or its subcontractors' construction tools and equipment and rented items which are used or intended for use in performing the work, regardless of whether such loss or damage is caused in whole or in part by the negligence of indemnity. This provision shall apply, without limitation, to loss or damage occurring at the work site or while such items are in transit to or from the work site and is in addition to contractor's obligations under section 3.18.1. It is the express intention of the parties hereto, both contractor and owner, that the indemnity is provided for in this section as to Contractor's or its subcontractor's tools and equipment and rental items, is an agreement by Contractor to indemnify and protect indemnities from the consequences of the negligence of any indemnitee whether that negligence is the sole or concurring cause of the loss or damage.

Add §3.18.4 to read: §3.18.4 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to an Indemnity pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives or any other Indemnitee under said statutes are secondary to that of the Contractor.

Add §3.18.5 to read: §3.18.5 The provisions of article 3.18 in its entirety shall survive the completion, termination or expiration of this contract.

§3.19. Representations and Warranties

Add §3.19. §3.19. Representation and Warranties

Add §3.19.1 to read: §3.19.1 The Contractor represents and warrants the following to the Owner in addition to the other representations and warranties contained in the Contract Documents, as an inducement to the Owner to execute this Contract, the following representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

Add §3.19.2 to read: §3.19.2 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§3.20 Antitrust Violation

Add §3.20 to read: §3.20 Antitrust Violation. To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 *et seq.* The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

ARTICLE 4 ARCHITECT

§ 4.1 General

No Change to §4.1.1

No Change to §4.1.2

Delete §4.1.3 in its entirety and in lieu of substitute the following: §4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 Administration of the Contract

Delete §4.2.1 in its entirety and in lieu of substitute the following: §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 specifically in the Contract Documents. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits or other services made necessary by the fault, neglect or request of the Contractor as per Paragraphs §4.2.2, §4.2.3 of the AIA - B103 Owner-Architect Agreement and their respective subparagraphs.

No Change to §4.2.2

No Change to §4.2.3

§ 4.2.4 Communications

No Change to §4.2.4 Communications

No Change to §4.2.5

Delete §4.2.6 in its entirety and in lieu of substitute the following: §4.2.6 The Architect or Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or Owner considers it necessary or advisable, the Architect or Owner 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 such Work is fabricated, installed or completed. However, neither this authority of the Architect or Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing

in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents.

Delete §4.2.7 in its entirety and in lieu of substitute the following: §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.

Add §4.2.7.1 to read: §4.2.7.1 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. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, 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. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

No Change to §4.2.8

Delete §4.2.9 in its entirety and in lieu of substitute the following: §4.2.9 The Architect and Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion. The Architect will 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 and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

Delete §4.2.10 in its entirety and in lieu of substitute the following: §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 set forth in an exhibit to be incorporated in the Contract Documents.

Delete §4.2.11 in its entirety and in lieu of substitute the following: §4.2.11 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements

of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

Delete §4.2.12 in its entirety and in lieu of substitute the following: §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.

Delete §4.2.13 in its entirety and in lieu of substitute the following: §4.2.13 The Architect's decision on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

Delete §4.2.14 in its entirety and in lieu of substitute the following: §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 limit 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, at no additional expense to Owner, unless responses are required as described in Paragraphs §4.2.2.2, §4.2.2.3 or §4.2.2.4 of AIA B101-2017 Agreement between Owner and Architect, as amended by the Owner.

Add §4.2.15 to read: §4.2.15 The Architect may appoint an employee or other person to assist him during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed Work not in accordance with the Contract Documents shall not prevent the Architect from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

No Change to §5.1.1

No Change to §5.1.2

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

No Change to §5.2.1

No Change to §5.2.2

No Change to §5.2.3

No Change to §5.2.4

§5.3 Subcontractual Relations

No Change to §5.3 Subcontractual Relations

Add §5.3.1 to read: §5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor. As between Owner and Contractor, the Owner shall be deemed a third-party beneficiary of all subcontracts of all tiers and shall be entitled to performance and enforcement of all Subcontractors' obligations under all subcontracts, provided Owner shall first give Contractor fourteen (14) days' notice and opportunity to cure. Owner acknowledges Contractor is under no obligation to include, or to require the inclusion of, a clause designating Owner as a third-party beneficiary in any subcontracts at any tier. The Contractor shall deliver to the Owner a copy of any one or more of the subcontracts promptly upon the Owner's request.

Add §5.3.2 to read: §5.3.2 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect, or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

Add §5.3.3 to read: §5.3.3 Any part of the Work performed for the Contractor by a Subcontractor shall be pursuant to a written subcontract between the Contractor and such Subcontractor. Each such subcontract shall at a minimum:

.1 require that such Work be performed in accordance with the requirements of the Contract Documents;

.2 waive all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance required by the Contract Documents;

.3 require the Subcontractor to carry and maintain liability insurance in accordance with the Contract Documents; and

.4 require the Subcontractor to furnish such certificates and waivers as the Owner may reasonably request.

Add §5.3.4 to read: §5.3.4 Contractor may require major subcontractors to provide bonds to the Contractor to secure performance or payment of their work to the Contractor as a prerequisite to receiving a subcontract on the Project.

§5.4 Contingent Assignment of Subcontracts

Delete §5.4.1 in its entirety and in lieu of substitute the following: §5.4.1 In the event this Contract is terminated by the Owner for any of the reasons set forth in Section §14.2, the Owner shall have the right to, without any responsibility to do so, assume the rights and responsibilities of the Contractor under all or some subcontracts, any construction, materials, tools, equipment or rental agreements and/or other commitments which the Owner, in its sole discretion, chooses to assume. While this provision shall constitute a present assignment of Contractor's rights with respect to any and all such contractors, agreements, and commitments which Owner so chooses to assume, the Contractor, upon request from the Owner, shall promptly execute and deliver to the Owner written assignments of Contractor's rights to such contractors, agreements and commitments which the Owner, in its sole discretion, so chooses to take by assignment. All contracts with Subcontractors shall provide for this assignment.

No Change to §5.4.2

No Change to §5.4.3

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

Delete §6.1.1 in its entirety and in lieu of substitute the following: §6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these. 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.

No Change to §6.1.2

No Change to §6.1.3

No Change to §6.1.4

§ 6.2 MUTUAL RESPONSIBILITY

No Change to §6.2.1

No Change to §6.2.2

No Change to §6.2.3

No Change to §6.2.4

No Change to §6.2.5

§ 6.3 OWNER'S RIGHT TO CLEAN UP

No Change to §6.3

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

No Change to §7.1.1

No Change to §7.1.2

No Change to §7.1.3

Add §7.1.4 to read: §7.1.4 Notwithstanding any other provisions in the Contract Documents, the adjustment in the Contract Sum and Contract Time, if any, set forth in a Change Order shall constitute the entire compensation and adjustment, including all indirect costs and expenses due to the Contractor on account thereof, unless otherwise provided in the Change Order.

§ 7.2 CHANGE ORDERS

No Change to §7.2.1

Add §7.2.2 to read: §7.2.2 Acceptance of a disbursement from any allowance fund or contingency by issuance and acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

Add §7.2.3 to read: §7.2.3 Notwithstanding any other provisions in the Contract Documents, the adjustment in the Contract Sum and Contract Time, if any, set forth in a Change Order shall constitute the entire compensation and adjustment, including all indirect costs and expenses due to the Contractor on account thereof, unless otherwise provided in the Change Order.

§ 7.3 Construction Change Directives

No Change to §7.3.1

No Change to §7.3.2

No Change to §7.3.3

No Change to §7.3.4

No Change to §7.3.5

No Change to §7.3.6

Delete §7.3.7 in its entirety and in lieu of substitute the following: §7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase 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. In such case, and also under Section §7.3.3.3, 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 §7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including costs 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 and inspection fees related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change, if change results in an increase of contract time.

Delete §7.3.8 in its entirety and in lieu of substitute the following: §7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost plus the Contractor's allocated percent for profit and overhead as confirmed by the Architect, subject to equitable adjustment recommended by the Architect and approved by the Owner. 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.

No Change to §7.3.9

No Change to §7.3.10

Add §7.3.11 to read: §7.3.11 When changes in the Work are indicated to be paid from a contingency allowance, if any, identified in the Contract Documents, the Contractor's supervision and all other overhead items and profit shall be deemed to be included in the Contract Sum, and not in the contingency allowance.

§ 7.4 Minor Changes in the Work

No Change to §7.4 Minor Changes in the Work

ARTICLE 8 TIME

§ 8.1 Definitions

No Change to §8.1.1

Delete §8.1.2 in its entirety and in lieu of substitute the following: **§8.1.2** The date of commencement of the Work shall be the date established in the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

Delete §8.1.3 in its entirety and in lieu of substitute the following: **§8.1.3** The date of Substantial Completion is the date certified by the Architect and Owner in accordance with Section §9.8. The date of Final Completion is the date certified by the Architect in accordance with Section §9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than sixty (60) days after the date of Substantial Completion.

No Change to §8.1.4

§ 8.2 Progress and Completion

Delete §8.2.1 in its entirety and in lieu of substitute the following: **§8.2.1** Time limits stated in the Contract Documents are the essence of the Contract. By executing the Agreement the Contractor confirms and accepts that the Contract Time is a reasonable period for performing the Work.

No Change to §8.2.2

No Change to §8.2.3

Add §8.2.4 to read: **§8.2.4** In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to the Owner in accordance with the Contract Documents.

Add §8.2.5 to read: **§8.2.5** If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby

agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work: Two Hundred Dollars per Calendar Day as per Article 5 and Article 6 of executed AIA Document A101 – 2017 Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum.

§ 8.3 Delays and Extensions of Time

Delete §8.3.1 to read: §8.3.1 The Owner, except as provided for in this Section §8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within ninety-six (96) hours, and under no circumstances shall Owner be liable to pay the Contractor any monetary compensation for such Owner or Architect caused delays and under no circumstances shall Owner be liable to pay the Contractor.

No Change to §8.3.2

Delete §8.3.3 in its entirety and in lieu of substitute the following: §8.3.3 This Agreement does not permit the recovery of damages by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

Delete §9.1.1 in its entirety and in lieu of substitute the following: §9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. All costs of overtime work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section §10.4, shall be and are included in the Contract.

No Change to §9.1.2

No Change to §9.2

§ 9.3 Applications for Payment

Delete §9.3.1 in its entirety and in lieu of substitute the following: §9.3.1 At least ten (10) 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, if required under Section §9.2, for completed portions of the Work. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment

as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers and shall reflect retainage. Owner or Architect may also require receipts, invoices, cancelled checks, time sheets, or any other form of proof of costs or expenses, including non-fixed general conditions, for the Work for payment is being requested. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703, Continuation Sheet.

No Change to §9.3.1.1

No Change to §9.3.1.2

Add §9.3.1.3 to read: §9.3.1.3 Contractor agrees that, for purposes of Texas Government Code Section 2251.042, receipts of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

No Change to §9.3.2

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

Add §9.3.3.1 to read: §9.3.3.1 Contractor shall indemnify and hold Owner harmless from any claims, security interests or encumbrances filed by the contractor, subcontractors, or anyone claiming by, through or under the contractor or subcontractor for items covered by payments made by the Owner to Contractor.

Add §9.3.4 to read: §9.3.4 Upon Owner's request, Contractor will at his own expense, by bonding or otherwise, receive prompt discharge of any claims that may be filed against the Owner arising out of the Contract.

§ 9.4 Certificates for Payment

Delete §9.4.1 in its entirety and in lieu of substitute the following: §9.4.1 The Architect will, within ten (10) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect

determines is properly due or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section §9.5.1.

No Change to §9.4.2

§ 9.5 Decisions to Withhold Certification

Delete §9.5.1 in its entirety and in lieu of substitute the following: §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

- .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 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;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- .9 evidence of financial inability to perform the Contract fully;

.10 failure to submit record documents required by the Contract; or

.11 failure of the Contractor to perform any other obligations of the Contract.

Delete §9.5.2 in its entirety and in lieu of substitute the following: §9.5.2 The Owner shall not be deemed in default by reason of withholding payment in whole or in part as provided for in Section 9.5.1, and Contractor may not file Claim against Owner for withholding of such payments.

No change to §9.5.3

Add sentence end of §9.5.4 to read: Owner's issuance of a joint check to Contractor and a Subcontractor shall in no way be construed as creating a contractual relationship between the Owner and that Subcontractor

§ 9.6 Progress Payments

Delete §9.6.1 in its entirety and in lieu of substitute the following: §9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided in the Contract Documents and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code section 2251.042 *et seq.* listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

Delete §9.6.2 in its entirety and in lieu of substitute the following: §9.6.2 The Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner as per §9.5.1.3.

No Change to §9.6.3

Delete §9.6.4 in its entirety and in lieu of substitute the following: §9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment 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 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, except as may otherwise be required by law.

No Change to §9.6.5

No Change to §9.6.6

Delete §9.6.7 in its entirety and in lieu of substitute the following: §9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

Delete §9.6.8 in its entirety

§ 9.7 Failure of Payment

Delete §9.7 in its entirety and in lieu of substitute the following: §9.7 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within thirty (30) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents the amount certified by the 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 shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

Delete §9.8.1 in its entirety and in lieu of substitute the following: §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, but in no case sooner than the receipt of a Certificate of Occupancy or Partial Occupancy, or Partial Certificate of Occupancy issued by the Authority having Jurisdiction on behalf of the City of Kenedy, Texas as well as any certification from State Agencies from whom certification may be required prior to use or occupancy of the facilities when occupancy is contingent on such certifications. In the event Substantial Completion is not achieved by the designated day, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

Delete §9.8.2 in its entirety and in lieu of substitute the following: §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 and the Owner a comprehensive list (a "punch list") which shall identify all (1) non-conforming, defective and incomplete Work and establish the date of commencement of warranties in connection with any Work, and (2) any other items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor acknowledges that during the period when it is completing the punch list, Owner may be occupying or preparing to occupy the Project, and that disputes may arise between Contractor and Owner as to the responsibility for correction of certain damage to the Work. Contractor agrees that it shall promptly perform any such corrective work irrespective of any dispute as to Contractor's responsibility therefore, subject to Contractor's right to make claim for additional compensation resulting therefrom pursuant to the terms of this Contract.

Delete §9.8.3 in its entirety and in lieu of substitute the following: §9.8.3 Upon receipt of the Contractor's "Punch List", the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's or Owner'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.

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than two (2) inspections to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

No Change to §9.8.4

Delete §9.8.5 in its entirety and in lieu of substitute the following: §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 such Certificate. Upon such acceptance, the Owner will pay contractor in full for all work identified as being substantially complete less retainage. Payment of retainage will not be made until all items on the punch list attached to the Certificate of Substantial Completion are completed.

Add §9.8.6 to read: §9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.9 Partial Occupancy or Use

Delete §9.9.1 in its entirety and in lieu of substitute the following: §9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the property insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section §9.8.2, and upon receipt of the Contractors list, Architect and Owner will respond as provided under Section §9.8.3. 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.

No Change to §9.9.2

Delete §9.9.3 in its entirety and in lieu of substitute the following: §9.9.3 Unless expressly agreed upon in writing, 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

Delete §9.10.1 in its entirety and in lieu of substitute the following: §9.10.1 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this

Contract. Except with the consent of the Owner, the Architect will perform no more than two (2) inspections to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection(s) of the Work, the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

Delete §9.10.2 in its entirety and in lieu of substitute the following: §9.10.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied; releases and waivers of claims from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release or waiver as required by Owner, the Contractor shall furnish a bond or secure continuance of bonds already in force which would be satisfactory to the Owner to discharge any such claim or indemnify the Owner from liability.

Delete §9.10.3 in its entirety and in lieu of substitute the following: §9.10.3 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of any claims by the Owner.

Delete §9.10.4 in its entirety

Delete §9.10.5 in its entirety and in lieu of substitute the following: §9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by the payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

No Change to §10.1

Delete §10.1 in its entirety and in lieu of substitute the following: §10.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, including but not limited to the following;

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or nonprescription

controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the work.

.2 Contractor has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

.3 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workplace Policy, Drug-Free Workplace Act of 1988).

.5 Policy bans the presence of all weapons on the Project site, including handguns, whether or not the owner thereof has a license to carry a handgun, concealed or open.

§10.2 Safety of Persons and Property

Delete §10.2.1 in its entirety and in lieu of substitute the following: §10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work site, persons on Owner's premises and other persons who may be affected thereby, which protection shall include the installation of fencing or other barriers between the Work site and the occupied portion of a connecting or adjacent facility;

.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 of the Contractor's Subcontractors or Sub-Subcontractor; and

.3 other property at the site or adjacent thereto, such as other buildings, fencing, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Delete §10.2.2 in its entirety and in lieu of substitute the following: §10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes,

insurance requirements, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

Delete §10.2.3 in its entirety and in lieu of substitute the following: §10.2.3 The Contractor shall 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 owners and users of adjacent sites and utilities. 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. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees, and cause all subcontractors or others working under Contractor to do likewise.

Delete §10.2.4 in its entirety and in lieu of substitute the following: §10.2.4 When use or storage of 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 and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

Delete §10.2.5 in its entirety and in lieu of substitute the following: §10.2.5 Contractor shall be responsible for and shall hold indemnitees free and harmless from liability resulting from loss of or damage to any property that is on or off the site and/or in transit as referred to in clause 10.2.1.2 even if such loss or damage results any indemnitee, indemnitee's consultant's negligence. As to property referred to in clause 10.2.1.3, contractor shall hold indemnitees free and harmless from liability resulting from loss of or damage caused in whole or in part by the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, anyone for whose acts of them may be liable, regardless of whether or not such damage is caused in part by the negligent acts or omissions of any indemnitees. The foregoing obligations of the contractor are in addition to his obligations under section 3.18.

Notwithstanding the foregoing, the Architect and the architect's consultants shall be indemnified only to the extent allowed by law. This is not intended to cover the architect's and architect's consultants' professional liabilities.

No Change to §10.2.6

No Change to §10.2.7.

§10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

Delete §10.2.8 in its entirety and in lieu of substitute the following: 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 such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

No Change to §10.3.1

No Change to §10.3.2

Delete §10.3.3 in its entirety and in lieu of substitute the following: §10.3.3 To the fullest extent permitted by Texas state law, the owner shall 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 and expert witness 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 relief. Notwithstanding anything to the contrary contained in this section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party held harmless; it being agreed and understood that the Owner and any party so identified shall each bear liability for its own negligent acts or omissions, and that such liability shall extend only for the negligent acts and omissions of the Owner.

No Change to §10.3.4

No change to §10.3.5

No Change to §10.3.6

§10.4 Emergencies

Delete §10.4 in its entirety and in lieu of substitute the following: 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.

Add §10.4.1 to read: §10.4.1 The performance of the foregoing services by the Contractor shall not relieve the Contractor of its responsibility for the safety of persons and property and for

compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

Delete §11.1.1 in its entirety and in lieu of substitute the following: §11.1.1 The Contractor shall purchase from and maintain in a company or companies with a "Best Rating" of "A" or better and lawfully authorized to conduct business in the jurisdiction in which the project is located the following kinds of liability insurance and minimum limits of coverage which will protect the Contractor from claims which may arise out of or result from the Contractor's 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 they may be liable:

Add §11.1.1.1 to read: §11.1.1.1 Worker's Compensation Coverages in compliance with 28 TAC 110.110(c) (7), adopted to implement Texas Labor Code 406.096.

- a.** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory worker's compensation insurance coverage for the person's or entity's employees providing services on a project is required for the duration of the project.
- b.** Duration of the project includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- c.** Persons providing services on the project ("subcontractor" in TEXAS LABOR CODE 406.096) include all persons or entities performing all or part of the services that the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the project.
- d.** Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries and delivery of portable toilets.
- e.** The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements

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

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

g. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

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

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

2) no later than seven (7) days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

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

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

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

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

1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of TEXAS LABOR CODE 401.011(44) for all of its employees providing services on the project for the duration of the project;

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

3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

4) obtain from each other person with whom it contracts and provide to the contractor. (Owner may request copies of these certificates from the contractor):

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

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

5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6) notify the governmental entity in writing by certified mail of personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

7) contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

n. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor that entitles the governmental entity to declare the contract void if the contractor does not remedy the breach with-in ten (10) days after receipt of notice of breach from the governmental entity.

o. The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i)

Add §11.1.1.2 to read: §11.1.1.2 Contractor's Comprehensive General Liability including Independent Contractor's Liability, Contractual Liability, Completed Operations & Products Liability and Excavation & Underground coverage, where applicable, all on an occurrence basis with Personal Injury and Broad Form Property Damage coverage. CLAIMS MADE POLICIES ARE NOT ACCEPTABLE. Completed Operations Liability shall be kept in force for at least one year after the date of final completion. Provide the following minimum limits of coverage:

a. Bodily Injury, Each Occurrence	\$1,000,000.00
b. Damage to Rented Premises Each Occurrence	\$300,000.00
c. Medical Expense – Any One Person	\$10,000.00
d. Personal & Advertising Injury	\$1,000,000.00
e. General Aggregate	\$2,000,000.00
f. Products – Completed Operations Aggregate	\$2,000,000.00

Add §11.1.1.3 to read: §11.1.1.3 Automobile Liability covering hired, owned and non-owned vehicles. Provide the following minimum limits of coverage:

a. Bodily Injury Per Person & Property Damage Combined Single Limit (CSL) \$1,000,000.00

Add §11.1.1.4 to read: §11.1.1.4 Excess Indemnity Policy (Umbrella) covering both General and Automobile Liability. Provide the following minimum coverage:

a. Each Occurrence \$1,000,000.00

b. Annual Aggregate \$2,000,000.00

Add §11.1.1.5 to read: §11.1.1.5 All of the Contractor's liability policies required above shall name the Owner and the Architect and all of their consultants as additional insureds and include waivers of subrogation in favor of the Owner and the Architect and all of their consultants.

Add §11.1.1.6 to read: §11.1.1.6 The amendment of form language relative to cancellation notification on certificates of insurance cannot simply be made on the face of the form but must actually be made by policy endorsement in compliance with State of Texas insurance regulations.

Add §11.1.1.7 to read: §11.1.1.7 The required insurance must be written by a company licensed to do business in Texas at the time the policies are issued. In addition, the company must be acceptable to the Owner.

Delete §11.1.2 in its entirety and in lieu of substitute the following: §11.1.2 The Contractor shall procure and obtain all bonds at the appropriate time as prescribed by Section 2269.258 of the Texas Government Code as required of the Owner by applicable Laws or by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. All bonds must comply with the requirements of Texas Insurance Code, Section 7.19-1 and all bonding companies must be licensed to do business in the State of Texas and, if bond amounts exceed \$100,000.00, hold a certificate of authority from the U.S. Secretary of the Treasury or reinsurance for liability in excess of \$100,000.00 from a reinsurer authorized and admitted as a reinsurer in the State of Texas and that is a holder of a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. Owner and Architect reserve the right to rely on the Treasury list of companies holding certificates of authority to determine whether the surety or reinsurer complies with the legal requirement. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the state in which the Project is located, including Chapter 2253 of the Texas Government Code, and in form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:

Add §11.1.2.1 to read: §11.1.2.1 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;

Add §11.1.2.2 to read: §11.1.2.2 Bonds shall be executed by a responsible surety licensed in the state in which the Project is located, and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion of the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer;

Add §11.1.2.3 to read: §11.1.2.3 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to 100% of the Contract Sum;

Add §11.1.2.4 to read: §11.1.2.4 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the necessary limit of such power;

Add §11.1.2.5 to read: §11.1.2.5 Every Bond under this Section §11.1.2 must be an original and display the Surety's Bond Number, and also include the name, address and telephone number of the bond company. A rider including the following provisions shall be attached to each Bond;

.1 Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents which, singularly or in the aggregate, does not exceed ten percent (10%) of the Contract Sum. Except as to increases in the Contract Sum in excess of the percentages set forth above in this Clause §11.1.2.5.1, any

other 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.

.2 Surety further agrees that in event of any default by the Owner in the performance of the Owner's obligations to the Contractor under the Contract, the Contractor or surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner, and the Owner shall have thirty (30) days from time after receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to Lender, if applicable, and the Owner.

.3 Surety agrees that it is obligated under the bonds to any successor, grantee or assignee of the Owner.

Add §11.1.2.6 to read: §11.1.2.6 The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of:

.1 notice of changes in the Work;

.2 request for reduction or release of retention;

.3 request for final payment; and

.4 any other material required by the surety. The Owner shall be notified by the Contractor, in writing, of all communications with the surety. The Owner may, in the Owner's sole discretion, inform surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Work.

Add §11.1.2.7 to read: §11.1.2.7 The Contractor shall provide Maintenance Bond Coverage to extend for the one (1) year period of the General Warranty to insure his performance under the terms of his obligation.

Delete §11.1.3 in its entirety and in lieu of substitute the following: §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 permit a copy to be made. Contractor must provide all subcontractors and suppliers with copies of Payment Bond provided on the Project and contact information for the company issuing the Bond upon execution of a subcontract or placement of order for materials.

No Change to §11.1.4

Add §11.1.5 to read: §11.1.5 The Contractor shall affect and maintain builders risk All Risk insurance protection written on an Installation Floater form, which allows the Owner to fully occupy the premises during the work, for the completed value of new portions of the entire structure on which work of this Contract is done, using standard insurance forms or their equivalent for this purpose. The Owner, Contractor and Architect and his consultants shall be named or designated in such capacity as insured jointly with the Contractor in this policy or policies, which shall be open to any of the Insured's inspections. The Contractor shall accomplish this by having an appropriate rider added to all policies as follows: The (name of insurance company) does insure (names of Owner, the Property Owner and Architect) with them at the described premises, but only to the extent of their individual interests, if any, as they may appear. If not covered under the All Risk insurance or otherwise provided in Contract Documents, the Contractor shall affect and maintain similar property insurance on portions of the work stored off the site or in transit when such portions of the work are to be included in an Application for Payment under Subparagraph §9.3.2. Policy shall have as endorsements, Texas Form No. 21, (Actual Completed Value), Texas Form No. 79-c, (Vandalism and Malicious Mischief Endorsement) including name of the Contractor and Owner. If the project is in a tier one wind storm zone the policy must also include windstorm coverage.

Add §11.1.6 to read: §11.1.6. The Contractor shall purchase and maintain separate boiler and machinery insurance which shall specifically cover such insured objects during installation and until final acceptance by Owner if the Contractor's normal liability or property insurance coverage excludes such objects. This insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

Add § 11.1.7 to read: § 11.1.7 If the Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Owner by appropriate Change Order.

Add § 11.1.8 to read: § 11.1.8 A loss insured under the Contractor's property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

Add § 11.1.9 to read: § 11.1.9 If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the

Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

Add § 11.1.10 to read: § 11.1.10 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

Add § 11.1.11 to read: § 11.1.11 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section §11.1. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner and others who are jointly insured.

§ 11.2 OWNER'S INSURANCE

Delete §11.2.1 in its entirety and in lieu of substitute the following: §11.2.1 Owner may, in its sole discretion, purchase an Owner Controlled Insurance Program (OCIP) for the Project. Owner will consult and confer with Contractor prior to purchasing OCIP. If OCIP is purchased, its cost will be included in the Cost of Work.

Delete §11.2.2 in its entirety

Delete §11.2.3 in its entirety

§ 11.3 Waivers of Subrogation

Delete §11.3.1 in its entirety and in lieu of substitute the following: §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, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section §11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by

endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

No change to §11.3.2

Delete §11.4 in its entirety

Delete §11.5 including §11.5.1 and §11.5.2 in their entirety

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

No Change to §12.1.1

Delete §12.1.2 in its entirety and in lieu of substitute the following: §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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§12.1.2.1 If a portion of the Work has been covered and the Architect has specifically requested to see such Work, or if any known deficiencies exist, or the Contract Documents specifically request inspection prior to its being covered, the Architect may request to see that Work and it shall be uncovered by the Contractor. If the Work is not in accordance with the Contract Documents, it must be corrected and covered at the expense of the Contractor. If the Work is according to the Contract Documents, the cost to restore cover on the Work is at the sole expense of the Contractor.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

No Change to §12.2.1

§ 12.2.2 After Substantial Completion

No Change to §12.2.2.1

No Change to §12.2.2.2

No Change to §12.2.2.3

Delete §12.2.2.4 in its entirety and in lieu of substitute the following: §12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

No Change to §12.2.3

No Change to §12.2.4

No Change to §12.2.5

Add §12.2.6 to read: §12.2.6 Contractor shall (1) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (2) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications of other Contract Documents; and (3) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein, whether by Owner or any other party, that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

Add §12.2.7 to read: §12.2.7 The provisions of this Section §12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section §12.2.7 shall not apply to corrective Work attributable solely to the acts or omissions of any separate Contractor or Owner unless Contractor is acting in such capacities. The cost to Contractor to performing any of its obligations under this Clause §12.2.7 to the extent not covered by insurance shall be borne by Contractor.

Add §12.2.8 to read: §12.2.8 If however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, as equitable deduction from the Contractor Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonable delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

Add §12.2.9 to read: §12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law, or in equity for defective Work.

§ 12.3 Acceptance of Nonconforming Work

No Change to §12.3

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

Delete §13.1 in its entirety and in lieu of substitute the following: The Contract shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in Karnes County, Texas. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

Add § 13.1.1 As per TGC Chapter 2270 Israel Verification, Rawley McCoy & Associates, PLLC hereby verifies that under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

- .1 Does not boycott Israel currently; and
- .2 Will not boycott Israel during the time of the contract.

Add § 13.1.2 Pursuant to Section 2270.001, Texas Government Code:

.1 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

.2 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit. "Governmental entity" means a state agency or political subdivision of this state

§13.2 Successors and Assigns

No Change to §13.2.1

No Change to §13.2.2

§13.3 Rights and Remedies

No Change to §13.3.1

No Change to §13.3.2

Add §13.3.3 to read: §13.4.3 If any provision or any portion of a provision of the Contract Documents or of any other document to be executed in connection with the Contract is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of any of the Contract Documents or such other document, as each provision of the Contract and all such other documents shall be deemed to be severable from all other provisions hereof and thereof."

Add §13.3.4 to read: §13.3.4 Written notice shall be deemed to have been duly served if delivered in person to the individual or 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 return receipt requested, or by courier service providing proof of delivery, or by electronic facsimile transmission to the last business address known to the party giving notice.

§ 13.4 Tests and Inspections

Delete §13.4.1 in its entirety and in lieu of substitute the following: §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, insurance requirements, rules and regulations or lawful orders of public authorities. The Owner will contract for, independently of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services. 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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

No Change to §13.4.2

No Change to §13.4.3

No Change to §13.4.4.

No Change to §13.4.5

No Change to §13.4.6

§13.5 Interest

Delete §13.5 Interest in its entirety and in lieu of substitute the following: Payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Any such payment shall be deemed

overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect if Owner's governing body meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect if Owner's governing body meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

Add §13.6 Project Information and Records

Add §13.6.1 to read: §13.6.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

Add §13.6.2 to read: §13.6.2 Contractor shall at all times through date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

Add §13.6.3 to read: §13.6.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

Add §13.6.4 to read: §13.6.4 Contractor shall keep all Construction Documents related to the Project provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

Add §13.6.5 to read: §13.6.5 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

Delete §14.1.1 in its entirety and in lieu of substitute the following: §14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days

through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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; or

.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 §9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

Delete §14.1.2 in its entirety and in lieu of substitute the following: §14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section §14.3 constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

Delete §14.1.3 in its entirety and in lieu of substitute the following: §14.1.3 If one of the reasons described in Section §14.1.1 or §14.1.2 exists, the Contractor may, upon fifteen (15) days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an amount which would have been recoverable had the termination been for the Owner's convenience.

Delete §14.1.4 in its entirety and in lieu of substitute the following: §14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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 fifteen (15) 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

Delete §14.2.1 in its entirety and in lieu of substitute the following: §14.2.1 The Owner may terminate the Contract if the Contractor

.1 Repeatedly refuses or fails to supply enough properly skilled workers or proper materials.

.2 Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors.

.3 Repeatedly disregards applicable laws, statutes, ordinances, codes, insurance requirements, rules and regulations, or lawful orders of a public authority.

.4 Otherwise is guilty of substantial breach of a provision of the Contract Documents.

.5 Or if any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (1) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (1) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner; or

.6 Fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents.

Delete §14.2.2 in its entirety and in lieu of substitute the following: §14.2.2 When any of the above reasons exist the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's Surety, if any, seven (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of Surety:

.1 Take possession of the site and of all materials, equipment, tools, and construction equipment, and machinery thereof owned by the Contractor.

.2 Accept assignment of contracts pursuant to Section §5.4.

.3 Finish the Work by whatever reasonable method the Owner may deem expedient.

Add §14.2.2.1 to read: §14.2.2.1 In any such event, title to the Work, and any products thereof, whether completed or partially completed, as well as all materials prepared, provided procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the Contract Documents.

No Change to §14.2.3

No Change to §14.2.4

§ 14.3 Suspension by Owner for Convenience

No Change to §14.3.1

No Change to §14.3.2

§ 14.4 Termination by Owner for Convenience

No Change to §14.4.1

No Change to §14.4.2

Delete §14.4.3 in its entirety and in lieu of substitute the following: §14.4.3 In the case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, for profits only on that portion of the Work executed, and for reasonable costs of demobilization.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

No change to §15.1.1

No change to §15.1.2

§15.1.3 Notice of Claims

No change to §15.1.3.1

No change to §15.1.3.2

§15.1.4 Continuing Contract Performance

No change to §15.1.4.1

No change to §15.1.4.2

§ 15.1.5 Claims for Additional Cost

No Change to §15.1.5 Claims for Additional Cost

§ 15.1.6 Claims for Additional Time

No Change to §15.1.6.1.

Delete §15.1.6.2 in its entirety and in lieu of substitute the following: §15.1.6.2 The Contractor shall be entitled to an extension of the contract time for delays or disruptions due to

unusually inclement weather in excess of that normally experienced at the job site. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year.

Add §15.1.6.2.1 to read: §15.1.6.2.1 Prepare as a base line for monthly weather reporting Norm based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. This shall determine monthly ANTICIPATED unusual weather days. The contractor's progress schedule must reflect these ANTICIPATED adverse weather delays in all-weather dependent activities. In order for a weather-related time extension to be awarded the weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work.

Add §15.1.6.2.2 to read: §15.1.6.2.2 Keep Daily Jobsite Reports including both written and photographic record of all weather information, specifically noting any adverse weather, including temperature, wind, rain, etc. If unusually inclement weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. Give a description of how any adverse weather event will affect the Project Critical Path Schedule and resultant impact to normally scheduled work. The delay must be beyond the control and without the fault or negligence of the contractor. Keep a record of any adverse weather delays as a result of previous project delays. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days.

Add §15.1.6.2.3 to read: §15.1.6.2.3 The Contractor shall bear the entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred.

§ 15.1.7 Waiver of Claims for Consequential Damages

No Change to §15.1.7 Waiver of Claims for Consequential Damages

§ 15.2 Initial Decision

No change to §15.2.1

No change to §15.2.2

No change to §15.2.3

No change to §15.2.4

No change to §15.2.5

No change to §15.2.6

No change to §15.2.6.1

No change to §15.2.7

Delete §15.2.8 in its entirety and in lieu of substitute the following: §15.2.8 It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, build, or situated.

Add §15.2.9 to read: §15.2.9 Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

§ 15.3 Mediation

Delete §15.3.1 in its entirety and in lieu of substitute the following: §15.3.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

Delete §15.3.2 in its entirety and in lieu of substitute the following: §15.3.2 The parties shall endeavor to resolve their claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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.

Delete §15.3.3 in its entirety and in lieu of substitute the following: §15.3.3 The parties shall select the mediator by mutual agreement and share the mediator's fee and any filing fees equally. If the parties cannot mutually agree upon a mediator the Presiding Judge of the District Courts of Karnes County, Texas shall select the mediator.

Delete §15.3.4 in its entirety and in lieu of substitute the following: §15.3.4 The mediation shall be held in Karnes County, Texas unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court

having jurisdiction thereof. Venue for binding dispute resolution shall also be in Karnes County, Texas

§ 15.4 Arbitration

Delete §15.4 in its entirety

§ 15.4.4 Consolidation or Joinder

Delete §15.4.4 in its entirety

Add §15.5 Immunity

Add §15.5.1 to read: §15.5.1 Contractor stipulates that Owner is a political subdivision of the State of Texas and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically provided by law.

END OF SUPPLEMENTARY GENERAL CONDITIONS

Cost Proposal
Construction Manager-at-Risk
Karnes County EMS – Administration/Training Center
County of Karnes
Kenedy, Texas
Project #1066-0524

PROPOSAL FORM

December 3, 2024

This Proposal Form is for use in stating fees requested under **Cost Proposal (40%) total**, in Selection Criteria of the RFP.

1. Fixed fee for pre-construction services shall be _____
2. Fixed fee for General Conditions shall be _____
(Provide attachment with above total fee for General Conditions broken down in the 28 categories listed in the RFP.)
3. Percentage of Construction Cost fee
for Construction Phase of Project shall be _____

We acknowledge receipt of addendums number _____ through _____, and have incorporated changes and clarifications contained therein within our proposal.

All responses under Qualifications section of RFP will be made using each respondent's/offeror's own format.

Offered by,

(Company Name)

(Signed)

(Title)

00 43 43 - PREVAILING WAGE RATES

The Conditions of the Contract and applicable requirements of Division 01 govern this section.

- A. In compliance with Texas Government Code, Section 2258, Karnes County has determined that the general prevailing rate of per diem wages in the locality in which the work under this contract is to be performed shall be the rates as provided by the U.S. Department of Labor for the County of Karnes, Texas (www.access.gpo.gov/davisbacon). Rules regarding compliance and prevailing wage rates to be paid on this project are as follows:

PREVAILING WAGE RATE DETERMINATION INFORMATION

GOVERNMENT CODE
TITLE 10. GENERAL GOVERNMENT
SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT
CHAPTER 2258. PREVAILING WAGE RATES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2258.001. Definitions. In this chapter:

- (1) "Locality in which the work is performed" means:
 - (A) for a contract for a public work awarded by the state, the political subdivision of the state in which the public work is located:
 - (i) which may include a county, municipality, county and municipality, or district, except as provided by Subparagraph (ii); and
 - (ii) which, in a municipality, with a population of 500,000 or more, may only include the geographical limits of the municipality; or
 - (B) for a contract for a public work awarded by a political subdivision of the state, the geographical limits of the political subdivision.
- (2) "Public body" means a public body awarding a contract for a public work on behalf of the state or a political subdivision of the state.
- (3) "Worker" includes a laborer or mechanic.

Sec. 2258.002. Applicability of Chapter to Public Works

- (a) This chapter applies only to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction.
- (b) This chapter does not apply to work done directly by a public utility company under an order of a public authority.

Sec. 2258.003. Liability

An officer, agent or employee of a public body is not liable in a civil action for any act or omission implementing or enforcing this chapter unless the action was made in bad faith.

SUBCHAPTER B. PAYMENT OF PREVAILING WAGE RATES

Sec. 2258.021. Right to be Paid Prevailing Wage Rates

- (a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:
 - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- (b) Subsection (a) does not apply to maintenance work.
- (c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or political subdivision of the state.

Sec. 2258.022. Determination of Prevailing Wage Rates

- (a) For a contract for a public work awarded by a political subdivision of the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:
 - (1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed; or
 - (2) using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments.
- (b) THIS SUBSECTION IS OMITTED BECAUSE IT IS ONLY APPLICABLE TO A PUBLIC WORK IN A COUNTY BORDERING THE UNITED MEXICAN STATES OR IN A COUNTY ADJACENT TO A COUNTY BORDERING THE UNITED MEXICAN STATES.
- (c) The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.
- (d) A public body shall specify in the call for bids for the contract and in the contract itself the wage rates determined under this section.
- (e) The public body's determination of the general prevailing rate of per diem wages is final.

Sec. 2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty

- (a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.002 to a worker employed by it in the execution of the contract.
- (b) A contractor or subcontractor who violates this section shall pay to the state or political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
- (c) A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.

- (d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.
- (e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

Sec. 2258.024. Records

- (a) A contractor and subcontractor shall keep a record showing:
 - (1) the name and occupation of each worker employed by the contractor or subcontractor in the construction of the public work; and
 - (2) the actual per diem wages paid to each worker.
- (b) The record shall be open at all reasonable hours to inspection by officers and agents of the public body.

Sec. 2258.025. Payment Greater Than Prevailing Rate Not Prohibited

This chapter does not prohibit the payment to a worker employed on a public work an amount greater than the prevailing rate per diem wages.

Sec. 2258.026. Reliance on Certificate of Subcontractor

A contractor is entitled to rely on a certificate by a subcontractor regarding the payment of all sums due those working for the subcontractor until the contrary has been determined.

SUBCHAPTER C. ENFORCEMENT; CIVIL AND CRIMINAL PENALTIES

Sec. 2258.051. Duty of Public Body to Hear Complaints and Withhold Payment

- (a) A public body awarding a contract, and an agent* or officer of the public body, shall:
 - (1) take cognizance of complaints of all violations of this chapter committed in the execution of the contract; and
 - (2) withhold money forfeited or required to be withheld under this chapter from payments to the contractor under the contract, except that the public body may not withhold money from other than the final payment without determination by the public body that there is good cause to believe that the contractor has violated this chapter.

The agent for the public body as mentioned in 2258.051 above shall be the Karnes County Auditor.

2258.052. Complaint; Initial Determination

- (a) On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023 by a contractor or subcontractor, a public body shall make an initial determination as to whether good cause exists to believe that the violation occurred.
- (b) A public body must make its determination under Subsection (a) before the 31st day after the date the public body receives the information.
- (c) A public body shall notify in writing the contractor or subcontractor and any affected worker of its initial decision.

- (d) A public body shall retain any amount due under the contract pending a final determination of the violation.

Sec. 2258.053. Arbitration Required for Unresolved Issue

- (a) An issue relating to an alleged violation of Section 2258.023, including a penalty owed to a public body or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the contractor or subcontractor and any affected worker do not resolve the issue by agreement before the 15th day after the date the public body makes its initial determination under Section 2258.052.
- (b) If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required under Subsection (a), a district court shall appoint an arbitrator on the petition of any of the persons.
- (c) A public body is not a party in the arbitration.

Sec. 2258.054. Arbitration Award; Costs

- (a) If an arbitrator determines that Section 2258.023 has been violated, the arbitrator shall assess and award against the contractor or subcontractor:
 - (1) penalties as provided by Section 2258.023 and this section; and
 - (2) All amounts owed to the affected worker.
- (b) An arbitrator shall assess and award all reasonable costs, including the arbitrator's fee, against the party who does not prevail. Costs may be assessed against the worker only if the arbitrator determines that the claim is frivolous. If the arbitrator does not find that the claim is frivolous and does not make an award to the worker, costs are shared equally by the parties.

Sec. 2258.055. Arbitration Decision and Final Award

The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

Sec. 2258.056. Payment by Public Body to Worker; Action to Recover Payment

- (a) A public body shall use any amounts retained under this chapter to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing wage rate as provided in the arbitrator's award.
- (b) The public body may adopt rules, orders, or ordinances relating to the manner in which a reimbursement is made.
- (c) If the amounts retained by the public body under this chapter are not sufficient for the public body to pay the worker the full amount owed, the worker has a right of action against the contractor or subcontractor and the surety of the contractor or subcontractor to recover the amount owed, reasonable attorney's fees, and court costs.

Sec. 2258.057. Withholding by Contractor

- (a) A contractor may withhold from a subcontractor sufficient money to cover an amount withheld from the contractor by a public body because the subcontractor violated this chapter.

- (b) If the contractor has made a payment to the subcontractor, the contractor may withhold money from any future payments owed to the subcontractor or sue the subcontractor or the subcontractor's surety for the amount withheld from the contractor by a public body because of the subcontractor's violation.

Sec. 2258.058. Criminal Offense

- (a) An officer, agent, or representative of the state or of a political subdivision of the state commits an offense if the person willfully violates or does not comply with a provision of this chapter.
- (b) A contractor or subcontractor of a public work under this chapter, or an agent or representative of the contractor or subcontractor, commits an offense if the person violates Section 2258.024.
- (c) An offense under this section is punishable by:
 - (1) a fine not to exceed \$500;
 - (2) confinement in jail for a term not to exceed six months; or
 - (3) both a fine and confinement.

WAGE RATES AS PROVIDED BY THE GENERAL SERVICES COMMISSION OF THE STATE OF TEXAS

General Decision Number: TX20240210 08/23/2024

Superseded General Decision Number: TX20230210

State: Texas

Construction Type: Building

Counties: Karnes and Lavaca Counties in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date

0	01/05/2024
1	07/05/2024
2	07/12/2024
3	08/23/2024

* ASBE0087-002 06/03/2024

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 29.50	8.79

BOIL0074-003 07/01/2023		

	Rates	Fringes
BOILERMAKER.....	\$ 37.00	24.64

IRON0066-005 06/01/2023

	Rates	Fringes
IRONWORKER, REINFORCING AND STRUCTURAL.....	\$ 26.00	7.53

LABO0154-001 05/01/2024

	Rates	Fringes
Laborers: (Mason Tender - Cement/Concrete).....	\$ 25.27	9.57

PLUM0142-005 07/01/2024

Karnes County, Lavaca County

	Rates	Fringes
Plumber.....	\$ 36.87	11.48

* SUTX2009-097 04/20/2009

	Rates	Fringes
BRICKLAYER.....	\$ 19.67	0.00
CARPENTER.....	\$ 13.18 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 13.27 **	0.00
ELECTRICIAN.....	\$ 20.00	3.11
LABORER: Common or General.....	\$ 12.02 **	0.00
LABORER: Landscape & Irrigation.....	\$ 8.50 **	0.22
LABORER: Mason Tender - Brick...	\$ 12.02 **	0.00
LABORER: Mortar Mixer.....	\$ 12.00 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 13.75 **	0.00
OPERATOR: Bulldozer.....	\$ 12.80 **	0.43

OPERATOR: Crane.....	\$ 21.33	0.00
OPERATOR: Forklift.....	\$ 14.58 **	0.00
OPERATOR: Loader (Front End)....	\$ 10.54 **	0.00
PAINTER: Brush, Roller and Spray.....	\$ 12.26 **	0.00
ROOFER.....	\$ 13.64 **	1.80
SHEET METAL WORKER.....	\$ 17.00 **	0.00
TILE SETTER.....	\$ 15.00 **	0.00
TRUCK DRIVER.....	\$ 11.24 **	0.35

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

State Adopted Rate Identifiers

Classifications listed under the "SA" identifier indicate that the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R. 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the "SA" identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

END OF SECTION 00 43 43

00 45 18 - CONFLICT OF INTEREST QUESTIONNAIRE

The Conditions of the Contract and applicable requirements of Division 01 govern this section.

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor or other person doing business with local governmental entity		
1		<u>OFFICE USE ONLY</u> Date Received
1. Name of person who has a business relationship with local governmental entity.		
2. Check this box If you are filing an update to a previously filed questionnaire. <input type="checkbox"/> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate)		

3. Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

- B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section *AND* the taxable income is not received from the local governmental entity?

Yes **No**

- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes **No**

- D. Describe each employment or business relationship with the local government officer named in this section.

4.

Signature of person doing business with the governmental entity .

Date
Adopted 06/29/2007

END OF SECTION 00 45 18

00 45 19 - NON-COLLUSION AFFIDAVIT

The Conditions of the Contract and applicable requirements of Division 01 govern this section.

STATE OF TEXAS §

COUNTY OF KARNES §

BEFORE ME, the undersigned authority, on this day personally appeared _____
_____ known to me to be the person whose name is subscribed
to the following, who, upon oath, says:

I am the manager, secretary or other agent or officer of the principal of the Bidder or Proposer in the matter of the bids or proposals to which this affidavit is attached, and I have full knowledge of the relations of the Bidder or Proposer with the other firms in this same line of business, and the Bidder or Proposer is not a member of any trust, pool, or combination to control the price of supplies, materials and/or services bid on, or to influence any person to propose or not to bid thereon.

I further affirm that the Bidder or Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid or proposal.

Affiant (General Contractor)

Printed Name

Title

Company

Subscribed and sworn to before me,
this _____ day of _____, 2024

Notary Public

My Commission Expires _____

END OF SECTION 00 45 19

00 45 20 - CERTIFICATE OF AUTHORITY AND INCUMBENCY

The Conditions of the Contract and applicable requirements of Division 01 govern this section.

I, the undersigned, do hereby certify that:

I am a duly elected (or appointed) and a currently acting officer

of _____ a _____ corporation
(Corporation Name) (State of Incorporation)

(hereafter called "Corporation").

1. I am an authorized signatory and agent of _____.
(Corporation Name)
2. The Corporation is currently existing and in good standing with the State of Texas on the date of this Certificate.

The Board of Directors of the Corporation have duly and properly authorized _____, to enter into and to execute on behalf of the Corporation that certain General Construction Contract with the County of Karnes, relating to the Administration / EMS Training Center Project in accordance with the Drawings, Specifications and other contract documents prepared for the Owner by Rawley McCoy & Associates, PLLC, Architects and Interior Designers, and to execute, furnish and deliver to Owner on behalf of the Corporation, the required Performance Bond and Payment Bond and any documentation which may be necessary or required to effect the provisions of such Construction Contract.

Executed on this the _____ day of _____, 2024.

Printed Name

Signature

Title

SUBSCRIBED AND SWORN TO before me by, _____,
on this _____ day of _____, 2024.

Notary Public

My Commission Expires _____

END OF SECTION 00 45 20

00 45 46 – GOVERNMENTAL CERTIFICATIONS - ISRAEL VERIFICATION

TGC CHAPTER 2270 ISRAEL VERIFICATION

I, _____, the undersigned representative of
(PRINT NAME)

(COMPANY)

do hereby verify that the company named-above, under the provisions of Subtitle F, Title 10,
Government Code Chapter 2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

Pursuant to Section 2270.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

3. "Governmental entity" means a state agency or political subdivision of this state.

(DATE)

(PRINT NAME OF COMPANY REPRESENTATIVE)

(SIGNATURE OF COMPANY REPRESENTATIVE)

(TITLE OF COMPANY REPRESENTATIVE)

END OF SECTION 00 45 46

SECTION 00 70 00 – CONTRACTING FORMS AND SUPPLEMENTS

The Conditions of the Contract and applicable requirements of Division 01 govern this section.

CONDITIONS OF THE CONTRACT

- A. The General Conditions are based on AIA A201.

FORMS

- A. Use the following forms for the specified purposes unless otherwise indicated elsewhere in the Contract Documents.
- B. Post-Award Certificates and Other Forms:
1. Schedule of Values Form: AIA G703.
 2. Application for Payment Forms: AIA G702 with AIA G703 (for Contractors).
- C. Closeout Forms:
1. Certificate of Substantial Completion Form: AIA G704.

REFERENCE STANDARDS

- A. AIA A201 - General Conditions of the Contract for Construction; 2017.
- B. AIA G702 - Application and Certificate for Payment; 1992.
- C. AIA G703 - Continuation Sheet; 1992.
- D. AIA G704 - Certificate of Substantial Completion; 2000.
- E. AIA G706 – Contractor's Affidavit of Payment of Debts and Claims; 1994
- F. AIA G707 – Consent of Surety Company to Final Payment; 1994
- G. AIA G707A – Consent of Surety Company to Reduction in or Partial Release of Retainage; 1994

END OF SECTION 00 70 00

SECTION 01 50 00 – TEMPORARY FACILITIES AND CONSTRUCTION

The Conditions of the Contract and applicable requirements of Division 01 govern this section.

TEMPORARY SERVICES - GENERAL

- A. Provide all temporary services and facilities as specified below, and as required for the proper and expeditious prosecution of the work. Provide all labor, materials, equipment and appliances necessary for the complete installation, operation and maintenance of all temporary service systems and facilities as may be required during work on the project.

UTILITIES

- A. Cost: The Contractor shall provide all temporary electrical and water as may be required to complete work on the project. The Contractor shall be responsible for temporary connection to these utilities and for disconnection from them and returning points of connections to original condition.
- B. Provide temporary electric feeder from electrical service arranged with Utility Company. Complete existing power service capacity and characteristics as required.
- C. Provide power outlets for construction operations with branch wiring and distribution boxes located as required.
- D. Provide, maintain and pay for suitable quality water service required for construction operations at time of project mobilization.
- E. Extend branch piping with outlets located so water is available by hoses with threaded connections.

HEATING, COOLING & LIGHTING

- A. Adequate lighting must be provided throughout the project. Provide and maintain lighting for construction operations.
- B. Provide and maintain lighting to exterior staging and storage areas for security purposes.
- C. Provide heating and cooling devices as needed to maintain specified conditions for construction operations.
- D. The permanent heating and cooling system should be put in operation as soon as possible and shall be used to dry out the building and to provide suitable conditions for finish work.

SANITARY FACILITIES

- A. The Contractor shall provide suitable temporary toilet facilities near the location of the work. Temporary toilets shall be maintained in a sanitary condition at all times and shall be placed in the least obtrusive location available.

STORAGE

- A. Each Contractor shall provide suitable means to protect all stored material subject to damage from the weather.
- B. Contractors may use portions of existing parking lots for storage if approved in advance by Owner. Contractors must protect these areas and return them to their original condition upon completion of the work.

FENCES

- A. Contractors must provide temporary fencing and other barricades to protect stored materials on the site and provide a secure and safe work area around the project.
- B. Coordinate size and location of all fenced storage and work areas with the Owner and Architect prior to erection.
- C. Chain-Link Fencing: Minimum 2-inch, 0.148-inch thick, galvanized steel, chain-link fabric fencing. 6 feet high minimum with galvanized steel pipe posts; minimum 2-3/8-inch OD line posts and 2-7/8-inch OD corner and pull posts, with 1-5/8-inch OD top rails.
 - 1. Securely anchor posts into ground with minimum 30 inch deep, 12 inch diameter concrete filled post holes at 6 feet on center max.
- D. Portable Chain-Link Fencing: Minimum 2-inch, 0.148-inch thick, galvanized steel, chain-link fabric fencing. 6 feet high minimum with galvanized steel pipe posts; minimum 2-3/8-inch OD line posts and 2-7/8-inch OD corner and pull posts, with 1-5/8-inch OD top rails.
 - 1. Provide concrete, tire or pipe bases for supporting posts.
- E. Provide 6 foot high fence around construction site; equip with locable vehicular gates.

OFFICES

- A. Contractor shall provide his own office on the premises, maintain it, and remove it when directed to by Owner. Contractor shall furnish office space for the Architect as well as for himself.
- B. Coordinate size and location of all offices with the Owner and Architect prior to erection or placement on the premises.

PROTECTION OF PROPERTY & PERSONS

- A. Protect all new or existing walks, curbing, drives, parking lots, planting beds, shrubs, trees and lawn areas. All damage caused by the Contractor or any Subcontractors shall be made good at the expense of the Contractor.
- B. Provide necessary barricades to protect persons entering, leaving or walking around construction areas during the course of the work or during periods when no work is in progress but when conditions around the construction areas could pose a danger.

PROTECTION OF INSTALLED WORK

- A. Protect installed work and provide special protection where required.

- B. Provide temporary and removable protection for installed products. Control construction activity in immediate work area to prevent damage.
- C. Provide protective coverings at walls, projections, jambs, sills and soffits of openings.
- D. Protect finish floors, stairs and other surfaces from traffic, dirt, wear, damage or movement of heavy objects by protecting with durable sheet materials.
- E. Prohibit traffic or storage on waterproofed or roofed surfaces. If traffic or activity is necessary, obtain recommendations for protection from waterproofing or roofing material manufacturer.
- F. Prohibit traffic from landscaped areas.

ACCESS ROADS AND PARKING

- A. Construct and maintain temporary roads accessing thoroughfares to serve construction area.
- B. Provide and maintain access to fire hydrants, free off obstructions.
- C. Provide temporary gravel surface parking areas to accommodate construction personnel within the site space.
- D. Do not allow vehicle parking on existing pavement without written approval from County allowing construction employee parking.

CLEANING AND WASTE REMOVAL

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain project site in a clean and orderly condition.
- B. Remove debris and rubbish from masonry cavities, pipe chases, plenums, attics, crawl spaces, and other closed or remote spaces prior to enclosing the space.
- C. Broom and vacuum clean interior areas daily and prior to start of any interior finish work to eliminate dust.

REMOVAL OF UTILITIES, FACILITIES AND CONTROLS

- A. Remove temporary utilities, equipment, facilities, and materials prior to Substantial Completion.
- B. Remove underground installations to a minimum depth of 2 feet. Grade site as indicated.
- C. Clean and repair damage caused by installation or use of temporary work.

JOB IDENTIFICATION SIGN

- A. The Contractor shall provide and erect where directed a job sign. Provide 8 feet wide x 4 feet high job sign of exterior grade plywood and wood frame construction, painted, with die cut vinyl, self-adhesive letters and logos to Architect's design and colors.

- B. The sign shall list the names of the Project, the Owner, the Architect, his Consultants, the General Contractor and whichever Subcontractors the General Contractor chooses. Work shall be done by an experienced sign company in a neat and professional manner.
- C. No other signs shall be erected on the job site without permission from the Architect or Owner except those required by law.

END OF SECTION 01 50 00

SECTION 01 77 00 – PROJECT CLOSEOUT

The Conditions of the Contract and applicable requirements of Division 01 govern this section.

GENERAL

- A. Comply with all requirements of the contract. Send notices, furnish certificates, affidavits and other requirements to complete contract.

SUBSTANTIAL COMPLETION

- A. When entire project (or specified area of the project, if requested by Owner) has reached Substantial Completion as defined in the General Conditions, as may be amended or supplemented, the Contractor shall send written notice and a comprehensive list (a punch list) of items to be completed or corrected to the Architect.
- B. The Architect will then make a preliminary inspection to determine the status of completion and prepare a supplementary list of items requiring completion or correction in addition to Contractor's list for use of the Contractor. This combined list shall constitute the "punch list" for the project.
- C. When all requirements of the General Conditions, as may be amended or supplemented, have been achieved then the Architect will prepare and issue a Certificate of Substantial Completion, AIA Document G 704, to be signed by the Owner and Contractor. This document will be accompanied by a list of any items remaining to be completed on the "punch list" prepared by the Contractor, supplemented by and approved by the Architect.

OPERATIONS INSTRUCTIONS, MANUALS, CERTIFICATIONS & RECORD DRAWINGS

- A. Instruct Owner's representatives in the operation of all mechanical, electrical, plumbing and other building systems as specified. All such instructions shall be coordinated with the Owner's Designated Representative.
- B. Deliver keys to Owner along with typed keying schedules and additional master keys, sub-masters or special keys.
- C. Deliver to the Architect all required written guarantees and warranties prepared and bound in duplicate for his review and delivery to Owner.
- D. Deliver to the Architect all required certificates of inspection prepared and bound in duplicate for his review and delivery to Owner.
- E. Deliver to the Architect all required bound operational manuals for his review and delivery to Owner.
- F. Deliver to the Architect all required hazardous material certifications, **including MSDS sheets**, prepared and bound in duplicate for his review and delivery to Owner.
- G. Deliver to the Architect required Record Drawings for his review and delivery to Owner.

CLOSEOUT LEGAL DOCUMENTS

A. The following AIA Documents must be completed and delivered to the Architect for review and delivery to the Owner.

1. Contractor's Affidavit of Payment of Debts and Claims, G706, for General Contractor and all major Sub-Contractors and Suppliers.
2. Consent of Surety Company to Final Payment, G707.
3. Consent of Surety Company to Reduction in or Partial Release of Retainage, G707A, if necessary.

B. Contractor must provide copy of Maintenance Bond, which is required to extend for the one (1) year period of guarantee to insure his performance under the terms of his obligation.

FINAL INSPECTION

A. Contractor shall notify the Architect when project is finally complete and all of the above requirements have been met.

B. Architect will then notify Owner and make a final inspection.

FINAL PAYMENT

A. Contractor shall submit the final Application and Certificate for Payment to the Architect after elapse of time stipulated in the contract, indicating all contract sum adjustments.

B. The Architect will approve and deliver to the Owner the final Application and Certificate for Payment upon completion of the final inspection and receipt and approval of all required closeout documentation.

GUARANTEE/WARRANTY INSPECTION

A. The Contractor shall be required to join the Architect and Owner, if notified to do so, in a walkthrough of the project within 30 days of the expiration of the general one (1) year project guarantee/warranty to determine if any work is still required under the terms of the guarantee/warranty.

END OF SECTION 01 77 00

SECTION 01 78 39 – RECORD DOCUMENTS, AS-BUILT DRAWINGS

The Conditions of the Contract and applicable requirements of Division 01 govern this section.

AS-BUILT DRAWINGS

- A. The Contractor shall provide as-built drawings which clearly show all differences between the contract work as drawn and as actually installed, as well as work added to the contract which is not indicated on the contract drawings.
- B. Special attention should be paid to precisely documenting changes to concealed work, meaning work installed underground or in areas which can not be readily inspected by use of access panels, inspection plates or other removable features.
- C. The Contractor shall maintain a set of record drawings at the job site. These drawings shall be kept legible and current and shall be available for inspection at all times by the Architect.
- D. Upon substantial completion of the work, transfer the changes noted on the record drawings to the as-built drawings.
- E. As-built drawings shall be prepared on full-size paper copies paid for by the Contractor. As-builts shall be provided for all sheets of the drawings.
- F. In showing changes in the work or added work, use the same legends as used on the contract drawings. The as-built drawings shall consist of a (2) complete full-size printed copy. If no changes are made on a particular as-built drawing, a notation reading "No Change" shall be made in the lower right hand corner of the drawing.
- G. As-built drawings shall contain the names, addresses and phone numbers of all the Subcontractors and shall be signed by the Contractor.
- H. Upon completion of the as-built drawings, submit one digital set of as-built drawings to the Architect for approval. Any changes required by the Architect must be made and upon receipt of approval of modified drawings, deliver the as-built printed copy to the owner.
- I. The Architect shall be the sole judge of acceptability of the as-built drawings. Final payment on the project will not be made until the as-built drawings and copies as described above are delivered to and accepted by the Architect.

END OF SECTION 01 78 39