## 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 7<sup>th</sup> day of August in the year 2024 (In words, indicate day, month, and year.)

**BETWEEN** the Owner: (Name and address)

City of Pflugerville P.O. Box 589 Pflugerville, TX 78691

and the Construction Manager: (Name and address)

CORE Construction Services of Texas, Inc. 6320 Research Road Frisco, TX 75033 (972) 688-9340

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

City of Pflugerville **Public Works Complex** Pflugerville, Texas

The Architect: (Name and address)

Marmon Mok, LP 1020 NE Loop 410, Suite 201 San Antonio, Texas 78209

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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#### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT **EXHIBIT B INSURANCE REQUIREMENTS**

#### 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.)

#### § 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.)

§ 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.)

\$75,000,000

Init.

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

.1 Design phase milestone dates, if any:

October 15, 2024

.2 Construction commencement date:

January 2, 2025

**.3** Substantial Completion date or dates:

July 15, 2026

.4 Other milestone dates:

N/A

§ 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<sup>TM</sup>–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 representative in accordance with Section 4.2: (List name, address, and other contact information.)

Brandon Pritchett City of Pflugerville

Email: brandonp@pflugervilletx.gov

Phone: (512) 990-6402

§ 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.)

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

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

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User Notes:

Not used.

(Paragraphs deleted)

.2 Not used.

(Paragraphs deleted)

.3 Not used.

§ 1.1.11 The Architect's representative:

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

Denise Dart

Marmon Mok, LP

Email: dart@marmonmok.com

Phone: (210) 223-9492

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

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

Gary Aanenson, Executive Vice President

CORE Construction Services of Texas, Inc.

6320 Research Road

Frisco, Texas 75033

(972) 688-9340

Email: garyaanenson@coreconstruction.com

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

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

§ 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 may 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.

#### ARTICLE 2 **GENERAL PROVISIONS**

#### § 2.1 The Contract Documents

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

#### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement. Construction Manager represents itself as having expertise in planning, scheduling, budgeting, and construction means and methods dictated by design parameters outlined in Contract Documents, and Construction Manager covenants with the Owner to cooperate with the Architect, Owner's separate contractors, consultants, and design professionals, if any, 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. In its capacity as a general contractor, not as a design professional, the Construction Manager represents and warrants to the Owner that is experienced in the construction of projects of similar size, scope, and quality to the Project and that it is familiar with and knowledgeable regarding the components that are properly and customarily included with such a project, including the requirements of state laws, local building codes, labor laws and labor markets applicable to the Work, and local building officials consistent with the knowledge of a competent construction manager and general contractor regularly engaged in the construction of such comparable projects.

#### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201<sup>TM</sup>–2017, General Conditions of the Contract for Construction, as modified, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.6.3, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law.

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

#### 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, as modified, referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager's representative authorized to act on behalf of the Construction Manager with respect to the Project is identified in Section 1.1.12.

### § 3.1 Preconstruction Phase

#### § 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. Except as otherwise required by Applicable Law, 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 and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall provide recommendations consistent with the Project requirements, in writing, to the Owner and Architect on proposed site use and improvements; selection of materials; building systems; equipment; constructability; scope; 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 designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. Construction Manager shall provide such written recommendations, at minimum, with the Design Development drawings and specifications, and when the Construction Documents reach 75%. 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 Not used.

#### § 3.1.4 Project Schedule

When Project requirements 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. Construction Manager shall coordinate and integrate the Project schedule with the services and activities of Owner, Construction Manager, Architect, and the requirements of governmental entities. As design proceeds, Construction Manager shall update the Project schedule to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Project schedule updates indicate that milestone dates contained in prior Project schedules will not be met, Construction Manager shall notify and make recommendations to Owner. Construction Manager shall make recommendations to Owner and Architect regarding the phased issuance of the drawings and specifications.

#### § 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. The Construction Manager shall also develop a site utilization plan showing routing, temporary facilities, and safety-related fencing and barricades proposed for the Project.

#### § 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 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform, in writing, the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action. One cost estimates shall be provided, at a minimum, prior to submission of the GMP: one (1) cost estimate at 100% Design Development.

§ 3.1.6.3 Not used.

- § 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. Construction Manager further agrees to work cooperatively with the Architect and review the Construction Documents and specifications, to be developed by the Architect in Construction Manager's capacity as a contractor and provide comments and recommendations to the Owner and Architect relating to the constructability with reasonable efficiency considering the site of the Project, availability of work force, time constraints, and prevailing trade practices within the construction industry concerning projects of this kind.
- § 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.
- § 3.1.10 Not used.

#### § 3.1.11 Subcontractors

- § 3.1.11.1 The Construction Manager shall establish budgets by bid package for the Construction Documents Phase. The Construction Manager shall develop and prepare Subcontractor bid and proposal packages, addressing the Owner's requirements, for the Owner's review and approval.
- § 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project by publicly advertising for bids for the performance of all major elements of the work, other than minor work that may be included in Construction Manager's general conditions. Construction Manager shall conduct pre-bid meetings and receive Subcontractor bids in accordance with Article 9 and Applicable Law.
- § 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

#### § 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.

#### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with all applicable federal, state, and local life safety and building codes, laws, rules, regulations, statutes, ordinances, , and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities, including accessibility laws ("Applicable Law") that in any way relate to the Construction Manager's obligations under the Contract Documents.

#### § 3.1.14 Other Preconstruction Services

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

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

[N/A]

§ 3.1.15 Time is of the essence in the delivery of Construction Manager's preconstruction phase services.

#### § 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 the Guaranteed Maximum Price proposal for the Owner's review and acceptance, using the form attached as

- **Exhibit A.** 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 shall include 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. By executing this Agreement and submitting the Guaranteed Maximum Price proposal, the Construction Manager agrees that the Contract Documents and materials and information furnished to the Construction Manager as of the date of submission of the Guaranteed Maximum Price proposal have described the scope, construction requirements, and actual building program and design (as specifically represented by said documents) of the Work in sufficient detail so as to support the proposal. The Construction Manager is not permitted to claim any adjustment in either the Guaranteed Maximum Price or Contract Time in connection with the completion of final drawings and specifications except as specifically provided herein.
- § 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;
  - 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 A proposed Project schedule (reflecting revisions to any previously approved Project schedule), showing all critical path milestones as well as 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, the basis of the proposal, 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 in the form attached hereto as **Exhibit A**, 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 execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.
- § 3.2.8 If required, and agreed upon by the Owner, 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.

§ 3.2.9 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, as modified, 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 within seven (7) days from Construction Manager's receipt of the latter of the following:
- 1. Fully executed Agreement including the GMP Amendment.
- Issuance of any permits required to commence the Work so long as Construction Manager has timely and properly submitted all applications for permits.
- Owner's Notice to Proceed with Construction; and 3.
- 4. Reasonable and necessary access to the Project site for commencement of work.

Prior to the acceptance of a Guaranteed Maximum Price proposal, the parties may, by written agreement, establish a date of commencement of the Construction Phase. 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. Prior to the commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work without prior written approval by the Owner.

- § 3.3.1.3 The Construction Manager shall fully execute the Work described in the Contract Documents and reasonably inferable therefrom to provide the results intended by the Contract Documents except to the extent specifically indicated in the Contract Documents to be the responsibility of others. Construction Manager understands that time is of the essence in the delivery of Construction Manager's services.
- § 3.3.1.4 The Construction Manager shall furnish only experienced staff for the performance of the Work and in accordance with Exhibit D. Key members of the Construction Manager's staff shall not be changed without the advanced written consent of the Owner, unless such person becomes unable to perform any required duties due to death, disability, transfer, or termination of employment with the Construction Manager or unless Owner requests removal. If a key member is no longer capable of performing or is removed by the Owner, the Owner and the Construction Manager shall agree on a mutually acceptable substitute. Written notice from the Owner or the Architect to the Construction Manager's superintendent, designated representative, or its project manager in connection with defective Work, or instruction for performance, shall be considered notice of such issues to the Construction Manager.
- § 3.3.1.5 At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who is able to communicate fluently in English, along with any necessary assistant(s) who is/are satisfactory to Owner. Any superintendent designee shall be identified in writing to Owner promptly after Owner issues written Notice to Proceed. The superintendent shall represent Contractor at all times and all written directions given to the superintendent shall be binding on Contractor. The designated superintendent shall not be replaced without written notice to and the approval of Owner, which approval shall not be unreasonably withheld, except with good reason (including any termination or disability of the superintendent) or under extraordinary circumstances or as otherwise permitted under the Contract. The superintendent may not be employed on any other project prior to Final Completion of the Work without the approval of Owner, which approval shall not be unreasonably withheld.
- § 3.3.1.6 Contractor shall furnish an updated list to Architect and Owner of all architects, engineers, consultants, subcon-consultants, job-site superintendents, Subcontractors, and Sub-subcontractors involved in the Project.
- § 3.3.1.7 Owner reserves the right to utilize one or more of its employees or Consultants to function in the capacity of Owner's inspector or construction observer, whose primary function shall be daily inspections of the Work, checking pay requests or construction timelines and the verification of the storage of supplies and materials.

#### § 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, as modified.

#### § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion, consumption and status of contingency, and other information required by the Owner. The reports shall include current properly annotated photographs, updated milestone and critical path reports, and the findings or feedback from any inspections of the site or Work by any third parties.

#### § 3.3.2.4 Daily Logs

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

#### § 3.3.2.5 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.

#### **OWNER'S RESPONSIBILITIES** ARTICLE 4

#### § 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 Not used.

- § 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.
- § 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- § 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- § 4.1.4.2 Upon written request of Construction Manager, the Owner shall furnish available surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site.
- § 4.1.4.3 The Owner, when such services are reasonably 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 necessary for 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 The Owner's acknowledgement of any portion of the Work furnished hereunder shall not in any way relieve the Construction Manager of responsibility for the accuracy of the Work, consistent with the requirements of the Contract Documents. The Owner's acknowledgement or acceptance of, or payment for, any of the Construction Manager's services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of performance under 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 and furnish information in a reasonable amount of time. Except as otherwise provided in Section 4.2.1 of A201–2017, as modified, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Not used.

#### § 4.3 Architect

The Owner shall retain an Architect to provide services, duties, and responsibilities as necessary for the Project consistent with the Contract Documents

#### ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

#### § 5.1 Compensation

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

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

A lump sum fee of Thirty Thousand and 00/100 dollars (\$\$30,000).

If additional Preconstruction Phase services beyond those established in Sections 3.1 and 3.2 are requested by the Owner, the Construction Manager shall perform those services at the hourly rates established in Section 5.1.2 or otherwise as mutually agreed to in writing. Construction Manager shall not perform any additional Preconstruction Phase services beyond those outlined in Sections 3.1 and 3.2 without Owner's prior written approval.

§ 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.)

[ "See Exhibit C"]

**Individual or Position** 

Rate

- § 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.
- § 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services may be equitably adjusted by Amendment to the Agreement.

Init.

#### § 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 thirty (30) days after Owner's receipt of Construction Manager's complete and accurate Application for Payment. Owner shall not be liable for interest on any progress or final payment to be made under the

Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment (Paragraph deleted)

Act, Chapter 2251, Texas Government Code, as amended.

#### 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.)

The Construction Manager's Fee shall be an amount equal to Five percent (5 %) of the total Cost of the Work.

- § 6.1.2.1 The Construction Manager's Fee shall not be subject to reduction for decreases in the Cost of the Work for accepted Value Engineering Proposals, or deductive changes in the Work.
- § 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

  For changes in the Work, the following maximum amounts shall be included in the Construction Manager's change proposal. All associated costs shall be fully documented including Subcontractor back-up.

Same as above fee structure.

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

Five Percent (5%).

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100 %) of the standard rental rate paid at the place of the Project in accordance with Section 7.5.2.

#### § 6.1.6 Liquidated damages, if any:

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

In the event that Substantial Completion of the entirety of the Work or a designated portion thereof is not achieved by the required date of Substantial Completion (including extensions of time to which the Construction Manager may be entitled under the express terms of this Agreement), the Construction Manager shall pay to the Owner, as liquidated damages and not as a penalty (and in lieu of damages incurred by the Owner as a result of such delay), the liquidated damage amount specified in the GMP Amendment. The parties acknowledge and agree that the actual delay damages which Owner will suffer in the event of a delay in achieving Substantial Completion of the entirety of the Work or a designated portion thereof within the Contract Time are difficult, if not impossible, to determine and that the liquidated damages described herein shall in no way be deemed a penalty, and are a fair and reasonable estimate of the delay damages which the Owner is expected to suffer in the event of such delay. Owner may deduct any liquidated damages due hereunder from payments due Construction Manager until liquidated damages due hereunder are paid to the Owner. Liquidated damages will be the Owner's exclusive damage remedy for the Construction Manager's failure to achieve Substantial Completion of the entirety of the Work or a designated portion thereof within the timeline set forth in any GMP Amendment, but such damages will in no way limit the Owner's exercise of any other rights and remedies under the Contract or entitlement to damages for any other injury, damage or loss, other than for delay, for which the Construction Manager may be

responsible pursuant to the terms of this Agreement or applicable law, including, without limitation, any termination rights that the Owner may have as a result of such delay. If Construction Manager challenges the enforceability of the liquidated damages as set forth in this Section and the liquidated damages are deemed by a court or arbitrator of competent jurisdiction to be unenforceable, then notwithstanding anything to the contrary set forth in the Contract Documents, Owner shall be entitled to recover all damages sustained by Owner, including but not limited to actual and consequential damages proximately caused as a result of the Construction Manager's failure to achieve Substantial Completion within the timeline set forth herein.

#### **§ 6.1.7** Other:

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

#### § 6.2 Guaranteed Maximum Price

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

#### § 6.3 Changes in the Work

- § 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.
- § 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction, as modified.
- § 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, as modified.
- § 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as modified, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of this Agreement, unless the Owner has furnished the Construction Manager with prior written approval of the form and substance of a subcontract, in which case such adjustment shall be calculated in accordance with the terms of those subcontracts.
- § 6.3.4 The Construction Manager shall submit detailed proposals or Subcontractor proposals showing the price to be paid for all materials, supplies, equipment, rental costs and related items used in the Change Order. The labor burden used for the Change Order work shall be as provided in Article 7. Any other costs included in the Change Order, including labor rates, shall be documented as to actual and direct cost to the Construction Manager.
- § 6.3.5 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017, as modified, 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.

#### COST OF THE WORK FOR CONSTRUCTION PHASE ARTICLE 7

#### § 7.1 Costs to Be Reimbursed

- § 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7 and shall never include the Construction Manager's Fee.
- § 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

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

#### (Paragraph deleted)

§ 7.1.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment, If any particular item for which payment may be requested can be characterized as falling into more than one compensable or reimbursable item under the Contract Documents, the Construction Manager shall make full disclosure of such item and allocate such item to a compensable reimbursable category as directed by the Owner.

§ 7.1.5 Not used.

#### § 7.2 Labor Costs.

- § 7.2.1 Only those direct and actual wages of the Construction Manager's on-site construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site locations at the agreed rates set forth in **Exhibit C**.
- § 7.2.2 Only those direct and actual 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, at the agreed rates set forth in **Exhibit C**.
- § 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

At the agreed rates set forth in **Exhibit C**, or as otherwise approved by Owner in writing.

§ 7.2.3 Not used.

§ 7.2.4 Not used.

§ 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

Amounts properly billed by Subcontractors for Work which has been approved by the Construction Manager and which otherwise satisfies all requirements of the subcontracts. Except for preservation of the Construction Manager's right to make receipt of payment from the Owner a condition precedent to the Construction Manager's obligation to pay Subcontractors and Sub-subcontractors. Subcontractor and Sub-subcontractor agreements otherwise shall conform to all 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 consent.

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

- § 7.4.1 Costs, including transportation and storage at the site or off site with Owner's prior written approval, of materials and equipment incorporated, if delivered and suitably stored at the site or off site, or to be incorporated, in the completed construction. Off-site storage shall be subject to Section 7.4.1.1 below.
- § 7.4.1.1 Construction Manager shall be entitled to payment for materials suitably stored off the site at a location agreed upon in writing by Owner and Owner's lender (if any) or as set forth in Section 7.4.2, conditioned on the following:
  - evidence satisfactory to Owner that the stored materials are included in the coverage of insurance policies naming the Owner as a loss payee and Owner's lender (if any) as a mortgagee and loss payee;
  - .2 bills of lading, invoices, and/or bills of sale satisfactory to Owner from the seller, supplier, or fabricator of the stored materials, evidencing the cost of such stored materials and that, upon payment, ownership thereof will vest in the Owner, free of any liens or claims of third parties; and

- verification (which may, at Owner's election, include physical inspection by Owner or its designated representative) of delivery and suitable storage of such materials in a warehouse or storage yard approved by the Owner (including the Owner's approval of the terms of such storage, including adequacy of insurance).
- § 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 and shall be properly stored at the site (or elsewhere, at Owner's option) in accordance with Owner's instructions, 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 written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.
- § 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- § 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.
- § 7.5.5 Not used.
- § 7.5.6 Not used.

#### § 7.6 Miscellaneous Costs

- § 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents or Subcontractor Default Insurance that can be reasonably calculated and directly attributed to this Contract.
- § 7.6.1.1 Not used.
- § 7.6.1.2 Not used.
- § 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable. unless otherwise precluded by Applicable Law.
- § 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.
- § 7.6.4 Fees of 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, as modified, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.
- § 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.
- **§ 7.6.5.1** Not used.

- § 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior written approval. Provided, however, that such costs shall not include any licensing and other similar fees to the Owner for accessing the electronic equipment, software or other information except for equipment and software required and used exclusively for this Project.
- § 7.6.7 Costs of document reproductions and delivery charges.
- § 7.6.8 Deposits lost for causes other than the Construction Manager's, Subcontractor's or Sub-subcontractor's fault, negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § 7.6.9 Not used.
- § 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior written approval.
- § 7.6.11 Not used.

#### § 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 provided that such damage, injury or loss was not caused by the negligence or fault of Construction Manager, Subcontractors, or Sub-subcontractors.
- § 7.7.3 Costs of repairing or correcting damaged Work performed by the Construction Manager, Subcontractors, or Sub-subcontractors, provided that such damaged Work was not caused in whole or in part by the fault of, or failure to fulfill a specific responsibility by, the Construction Manager, Subcontractors, or Sub-subcontractors, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, Sub-subcontractors, or others, provided that any such non-recovery was not the Construction Manager's, Subcontractor's or Sub-subcontractor's fault.
- § 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, as modified, 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 Agreement, 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 director, member, stockholder in, officer, or management employee of, the Construction Manager holds an equity interest in excess of ten percent (10%) 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 provide written notification to 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 written notification, provides written authorization of 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. In no event shall such transactions lead to costs in excess of the prevailing market costs.
- § 7.8.3 Except as otherwise agreed in writing, the Construction Manager may perform trade work with its own forces or through a related party only if (1) the Construction Manager has competitively bid the trade work in accordance with Applicable Law, (2) the Construction Manager's bid is submitted in the same manner as all other subcontractors, (3) the

Owner determines that the Construction Manager's bid provides the best value for the Owner, and (4) the parties agree in writing after the bids and the parties' relationship have been disclosed.

#### § 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, 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;
- 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 Sub-subcontractors, 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 signed by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality, or tribunal arising from the fault of Construction Manager or its Subcontractors or Sub-subcontractors;
- .11 Consultants to Construction Manager not previously approved in writing by Owner;
- .12 Corporate office accounting, computer or information technology systems monitoring or maintenance, check, or audit processing costs;
- .13 Costs of transportation and subsistence incurred by Construction Manager's employees stationed at the corporate or regional office unless incurred specifically for the Project with Owner's prior written approval;
- Travel expenses, , incurred by Construction Manager's employees while traveling for purposes other than the direct execution of the Work;
- costs due to labor disharmony, unrest, or strikes including but not limited to, delays, security, legal expenses and fines and work stoppages and slowdowns .16 Costs to repair defects in the Work caused by Construction Manager, its Subcontractors, Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable and other costs to comply with Construction Manager's warranty obligations under the Contract, except as may be expressly included in Section 7.7.3 above;
- .17 Incentive or bonus programs (including safety), EEO and targeted business compliance staff, safety training or seminars;
- .18 Management of warranty Work or punch list work;
- Any of the Construction Manager's federal, state or local income taxes, franchise taxes, or personal or real property taxes and the cost for any licenses obtained for the general conduct of Construction Manager's business;
- Moving and relocation costs incurred by Construction Manager in relocating personnel for the purposes of staffing the Project;
- .21 Costs resulting from the termination or default of a Subcontractor or Sub-subcontractor; and
- .22 Other costs, damages, or expenses specifically excluded elsewhere in the Contract Documents.

#### 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 or salvaged 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 other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors for the Work, who are qualified and able to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed Subcontractors and Sub-subcontractors in consultation with the Architect and, subject to Section 9.1.1, to object to any Subcontractor or Sub-subcontractor. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.
- § 9.1.1 When a specific Subcontractor (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 Construction Manager will enter into subcontracts containing the terms required by the Contract Documents including incorporating the Contract Documents by reference and providing the Contract Documents control in the event of any conflict between the Contract Documents and such subcontract. All subcontracts or other agreements issued by Construction Manager shall specifically provide that Subcontractors agree to indemnify, defend and hold Indemnitees harmless from any claims, damages, costs (including reasonable attorney's fees), liability or loss arising from personal injury, death or property damage (except for the Work itself) to the extent caused by the willful or negligent acts, errors or omissions of the Construction Manager, Subcontractors, or Sub-subcontractors as the case may be. All subcontracts and other agreements shall conform to the applicable provisions of this Agreement, including payment and Owner's rights, such as right to suspend or terminate the Work in accordance with Article 14, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. Subcontracts 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 or "time and materials" basis (or any other basis other than lump sum), 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.
- § 9.3 All Subcontractors shall be pre-qualified to the satisfaction of the Owner prior to being requested to submit a bid on that portion of the Work. Construction Manager shall publicly advertise for bids and receive bids from potential Subcontractors for all portions of the Work in accordance with the requirements of Sections 2269.255, 2269.256, and 2269.257 of the Texas Government Code.
- § 9.3.1 In accordance with Section 2269.256 of the Texas Government Code, Construction Manager shall review all bids in a manner that does not disclose the contents of the bid during the selection process to a person not employed by the Construction Manager, the Owner, or the Owner's consultants. All bids shall be made available to Owner on request and to the public after the later of (i) the award of the contract or (ii) the seventh (7<sup>th</sup>) day after the date of final selection of bids.
- § 9.3.2 In accordance with Section 2269.256 of the Texas Government Code, if the Construction Manager reviews, evaluates, and recommends to the Owner a bid from a potential Subcontractor, but the Owner requires another bid or proposal to be accepted, the Construction Manager's compensation shall be equitably adjusted to compensate the Construction Manager for the costs it incurs because of the Owner's requirement that another bid be accepted.

- § 9.4 If Construction Manager desires to self-perform a portion of the Work, Construction Manager shall submit its bid for those portions of the Work in the same manner as all other Subcontractors. The Owner shall determine whether the Construction Manager's bid provides the best value for the Owner.
- § 9.5 Owner reserves the right to cause the removal of any of Construction Manager's construction personnel or Subcontractors for any reason whatsoever and Construction Manager shall be responsible for replacing the removed personnel or Subcontractor at no cost to the Owner. Construction Manager recognizes that it has received specific consideration within the GMP and Construction Manager's Fee for Owner's right of removal identified herein.
- § 9.6 In accordance with Section 2269.257 of the Texas Government Code, if a Subcontractor defaults, the Construction Manager may itself complete the portion of the Work subcontracted to the defaulting Subcontractor without advertising for bids to complete such Work, or may select a replacement Subcontractor to fulfill the subcontract requirements.

#### ARTICLE 10 ACCOUNTING RECORDS

§ 10.1 The Construction Manager shall, and shall require all Subcontractors to, 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 and its Subcontractors' records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractors' and Sub-subcontractors' invoices, purchase orders, notes, recordings, drawings, vouchers, memoranda, superintendent's reports, daily diaries, notes, arrangements, recordings, subscriptions, leases, sources of information and matters that have any bearing on or pertain to any records subject to audit, records reasonably necessary to evaluate and verify direct and indirect costs (including overhead allocations), and other data whether electronic or paper copies, relating to this Contract or the Project. The Construction Manager shall preserve these records for a period of four (4) years after final payment, or for such longer period as may be required by Applicable Law or otherwise under the Contract Documents.

§ 10.2 Not used.

- § 10.3 Access shall be afforded to all of the Construction Manager's records, and the auditor shall be allowed to interview, and Construction Manager shall produce any of the Construction Manager's employees, for a period of three years after final payment or longer if required by law.
- § 10.4 Access shall be provided to the Construction Manager's facilities within 48 hours' notice and all necessary records for the purpose of an audit, and adequate and appropriate workspace will be provided in order to conduct audits in compliance with this article.
- § 10.5 If an audit or examination of the Construction Manager's records discloses overcharges (of any nature) by the Construction Manager then, at the Owner's option, if a 3<sup>rd</sup> party independent audit has verified the results, either the Construction Manager shall immediately reimburse the Owner for such overcharge, or the Owner may deduct the amount of such overcharges from amounts otherwise owed by the Owner to the Construction Manager. If the audit demonstrates that Construction Manager has errant charges, and that aggregate in excess of 0.75% of the GMP, the cost of the audit will be chargeable to Construction Manager.

# 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.

(Paragraphs deleted)

§ 11.1.1 Each Application for Payment shall constitute a certification and representation by the Construction Manager to the Owner and Architect that: (i) the construction has progressed to the point indicated; (ii) the quality of the Work covered by the Application is in accordance with the Contract Documents; (iii) there are no claims outstanding or known to exist at the date of the Application; (iv) all due and payable bills with respect to the Work have been paid to date or

included in the amount requested in the current Application, and there is no known basis for the filing of any claims on the Work; and (v) the Construction Manager is entitled to payment in the amount requested.

- § 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:
- § 11.1.3 Provided that a complete and accurate Application for Payment is received by the Owner not later than the 30th day of a month, the Owner shall make payment of the amount due pursuant to the terms of this Agreement to the Construction Manager not later than the 30 days after the Owner receives the Application for Payment. If a complete and accurate Application for Payment is received by the Owner after the application date fixed above, payment of shall be made by the Owner pursuant to the terms of this Agreement not later than thirty (30) days after the Owner receives the Application for Payment.
- § 11.1.4 With each Application for Payment, the Construction Manager shall provide reasonable evidence of the Cost of the Work incurred by the Construction Manager, including Construction Manager's job cost summary, budget, or other job tracking information satisfactory to Owner. In addition to the required items and if requested by Owner, each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Texas: payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner and Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.
- § 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. If requested by the Owner at any time, the Construction Manager shall furnish information, data and breakdowns as necessary for the Owner to verify the content of the schedule of values. 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 Owner 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 Not used.
- § 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- § 11.1.7 In accordance with AIA Document A201–2017, as modified, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- § 11.1.7.1 The amount of each progress payment shall first include:
  - .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

- That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that are not in dispute; and
- The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2, or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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

#### § 11.1.8 Retainage

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

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

Five Percent (5%)

#### § 11.1.8.1.1 The following items are not subject to retainage:

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

Not applicable.

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

(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.) as follows (Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Final 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. Owner shall not be required to pay the retainage if:

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

There is a bona fide dispute between the Owner and Construction Manager and the reason for the dispute is that labor, services, or materials provided by the Construction Manager, or by a person under the direction or control of the Construction Manager, failed to comply with the express terms of the Agreement or if the surety on any outstanding surety bond executed for the contract does not agree to the release of retainage.

#### § 11.1.9 Not used.

- § 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to Subcontractors 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 Construction Manager shall execute subcontracts in accordance with those agreements. Except with the Owner's prior written approval, payments to Subcontractors shall be subject to the same retainage set forth in Section 11.1.8.1.
- § 11.1.12 In taking action on the Construction Manager's Applications for Payment the Owner 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 Owner 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 Owner has made exhaustive or continuous on-site inspections; or (3) that the Owner 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 Subject to other provisions of the Contract Documents, final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when
  - 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, as modified, and to satisfy other requirements, if any, which extend beyond final payment; and the Work is acceptable to the Owner;
  - .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final complete and accurate Application for Payment;
  - the Project has achieved Final Completion; .3
  - the Construction Manager has satisfied all requirements, if any, which extend beyond Final Payment, including delivery of final as-built CAD files;
  - .5 the Construction Manager has completed its final site clean-up and restoration, including removal of all excess materials, and miscellaneous debris, supplies, and equipment; and
  - .6 all of the improvements within the scope of Work may be utilized in the ordinary course of the intended purpose for such improvements.
- § 11.2.2 Within thirty (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 Construction Manager 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 ten (10) days after completion of the audit, submit a written report based upon the auditors' findings to the Construction Manager.
- § 11.2.2.2 Within seven (7) days after receipt of any 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 Owner will either issue final payment to the Construction Manager, or notify the Construction Manager in writing of the Owner's reasons for withholding payment as provided in Article 9 of AIA Document A201-2017, as modified. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017, as modified.
- § 11.2.2.3 If the Owner's or 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 pursuant to Article 15 of AIA Document A201–2017, as modified. A request for mediation shall be made by the Construction Manager within thirty (30) days after the Construction Manager's receipt of a copy of the final request for Payment. Failure to request mediation within this thirty (30) day period shall result in the substantiated amount reported by the Owner or 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 undisputed amount certified in the final request for Payment.

§ 11.2.3 Subject to other provisions of the Contract Documents, Owner's final payment to the Construction Manager shall be made no later than thirty (30) days after Final Completion, request for final payment, and the completion of the requirements of section 11.2.1 of this Agreement.

(Paragraph deleted)

§ 11.2.4 The acceptance by Construction Manager of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Construction Manager, Subcontractors, or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by Construction Manager as unsettled at the time of the request for final payment.

§ 11.2.5 Not used.

§ 11.2.6 Not used.

#### § 11.3 Interest

(Paragraphs deleted)

Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended.

#### ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Not used.

(Paragraphs deleted)

#### § 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
[ X ]	Litigation in a court of competent jurisdiction
[ ]	Other: (Specify)

§ 12.2.1 Claims arising hereunder shall be resolved by litigation in a court of competent jurisdiction. Each of the parties hereby (i) irrevocably and unconditionally consents to submit itself to the sole and exclusive personal jurisdiction of any federal or state court within the County where the Project is located (the "Applicable Courts"), (ii) waives any objection to the laying of venue of any such litigation in any of the Applicable Courts, (iii) agrees not to plead or claim in any such court that such litigation brought therein has been brought in an inconvenient forum and agrees not otherwise to attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court, and (iv) agrees that such party will not bring any action, suit, or proceeding in connection with any dispute, claim, or controversy arising out of or relating to this Agreement or the Project in any court or other tribunal other than any of the Applicable Courts.

§ 12.2.2 The parties hereto expressly agree, in the event of litigation, the prevailing party shall be entitled to payment of reasonable attorneys' fees and costs as may be recoverable, pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law, or any other provision of applicable federal, state or local law for payment of attorney's fees.

#### ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 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

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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 the A201-2017, as modified

- § 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work properly performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement, and the Construction Manager waives any claim for termination, consequential, or indirect damages, or compensation, lost profits or renumeration of any kind as a result of any termination hereunder. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.
- § 13.1.3 If the Owner terminates the Contract pursuant to Section 13.1.1 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;
  - .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services; and
  - .4 Subtract the Owner's cost to complete and correct any portion of the Work that the Construction Manager should have completed or corrected under this Agreement, as well as any other costs, expenses, losses and damages incurred or sustained by the Owner as a result of the Construction Manager's breach of this Agreement.
- § 13.1.4 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 13.1.3.1. 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.

#### (Paragraphs deleted)

§ 13.1.4.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

# § 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, as modified.

#### § 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, as modified, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017, as modified, 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' 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, as modified, 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.)

There shall be no termination fee. I

#### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017, as modified; 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.

§ 13.4 Any termination by the Owner of the Construction Manager for cause that is subsequently determined to have been erroneous, shall be treated as a termination for convenience.

#### 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. Where reference is made in this Agreement to the "General Conditions", it shall mean AIA Document A201-2017, as modified.

#### § 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 The Construction Manager shall maintain the insurance set forth in Exhibit B, Insurance Requirements and the bonds as set forth in Article 11 of the A201-2017, as modified.

(Paragraphs deleted) (Table deleted) (Paragraphs deleted) § 14.4 Notice in electronic

#### (Paragraphs deleted)

format may be given subject to the terms of the Contract Documents.

#### § 14.5 Other provisions:

§ 14.5.1 The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement:

- that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- that it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- (iii) that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the project;
- (iv) that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- (v) that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents; and
- (vi) that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor serving in the role of a construction manager.

#### § 14.5.2 Reformation

It is agreed that the provisions set forth in this Agreement shall be reformed and amended as necessary to comply with any legal limitations now or hereafter in effect and affecting the validity or enforceability of such provisions set forth in this Agreement to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.

#### § 14.5.3 Survival

All provisions of the Contract which by their nature survive termination of this Agreement or Final Completion of the Work, including without limitation, all warranties, indemnities, indemnity obligations, confidentiality obligations, and insurance requirements that extend past completion of the Work, shall remain in force and effect after Final Completion or any termination, including termination for convenience.

#### § 14.5.4 Cumulative Remedies

Notwithstanding anything to the contrary set forth in this Agreement, all rights and remedies accorded to the Owner and the Construction Manager hereunder and by law are separate and cumulative and not alternative and may be pursued separately, successively, or concurrently at the Owner's or Construction Manager's sole option, and the pursuit of any particular remedy shall not preclude other remedies.

#### § 14.5.5 Counterparts

The parties may sign this Agreement in counterparts. Together the counterparts shall constitute a complete document. Signatures transmitted electronically shall have the same effect as physical delivery of the paper bearing the original signatures.

#### § 14.5.6 No Waiver

No act or failure to act by the Owner or Construction Manager constitutes a waiver of any right, remedy, obligation or duty afforded them under the Contract or Applicable Law, or approval of, or acquiescence in, any breach of contract or negligence of the other party, except as stated in the Contract or otherwise agreed in writing.

#### § 14.5.7 Additional Construction Manager Certifications

§ 14.5.7.1 In accordance with Section 2271.002 of the Texas Government Code, Construction Manager certifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

- § 14.5.7.2 To the extent applicable to the Project, in accordance with Section 2275.0102 of the Texas Government Code, Construction Manager certifies that it is not (1) headquartered in China, Iran, North Korea, Russia, or a designated country; or (2) owned by or the majority of stock or other ownership interest of Construction Manager is not held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country.
- § 14.5.7.3 In accordance with Section 2276.002 of the Texas Government Code, Construction Manager certifies that either (1) it meets an exemption criterion under 2276.002 of the Texas Government Code or (2) it does not boycott energy companies and will not boycott energy companies during the term of this Contract. If circumstances relevant to this provision change during the course of the contract, Construction Manager shall promptly notify Owner.
- § 14.5.7.4 In accordance with Section 2274.002 of the Texas Government Code, Construction Manager certifies that either (1) it meets an exemption criterion under Section 2274.002 or (2) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and it will not discriminate during the term of the contract against a firearm entity or firearm trade association. If circumstances relevant to this provision change during the course of the contract, Construction Manager shall promptly notify Owner.
- § 14.5.7.5 If circumstances change as it relates to any of Contactor's certifications in this Section 14.5.7, Construction Manager shall promptly notify Owner in writing.

#### § 14.5.8 Open Records

- § 14.5.8.1 Pursuant to Subchapter J, Chapter 552, Texas Government Code, Construction Manager shall:
  - Preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement.
  - (ii) Promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the entity on request of the Owner; and,
  - (iii) On completion of the Agreement, either: (a) provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the entity; or (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the governmental body.
- § 14.5.8.2 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Construction Manager agrees that the Agreement can be terminated if the Construction Manager knowingly or intentionally fails to comply with the requirement of that subchapter. The Owner may terminate this Agreement in the event Construction Manager fails to comply with Subchapter J, Texas Government Code, pursuant to Sections 552.373 and 552.374, Texas Government Code.
- § 14.5.8.3 "Contracting information" includes but is not limited to all records defined in Section 552.003(1-a), Texas Government Code and Article 10 of the Agreement.
- § 14.5.8.4 In the event of a conflict between the Owner's adopted records retention schedule and Article 10 of the Agreement, the longer retention period shall control.
- § 14.5.9 If Construction Manager is a corporation, partnership or a limited liability company, Construction Manager warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

#### § 14.5.10 Franchise Tax Certification

Construction Manager certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out of state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

#### § 14.5.11 Eligibility Certification

Construction Manager certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

#### § 14.5.12 Payment of Debt or Delinquency to the State or Political Subdivision of the State

Pursuant to Chapter 38, City of Pflugerville Code of Ordinances, Construction Manager agrees that any payments owing to Construction Manager under the Agreement may be applied directly toward any debt or delinquency that Construction Manager owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

#### § 14.5.13 General Compliance with Chapter 38 of the City's Code of Ordinances

Construction Manager acknowledges that this Agreement is conditioned upon Construction Manager's compliance with Chapter 38, Sections 38.01 through 38.07 of the City of Pflugerville Code of Ordinances, all of which are incorporated herein by reference. Construction Manager hereby certifies that Construction Manager has fully read and understood the terms and conditions for eligibility to contract with the Owner pursuant to Chapter 38 of the City of Pflugerville Code of Ordinances and by entering into this Agreement hereby certifies that Construction Manager is in compliance with these requirements.

#### § 14.5.14 Gifts to Public Servants

§ 14.5.14.1 Owner may terminate this Agreement immediately if Construction Manager has offered, conferred or agreed to confer any benefit on a City of Pflugerville employee or official that the employee or official is prohibited by law from accepting.

§ 14.5.14.2 For purposes of this Section 14.5.14, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

§ 14.5.14.3 Notwithstanding any other legal remedies, Owner may require Construction Manager to remove any employee of Construction Manager, a Subcontractor or any employee of a Subcontractor from the Project who has violated the restrictions of this Section 14.5.14 or any similar State or Federal law and Owner may obtain reimbursement for any expenditures made to Construction Manager as a result of an improper offer, an agreement to confer or the conferring of a benefit to a City of Pflugerville employee or official.

#### § 14.5.15 Prevailing Wages

The provisions of Chapter 2258 of the Texas Government Code expressly are made a part of this Contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform this Contract is part of the Contract Documents for all purposes. Construction Manager shall forfeit, as a penalty to City, sixty dollars (\$60.00) for each laborer, worker or mechanic employed for each calendar day, or portion thereof, in which such laborer, worker or mechanic is paid less than the stipulated prevailing wage rates for any Work done under this Contract by the Construction Manager or any Subcontractor or Sub-subcontractor employed on the project. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Construction Manager from its obligation under any federal or state law, regarding the wages to be paid to or hours worked by laborers, workers or mechanics, insofar as applicable to the Work to be performed hereunder.

#### § 14.5.16 Unavailability of Funds

Construction Manager accepts and agrees that all payments pursuant to this Contract are subject to the availability and appropriation of funds by the Pflugerville City Council. If funds are not available and appropriated, this Contract may immediately be terminated by Ownerwith no liability to any Party to this Contract .

#### § 14.5.17 No Waiver of Governmental Immunity.

Nothing in this Contract shall be construed to waive Owner's Governmental Immunity from a lawsuit, which Immunity is expressly retained to the extent it is not clearly and unambiguously waived by Applicable Law.

#### 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:

- AIA Document A133<sup>TM</sup>–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified by the parties
- .2 AIA Document A133<sup>TM</sup>-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- Not used. .3
- AIA Document A201<sup>TM</sup>–2017, General Conditions of the Contract for Construction, as modified by the parties.
- .5 Not used.
- Other Exhibits:

(Check all boxes that apply.)

(Paragraphs deleted)

[ ] Supplementary and other Conditions of the Contr
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Document	Title	Date	Pages
N/A			

.7 Other documents, if any, listed below:

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

Exhibit B	Insurance Requirements
Exhibit C	Rates and Salaries
Exhibit D	Key Personnel

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

	Hary aa	ninson	
OWNER (Signature)	CONSTRUCTION MANAGER (Signature)		
	Gary Aanenson	Executive Vice President	
(Printed name and title)	(Printed name and title)	<del></del>	

DocuSigned by:

## Additions and Deletions Report for

AIA<sup>®</sup> Document A133<sup>®</sup> – 2019

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#### PAGE 1

**AGREEMENT** made as of the 7<sup>th</sup> day of August in the year 2024

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

City of Pflugerville P.O. Box 589 Pflugerville, TX 78691

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

CORE Construction Services of Texas, Inc. 6320 Research Road Frisco, TX 75033 (972) 688-9340

City of Pflugerville **Public Works Complex** Pflugerville, Texas

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

Marmon Mok, LP 1020 NE Loop 410, Suite 201 San Antonio, Texas 78209 PAGE 2

#### **EXHIBIT B INSURANCE AND BONDSREQUIREMENTS**

\$75,000,000 PAGE 3

October 15, 2024

January 2, 2025 July 15, 2026 N/A None **Brandon Pritchett** City of Pflugerville Email: brandonp@pflugervilletx.gov Phone: (512) 990-6402 PAGE 4 Geotechnical Engineer: .1 Not used. Civil Engineer: Not used. .3 Other, if any: (List any other consultants retained by the Owner, such as a Project or Program Manager.) Not used.

> Denise Dart Marmon Mok, LP

Email: dart@marmonmok.com

Phone: (210) 223-9492

Gary Aanenson, Executive Vice President CORE Construction Services of Texas, Inc. 6320 Research Road Frisco, Texas 75033 (972) 688-9340

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Email: garyaanenson@coreconstruction.com

...

§ 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 may 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.

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The Construction Manager accepts the relationship of trust and confidence established by this Agreement and Agreement. Construction Manager represents itself as having expertise in planning, scheduling, budgeting, and construction means and methods dictated by design parameters outlined in Contract Documents, and Construction Manager covenants with the Owner to cooperate with the Architect Architect, Owner's separate contractors, consultants, and design professionals, if any, 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. In its capacity as a general contractor, not as a design professional, the Construction Manager represents and warrants to the Owner that is experienced in the construction of projects of similar size, scope, and quality to the Project and that it is familiar with and knowledgeable regarding the components that are properly and customarily included with such a project, including the requirements of state laws, local building codes, labor laws and labor markets applicable to the Work, and local building officials consistent with the knowledge of a competent construction manager and general contractor regularly engaged in the construction of such comparable projects.

...

§ 2.3.1 For the Preconstruction Phase, AIA Document A201<sup>TM</sup>–2017, General Conditions of the Contract for Construction, <u>as modified</u>, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section <del>1.7, 1.6.3, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.</del>

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

...

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 A201-2017, as modified, referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a Manager's representative authorized to act on behalf of the Construction Manager with respect to the Project is identified in Section 1.1.12.

...

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 Except as otherwise required by Applicable Law, 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.

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§ 3.1.3.2 The Construction Manager shall advise-provide recommendations consistent with the Project requirements, in writing, to the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; improvements; selection of materials; building systems; equipment; constructability; scope; 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 designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. Construction Manager shall provide such written recommendations, at minimum, with the Design Development drawings and specifications, and when the Construction Documents reach 75%. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project. Not used.

...

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-Construction Manager shall coordinate and integrate the Project schedule with the services and activities of Owner, Construction Manager, Architect, and the requirements of governmental entities. As design proceeds, Construction Manager shall update the Project schedule to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Project schedule updates indicate that milestone dates contained in prior Project schedules will not be met, Construction Manager shall notify and make recommendations to Owner. Construction Manager shall make recommendations to Owner and Architect regarding the phased issuance of the drawings and specifications.

• • •

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. The Construction Manager shall also develop a site utilization plan showing routing, temporary facilities, and safety-related fencing and barricades proposed for the Project.

...

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of

the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform inform, in writing, the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action. One cost estimates shall be provided, at a minimum, prior to submission of the GMP: one (1) cost estimate at 100% Design Development.

- § 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. Not used.
- § 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. Construction Manager further agrees to work cooperatively with the Architect and review the Construction Documents and specifications, to be developed by the Architect in Construction Manager's capacity as a contractor and provide comments and recommendations to the Owner and Architect relating to the constructability with reasonable efficiency considering the site of the Project, availability of work force, time constraints, and prevailing trade practices within the construction industry concerning projects of this kind.

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§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234<sup>TM</sup> 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.Not used.

#### § 3.1.11 Subcontractors and Suppliers Subcontractors

- § 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, The Construction Manager shall establish budgets by bid package for the Construction Documents Phase. The Construction Manager shall develop and prepare Subcontractor bid and proposal packages, addressing the Owner's requirements, for the Owner's review and approval.
- § 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. Project by publicly advertising for bids for the performance of all major elements of the work, other than minor work that may be included in Construction Manager's general conditions. Construction Manager shall conduct pre-bid meetings and receive Subcontractor bids in accordance with Article 9 and Applicable Law.

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 all applicable federal, state, and local life safety and building codes, laws, rules, regulations, statutes, ordinances, , and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.authorities, including accessibility laws ("Applicable Law") that in any way relate to the Construction Manager's obligations under the Contract Documents.

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

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

[N/A]

§ 3.1.15 Time is of the essence in the delivery of Construction Manager's preconstruction phase services.

...

- § 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a the Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. review and acceptance, using the form attached as Exhibit A. 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 shall include 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. By executing this Agreement and submitting the Guaranteed Maximum Price proposal, the Construction Manager agrees that the Contract Documents and materials and information furnished to the Construction Manager as of the date of submission of the Guaranteed Maximum Price proposal have described the scope, construction requirements, and actual building program and design (as specifically represented by said documents) of the Work in sufficient detail so as to support the proposal. The Construction Manager is not permitted to claim any adjustment in either the Guaranteed Maximum Price or Contract Time in connection with the completion of final drawings and specifications except as specifically provided herein.

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.4 The A proposed Project schedule (reflecting revisions to any previously approved Project schedule), showing all critical path milestones as well as the anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

...

- § 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, the basis of the proposal, 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 in the form attached hereto as Exhibit A, 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.

• • •

§ 3.2.8 The If required, and agreed upon by the Owner, 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.

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- § 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, <u>as modified</u>, 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. within seven (7) days from Construction Manager's receipt of the latter of the following:
  - . Fully executed Agreement including the GMP Amendment.

- 2. Issuance of any permits required to commence the Work so long as Construction Manager has timely and properly submitted all applications for permits.
- 3. Owner's Notice to Proceed with Construction; and
- 4. Reasonable and necessary access to the Project site for commencement of work.

Prior to the acceptance of a Guaranteed Maximum Price proposal, the parties may, by written agreement, establish a date of commencement of the Construction Phase. 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. Prior to the commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work without prior written approval by the Owner.

- § 3.3.1.3 The Construction Manager shall fully execute the Work described in the Contract Documents and reasonably inferable therefrom to provide the results intended by the Contract Documents except to the extent specifically indicated in the Contract Documents to be the responsibility of others. Construction Manager understands that time is of the essence in the delivery of Construction Manager's services.
- § 3.3.1.4 The Construction Manager shall furnish only experienced staff for the performance of the Work and in accordance with Exhibit D. Key members of the Construction Manager's staff shall not be changed without the advanced written consent of the Owner, unless such person becomes unable to perform any required duties due to death, disability, transfer, or termination of employment with the Construction Manager or unless Owner requests removal. If a key member is no longer capable of performing or is removed by the Owner, the Owner and the Construction Manager shall agree on a mutually acceptable substitute. Written notice from the Owner or the Architect to the Construction Manager's superintendent, designated representative, or its project manager in connection with defective Work, or instruction for performance, shall be considered notice of such issues to the Construction Manager.
- § 3.3.1.5 At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who is able to communicate fluently in English, along with any necessary assistant(s) who is/are satisfactory to Owner. Any superintendent designee shall be identified in writing to Owner promptly after Owner issues written Notice to Proceed. The superintendent shall represent Contractor at all times and all written directions given to the superintendent shall be binding on Contractor. The designated superintendent shall not be replaced without written notice to and the approval of Owner, which approval shall not be unreasonably withheld, except with good reason (including any termination or disability of the superintendent) or under extraordinary circumstances or as otherwise permitted under the Contract. The superintendent may not be employed on any other project prior to Final Completion of the Work without the approval of Owner, which approval shall not be unreasonably withheld.
- § 3.3.1.6 Contractor shall furnish an updated list to Architect and Owner of all architects, engineers, consultants, subcon-consultants, job-site superintendents, Subcontractors, and Sub-subcontractors involved in the Project.
- § 3.3.1.7 Owner reserves the right to utilize one or more of its employees or Consultants to function in the capacity of Owner's inspector or construction observer, whose primary function shall be daily inspections of the Work, checking pay requests or construction timelines and the verification of the storage of supplies and materials.

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- § 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. A201–2017, as modified.

...

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 completion, consumption and status of contingency, and other information required by the Owner. The reports shall include current properly annotated photographs, updated milestone and critical path reports, and the findings or feedback from any inspections of the site or Work by any third parties.

...

§ 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. Not used.

...

- § 4.1.4.2 The Owner shall furnish Upon written request of Construction Manager, the Owner shall furnish available 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 <u>reasonably</u> 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 necessary for 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<sup>TM</sup> 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to The Owner's acknowledgement of any portion of the Work furnished hereunder shall not in any way relieve the Construction Manager of responsibility for the accuracy of the Work, consistent with the requirements of the Contract Documents. The Owner's acknowledgement or acceptance of, or payment for, any of the Construction Manager's services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of performance under this Agreement.

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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. and furnish information in a reasonable amount of time. Except as otherwise provided in Section 4.2.1 of A201–2017, as modified, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Not used.

...

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133<sup>TM</sup> 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. 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.duties, and responsibilities as necessary for the Project consistent with the Contract Documents

...

A lump sum fee of Thirty Thousand and 00/100 dollars (\$\$30,000).

If additional Preconstruction Phase services beyond those established in Sections 3.1 and 3.2 are requested by the Owner, the Construction Manager shall perform those services at the hourly rates established in Section 5.1.2 or otherwise as mutually agreed to in writing. Construction Manager shall not perform any additional Preconstruction Phase services beyond those outlined in Sections 3.1 and 3.2 without Owner's prior written approval.

...

# [ "See Exhibit C"]

...

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within (—) twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted by Amendment to the Agreement.

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§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () 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. thirty (30) days after Owner's receipt of Construction Manager's complete and accurate Application for Payment. Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment (Insert rate of monthly or annual interest agreed upon.)

%—Act, Chapter 2251, Texas Government Code, as amended.

...

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

The Construction Manager's Fee shall be an amount equal to Five percent (5 %) of the total Cost of the Work.

§ 6.1.2.1 The Construction Manager's Fee shall not be subject to reduction for decreases in the Cost of the Work for accepted Value Engineering Proposals, or deductive changes in the Work.

...

For changes in the Work, the following maximum amounts shall be included in the Construction Manager's change proposal. All associated costs shall be fully documented including Subcontractor back-up.

Same as above fee structure.

•••

Five Percent (5%).

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed <u>one hundred</u> percent (100%) of the standard rental rate paid at the place of the Project. Project in accordance with Section 7.5.2.

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In the event that Substantial Completion of the entirety of the Work or a designated portion thereof is not achieved by the required date of Substantial Completion (including extensions of time to which the Construction Manager may be entitled under the express terms of this Agreement), the Construction Manager shall pay to the Owner, as liquidated damages and not as a penalty (and in lieu of damages incurred by the Owner as a result of such delay), the liquidated damage amount specified in the GMP Amendment. The parties acknowledge and agree that the actual delay damages which Owner will suffer in the event of a delay in achieving Substantial Completion of the entirety of the Work or a designated portion thereof within the Contract Time are difficult, if not impossible, to determine and that the liquidated damages described herein shall in no way be deemed a penalty, and are a fair and reasonable estimate of the delay damages which the Owner is expected to suffer in the event of such delay. Owner may deduct any liquidated damages due hereunder from payments due Construction Manager until liquidated damages due hereunder are paid to the Owner. Liquidated damages will be the Owner's exclusive damage remedy for the Construction Manager's failure to achieve Substantial Completion of the entirety of the Work or a designated portion thereof within the timeline set forth in any GMP Amendment, but such damages will in no way limit the Owner's exercise of any other rights and remedies under the Contract or entitlement to damages for any other injury, damage or loss, other than for delay, for which the Construction Manager may be responsible pursuant to the terms of this Agreement or applicable law, including, without limitation, any termination rights that the Owner may have as a result of such delay. If Construction Manager challenges the enforceability of the liquidated damages as set forth in this Section and the liquidated damages are deemed by a court or arbitrator of competent jurisdiction to be unenforceable, then notwithstanding anything to the contrary set forth in the Contract Documents, Owner shall be entitled to recover all damages sustained by Owner, including but not limited to actual and consequential damages proximately caused as a result of the Construction Manager's failure to achieve Substantial Completion within the timeline set forth herein.

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

...

- § 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction. Construction, as modified.
- § 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. Construction, as modified.
- **§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as <u>modified</u>, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee <u>shall be calculated in accordance with the terms of this Agreement, unless the Owner has furnished the Construction Manager with prior written approval of the form and substance of a subcontract, in which case such adjustment shall be calculated in accordance with the terms of those subcontracts.</u>
- § 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement. The Construction Manager shall submit detailed proposals or Subcontractor proposals showing the price to be paid for all materials, supplies, equipment, rental costs and related items used in the Change Order. The labor burden used for the Change Order work shall be as provided in Article 7. Any other costs included in the Change Order, including labor rates, shall be documented as to actual and direct cost to the Construction Manager.
- § 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work,

and the Guaranteed Maximum Price shall be adjusted accordingly. In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017, as modified, 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.

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.7.7 and shall never include the Construction Manager's Fee.

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# § 7.2 Labor Costs

§ 7.1.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment, If any particular item for which payment may be requested can be characterized as falling into more than one compensable or reimbursable item under the Contract Documents, the Construction Manager shall make full disclosure of such item and allocate such item to a compensable reimbursable category as directed by the Owner.

§ 7.1.5 Not used.

# § 7.2 Labor Costs.

§ 7.2.1 Wages or salaries of Only those direct and actual wages of the Construction Manager's on-site 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 written approval, at off-site locations at the agreed rates set forth in Exhibit C.

§ 7.2.2 Wages-Only those direct and actual 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, approval, at the agreed rates set forth in Exhibit C.

At the agreed rates set forth in **Exhibit C**, or as otherwise approved by Owner in writing.

- § 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. Not used.
- § 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, 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. Not used.

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Amounts properly billed by Subcontractors for Work which has been approved by the Construction Manager and which otherwise satisfies all requirements of the subcontracts. Except for preservation of the Construction Manager's right to make receipt of payment from the Owner a condition precedent to the Construction Manager's obligation to pay Subcontractors and Sub-subcontractors. Subcontractor and Sub-subcontractor agreements otherwise shall conform to all 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 consent.

- § 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, site or off site with Owner's prior written approval, of materials and equipment incorporated, if delivered and suitably stored at the site or off site, or to be incorporated, in the completed construction. Off-site storage shall be subject to Section 7.4.1.1 below.
- § 7.4.1.1 Construction Manager shall be entitled to payment for materials suitably stored off the site at a location agreed upon in writing by Owner and Owner's lender (if any) or as set forth in Section 7.4.2, conditioned on the following:
  - evidence satisfactory to Owner that the stored materials are included in the coverage of insurance policies naming the Owner as a loss payee and Owner's lender (if any) as a mortgagee and loss
  - bills of lading, invoices, and/or bills of sale satisfactory to Owner from the seller, supplier, or fabricator of the stored materials, evidencing the cost of such stored materials and that, upon payment, ownership thereof will vest in the Owner, free of any liens or claims of third parties; and
  - verification (which may, at Owner's election, include physical inspection by Owner or its designated representative) of delivery and suitable storage of such materials in a warehouse or storage yard approved by the Owner (including the Owner's approval of the terms of such storage, including adequacy of insurance).
- § 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 and shall be properly stored at the site (or elsewhere, at Owner's option) in accordance with Owner's instructions, 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. **PAGE 15**
- § 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 written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.
- § 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval. Not used.
- § 7.5.6 Not used.
- § 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents or Subcontractor Default Insurance that can be reasonably calculated and directly attributed to this Contract.
- § 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Not used.
- § 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval. Not used.
- § 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable. unless otherwise precluded by Applicable Law.

§ 7.6.4 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 A201–2017, as modified, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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- § 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price. Not used.
- § 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior <u>written</u> approval. <u>Provided, however, that such costs shall not include any licensing and other similar fees to the Owner for accessing the electronic equipment, software or other information except for equipment and software required and used exclusively for this Project.

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- § 7.6.8 Deposits lost for causes other than the Construction Manager's Manager's, Subcontractor's or Sub-subcontractor's fault, negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. Not used.
- § 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior <u>written approval</u>.
- § 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work. Not used.

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- § 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.property provided that such damage, injury or loss was not caused by the negligence or fault of Construction Manager, Subcontractors, or Sub-subcontractors.
- § 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed Work performed by the Construction Manager, Subcontractors, or suppliers, Sub-subcontractors, provided that such damaged or nonconforming. Work was not caused by the negligence in whole or in part by the fault of, or failure to fulfill a specific responsibility by, the Construction Manager, Subcontractors, or Sub-subcontractors, 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. Sub-subcontractors, or others, provided that any such non-recovery was not the Construction Manager's, Subcontractor's or Sub-subcontractor's fault.
- § 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 A201–2017, as modified, or other Conditions 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.

- § 7.8.1 For purposes of this Section 7.8, Agreement, 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 director, member, stockholder in, officer, or management employee of, the Construction Manager holds an equity interest in excess of ten percent (10%) 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-provide written notification to 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 written notification, provides written authorization of 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. In no event shall such transactions lead to costs in excess of the prevailing market costs.
- § 7.8.3 Except as otherwise agreed in writing, the Construction Manager may perform trade work with its own forces or through a related party only if (1) the Construction Manager has competitively bid the trade work in accordance with Applicable Law, (2) the Construction Manager's bid is submitted in the same manner as all other subcontractors, (3) the Owner determines that the Construction Manager's bid provides the best value for the Owner, and (4) the parties agree in writing after the bids and the parties' relationship have been disclosed.

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.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. Subcontractor, unless the Owner has provided prior approval;

.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, Sub-subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

- Costs, other than costs included in Change Orders approved signed by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- Costs for services incurred during the Preconstruction Phase. Phase;
- Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality, or tribunal arising from the fault of Construction Manager or its Subcontractors or Sub-subcontractors;
- Consultants to Construction Manager not previously approved in writing by Owner;
- Corporate office accounting, computer or information technology systems monitoring or maintenance, check, or audit processing costs;
- .13 Costs of transportation and subsistence incurred by Construction Manager's employees stationed at the corporate or regional office unless incurred specifically for the Project with Owner's prior written approval;
- Travel expenses, , incurred by Construction Manager's employees while traveling for purposes other than the direct execution of the Work;
- .15 Costs due to labor disharmony, unrest, or strikes including but not limited to, delays, security, legal expenses and fines and work stoppages and slowdowns .16 Costs to repair defects in the Work caused by Construction Manager, its Subcontractors, Sub-subcontractors or anyone directly or

- indirectly employed by any of them or for whose acts any of them may be liable and other costs to comply with Construction Manager's warranty obligations under the Contract, except as may be expressly included in Section 7.7.3 above;
- .17 Incentive or bonus programs (including safety), EEO and targeted business compliance staff, safety training or seminars;
- .18 Management of warranty Work or punch list work;
- Any of the Construction Manager's federal, state or local income taxes, franchise taxes, or personal or real property taxes and the cost for any licenses obtained for the general conduct of Construction Manager's business;
- Moving and relocation costs incurred by Construction Manager in relocating personnel for the purposes of staffing the Project;
- .21 Costs resulting from the termination or default of a Subcontractor or Sub-subcontractor; and
- .22 Other costs, damages, or expenses specifically excluded elsewhere in the Contract Documents.

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- § 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 or salvaged materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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- § 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially Subcontractors for the Work, who are qualified and able to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers-Subcontractors and Sub-subcontractors in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Subcontractor or Sub-subcontractor. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.
- § 9.1.1 When a specific subcontractor or supplier Subcontractor (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 Construction Manager will enter into subcontracts containing the terms required by the Contract Documents including incorporating the Contract Documents by reference and providing the Contract Documents control in the event of any conflict between the Contract Documents and such subcontract. All subcontracts or other agreements issued by Construction Manager shall specifically provide that Subcontractors agree to indemnify, defend and hold Indemnitees harmless from any claims, damages, costs (including reasonable attorney's fees), liability or loss arising from personal injury, death or property damage (except for the Work itself) to the extent caused by the willful or negligent acts, errors or omissions of the Construction Manager, Subcontractors, or Sub-subcontractors as the case may be. All subcontracts and other agreements shall conform to the applicable payment provisions of this Agreement, including payment and Owner's rights, such as right to suspend or terminate the Work in accordance with Article 14, 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, fee or "time and materials" basis (or any other basis other than lump sum), 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.

- § 9.3 All Subcontractors shall be pre-qualified to the satisfaction of the Owner prior to being requested to submit a bid on that portion of the Work. Construction Manager shall publicly advertise for bids and receive bids from potential Subcontractors for all portions of the Work in accordance with the requirements of Sections 2269.255, 2269.256, and 2269.257 of the Texas Government Code.
- § 9.3.1 In accordance with Section 2269.256 of the Texas Government Code, Construction Manager shall review all bids in a manner that does not disclose the contents of the bid during the selection process to a person not employed by the Construction Manager, the Owner, or the Owner's consultants. All bids shall be made available to Owner on request and to the public after the later of (i) the award of the contract or (ii) the seventh (7th) day after the date of final selection of bids.
- § 9.3.2 In accordance with Section 2269.256 of the Texas Government Code, if the Construction Manager reviews, evaluates, and recommends to the Owner a bid from a potential Subcontractor, but the Owner requires another bid or proposal to be accepted, the Construction Manager's compensation shall be equitably adjusted to compensate the Construction Manager for the costs it incurs because of the Owner's requirement that another bid be accepted.
- § 9.4 If Construction Manager desires to self-perform a portion of the Work, Construction Manager shall submit its bid for those portions of the Work in the same manner as all other Subcontractors. The Owner shall determine whether the Construction Manager's bid provides the best value for the Owner.
- § 9.5 Owner reserves the right to cause the removal of any of Construction Manager's construction personnel or Subcontractors for any reason whatsoever and Construction Manager shall be responsible for replacing the removed personnel or Subcontractor at no cost to the Owner. Construction Manager recognizes that it has received specific consideration within the GMP and Construction Manager's Fee for Owner's right of removal identified herein.
- § 9.6 In accordance with Section 2269.257 of the Texas Government Code, if a Subcontractor defaults, the Construction Manager may itself complete the portion of the Work subcontracted to the defaulting Subcontractor without advertising for bids to complete such Work, or may select a replacement Subcontractor to fulfill the subcontract requirements.

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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.§ 10.1 The Construction Manager shall, and shall require all Subcontractors to, 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 and its Subcontractors' records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractors' and Sub-subcontractors' invoices, purchase orders, notes, recordings, drawings, vouchers, memoranda, superintendent's reports, daily diaries, notes, arrangements, recordings, subscriptions, leases, sources of information and matters that have any bearing on or pertain to any records subject to audit, records reasonably necessary to evaluate and verify direct and indirect costs (including overhead allocations), and other data whether electronic or paper copies, relating to this Contract or the Project. The Construction Manager shall preserve these records for a period of four (4) years after final payment, or for such longer period as may be required by Applicable Law or otherwise under the Contract Documents.

# § 10.2 Not used.

- § 10.3 Access shall be afforded to all of the Construction Manager's records, and the auditor shall be allowed to interview, and Construction Manager shall produce any of the Construction Manager's employees, for a period of three years after final payment or longer if required by law.
- § 10.4 Access shall be provided to the Construction Manager's facilities within 48 hours' notice and all necessary records for the purpose of an audit, and adequate and appropriate workspace will be provided in order to conduct audits in compliance with this article.
- § 10.5 If an audit or examination of the Construction Manager's records discloses overcharges (of any nature) by the Construction Manager then, at the Owner's option, if a 3<sup>rd</sup> party independent audit has verified the results, either the Construction Manager shall immediately reimburse the Owner for such overcharge, or the Owner may deduct the amount of such overcharges from amounts otherwise owed by the Owner to the Construction Manager. If the audit demonstrates that Construction Manager has errant charges, and that aggregate in excess of 0.75% of the GMP, the cost of the audit will be chargeable to Construction Manager.

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- § 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:
- § 11.1.1.1 Each Application for Payment shall constitute a certification and representation by the Construction Manager to the Owner and Architect that: (i) the construction has progressed to the point indicated; (ii) the quality of the Work covered by the Application is in accordance with the Contract Documents; (iii) there are no claims outstanding or known to exist at the date of the Application; (iv) all due and payable bills with respect to the Work have been paid to date or included in the amount requested in the current Application, and there is no known basis for the filing of any claims on the Work; and (v) the Construction Manager is entitled to payment in the amount requested.
- § 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:
- § 11.1.3 Provided that an a complete and accurate Application for Payment is received by the Architect-Owner not later than the 30th day of a month, the Owner shall make payment of the amount certified due pursuant to the terms of this Agreement to the Construction Manager not later than the day of the month. If an 30 days after the Owner receives the Application for Payment. If a complete and accurate Application for Payment is received by the Architect Owner after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.

  (Federal, state or local laws may require payment within a certain period of time.) pursuant to the terms of this Agreement not later than thirty ( 30 ) days after the Owner receives the Application for Payment.
- § 11.1.4 With each Application for Payment, the Construction Manager shall submit-provide reasonable evidence of the Cost of the Work incurred by the Construction Manager, including Construction Manager's job cost summary, budget, or other job tracking information satisfactory to Owner. In addition to the required items and if requested by Owner, each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Texas: payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or and Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. If requested by the Owner at any time, the Construction Manager shall furnish information, data and breakdowns as necessary for the Owner to verify the content of the schedule of values. 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 <u>Architect Owner may</u> require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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§ 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. Not used.

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§ 11.1.7 In accordance with AIA Document A201 2017 A201 2017, as modified, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows: PAGE 21

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; are not in dispute; and

A The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2-6.1.2, or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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Five Percent (5%)

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Not applicable.

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(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.) as follows (Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

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§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial-Final 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: Owner shall not be required to pay the retainage if: (Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial-Final 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. There is a bona fide dispute between the Owner and Construction Manager and the reason for the dispute is that labor, services, or materials provided by the Construction Manager, or by a person under the direction or control of the Construction Manager, failed to comply with the express terms of the Agreement or if the surety on any outstanding surety bond executed for the contract does not agree to the release of retainage.

# § 11.1.9 Not used.

- § 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers-Subcontractors 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. Except with the Owner's prior written approval, payments to Subcontractors shall be subject to the same retainage set forth in Section 11.1.8.1.
- § 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect Owner 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 Owner 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 Owner has made exhaustive or continuous on-site inspections; or (3) that the Architect Owner 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.

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- § 11.2.1 Final Subject to other provisions of the Contract Documents, 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, <u>as modified</u>, and to satisfy other requirements, if any, which extend beyond final payment; <u>and the Work is acceptable to the Owner</u>;
  - .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final complete and accurate Application for Payment; and
  - a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.the Project has achieved Final Completion;
  - .4 the Construction Manager has satisfied all requirements, if any, which extend beyond Final Payment, including delivery of final as-built CAD files;
  - .5 the Construction Manager has completed its final site clean-up and restoration, including removal of all excess materials, and miscellaneous debris, supplies, and equipment; and
  - all of the improvements within the scope of Work may be utilized in the ordinary course of the intended purpose for such improvements.

- § 11.2.2 Within 30 thirty (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 Construction Manager 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-ten (10) days after completion of the audit, submit a written report based upon the auditors' findings to the Architect. Construction Manager.
- § 11.2.2.2 Within seven (7) days after receipt of the any 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 Owner will either issue final payment to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's Owner's reasons for withholding a certificate payment as provided in Article 9 of AIA Document A201–2017, as modified. 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. A201–2017, as modified.
- § 11.2.2.3 If the Owner's or 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. A201 2017, as modified. A request for mediation shall be made by the Construction Manager within 30-thirty (30) days after the Construction Manager's receipt of a copy of the Architect's final Certificate final request for Payment. Failure to request mediation within this 30-day-thirty (30) day period shall result in the substantiated amount reported by the Owner or 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 undisputed amount certified in the Architect's final Certificate final request for Payment.
- § 11.2.3 The Subject to other provisions of the Contract Documents, Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

thirty (30) days after Final Completion, request for final payment, and the completion of the requirements of section 11.2.1 of this Agreement.

- § 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.
- § 11.2.4 The acceptance by Construction Manager of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Construction Manager, Subcontractors, or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by Construction Manager as unsettled at the time of the request for final payment.

# § 11.2.5 Not used.

#### § 11.2.6 Not used.

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.)

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

§ 12.1.2 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.)

[ X ] Litigation in a court of competent jurisdiction

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.

§ 12.2.1 Claims arising hereunder shall be resolved by litigation in a court of competent jurisdiction. Each of the parties hereby (i) irrevocably and unconditionally consents to submit itself to the sole and exclusive personal jurisdiction of any federal or state court within the County where the Project is located (the "Applicable Courts"), (ii) waives any objection to the laying of venue of any such litigation in any of the Applicable Courts, (iii) agrees not to plead or claim in any such court that such litigation brought therein has been brought in an inconvenient forum and agrees not otherwise to attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court, and (iv) agrees that such party will not bring any action, suit, or proceeding in connection with any dispute, claim, or controversy arising out of or relating to this Agreement or the Project in any court or other tribunal other than any of the Applicable Courts.

§ 12.2.2 The parties hereto expressly agree, in the event of litigation, the prevailing party shall be entitled to payment of reasonable attorneys' fees and costs as may be recoverable, pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law, or any other provision of applicable federal, state or local law for payment of attorney's fees.

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, 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, 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.Owner for the reasons set forth in Article 14 of the A201-2017, as modified

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(1867591533)

- § 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work properly performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. Agreement, and the Construction Manager waives any claim for termination, consequential, or indirect damages, or compensation, lost profits or renumeration of any kind as a result of any termination hereunder. 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 If the Owner terminates the Contract pursuant to Section 13.1.1 after the commencement of the Construction Phase but 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. 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:
  - Take the Cost of the Work incurred by the Construction Manager to the date of termination:
  - 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;
  - Subtract the aggregate of previous payments made by the Owner for Construction Phase services; and
  - Subtract the Owner's cost to complete and correct any portion of the Work that the Construction Manager should have completed or corrected under this Agreement, as well as any other costs, expenses, losses and damages incurred or sustained by the Owner as a result of the Construction Manager's breach of this Agreement.
- § 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1. 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 13.1.3.1. 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.
- § 13.1.5 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:
  - Take the Cost of the Work incurred by the Construction Manager to the date of termination;
  - 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
  - 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. 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.

§ 13.1.4.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

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

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

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If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, as modified, then the Owner shall pay the Construction Manager a termination fee as follows:

There shall be no termination fee. I

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; A201–2017, as modified; 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.

§ 13.4 Any termination by the Owner of the Construction Manager for cause that is subsequently determined to have been erroneous, shall be treated as a termination for convenience.

§ 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. Where reference is made in this Agreement to the "General Conditions", it shall mean AIA Document A201-2017, as modified.

#### § 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 eost.insurance set forth in Exhibit B, Insurance Requirements and the bonds as set forth in Article 11 of the A201-2017, as modified.

- § 14.3.1.1 Commercial General Liability with policy limits of not less than (\$ ) for each occurrence and (\$ ) in the aggregate for bodily injury and property damage.
- § 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (\$\) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.
- § 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 (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.
- § 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

# § 14.3.1.6 Other Insurance

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

#### Limits Coverage

- § 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 A133TM 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 a building information modeling exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with a building information modeling exhibit, 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.)

format may be given subject to the terms of the Contract Documents.

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§ 14.5.1 The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement:

- that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- (ii) that it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- (iii) that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the project:
- that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- (v) that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents; and
- (vi) that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor serving in the role of a construction manager.

#### § 14.5.2 Reformation

It is agreed that the provisions set forth in this Agreement shall be reformed and amended as necessary to comply with any legal limitations now or hereafter in effect and affecting the validity or enforceability of such provisions set forth in this Agreement to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.

# § 14.5.3 Survival

All provisions of the Contract which by their nature survive termination of this Agreement or Final Completion of the Work, including without limitation, all warranties, indemnities, indemnity obligations, confidentiality obligations, and insurance requirements that extend past completion of the Work, shall remain in force and effect after Final Completion or any termination, including termination for convenience.

# § 14.5.4 Cumulative Remedies

Notwithstanding anything to the contrary set forth in this Agreement, all rights and remedies accorded to the Owner and the Construction Manager hereunder and by law are separate and cumulative and not alternative and may be pursued separately, successively, or concurrently at the Owner's or Construction Manager's sole option, and the pursuit of any particular remedy shall not preclude other remedies.

# § 14.5.5 Counterparts

The parties may sign this Agreement in counterparts. Together the counterparts shall constitute a complete document. Signatures transmitted electronically shall have the same effect as physical delivery of the paper bearing the original signatures.

# § 14.5.6 No Waiver

No act or failure to act by the Owner or Construction Manager constitutes a waiver of any right, remedy, obligation or duty afforded them under the Contract or Applicable Law, or approval of, or acquiescence in, any breach of contract or negligence of the other party, except as stated in the Contract or otherwise agreed in writing.

# § 14.5.7 Additional Construction Manager Certifications

- § 14.5.7.1 In accordance with Section 2271.002 of the Texas Government Code, Construction Manager certifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.
- § 14.5.7.2 To the extent applicable to the Project, in accordance with Section 2275.0102 of the Texas Government Code, Construction Manager certifies that it is not (1) headquartered in China, Iran, North Korea, Russia, or a designated country; or (2) owned by or the majority of stock or other ownership interest of Construction Manager is not held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country.
- § 14.5.7.3 In accordance with Section 2276.002 of the Texas Government Code, Construction Manager certifies that either (1) it meets an exemption criterion under 2276.002 of the Texas Government Code or (2) it does not boycott energy companies and will not boycott energy companies during the term of this Contract. If circumstances relevant to this provision change during the course of the contract, Construction Manager shall promptly notify Owner.
- § 14.5.7.4 In accordance with Section 2274.002 of the Texas Government Code, Construction Manager certifies that either (1) it meets an exemption criterion under Section 2274.002 or (2) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and it will not discriminate during the term of the contract against a firearm entity or firearm trade association. If circumstances relevant to this provision change during the course of the contract, Construction Manager shall promptly notify Owner.
- § 14.5.7.5 If circumstances change as it relates to any of Contactor's certifications in this Section 14.5.7, Construction Manager shall promptly notify Owner in writing.

# § 14.5.8 Open Records

- § 14.5.8.1 Pursuant to Subchapter J, Chapter 552, Texas Government Code, Construction Manager shall:
  - Preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement.
  - (ii) Promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the entity on request of the Owner; and,
  - (iii) On completion of the Agreement, either: (a) provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the entity; or (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the governmental body.
- § 14.5.8.2 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Construction Manager agrees that the Agreement can be terminated if the Construction Manager knowingly or intentionally fails to comply with the requirement of that subchapter. The Owner may terminate this Agreement in the event Construction Manager fails to comply with Subchapter J, Texas Government Code, pursuant to Sections 552.373 and 552.374, Texas Government Code.
- § 14.5.8.3 "Contracting information" includes but is not limited to all records defined in Section 552.003(1-a), Texas Government Code and Article 10 of the Agreement.
- § 14.5.8.4 In the event of a conflict between the Owner's adopted records retention schedule and Article 10 of the Agreement, the longer retention period shall control.
- § 14.5.9 If Construction Manager is a corporation, partnership or a limited liability company, Construction Manager warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

# § 14.5.10 Franchise Tax Certification

Construction Manager certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out of state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

# § 14.5.11 Eligibility Certification

Construction Manager certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

# § 14.5.12 Payment of Debt or Delinquency to the State or Political Subdivision of the State

Pursuant to Chapter 38, City of Pflugerville Code of Ordinances, Construction Manager agrees that any payments owing to Construction Manager under the Agreement may be applied directly toward any debt or delinquency that Construction Manager owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

# § 14.5.13 General Compliance with Chapter 38 of the City's Code of Ordinances

Construction Manager acknowledges that this Agreement is conditioned upon Construction Manager's compliance with Chapter 38, Sections 38.01 through 38.07 of the City of Pflugerville Code of Ordinances, all of which are incorporated herein by reference. Construction Manager hereby certifies that Construction Manager has fully read and understood the terms and conditions for eligibility to contract with the Owner pursuant to Chapter 38 of the City of Pflugerville Code of Ordinances and by entering into this Agreement hereby certifies that Construction Manager is in compliance with these requirements.

# § 14.5.14 Gifts to Public Servants

§ 14.5.14.1 Owner may terminate this Agreement immediately if Construction Manager has offered, conferred or agreed to confer any benefit on a City of Pflugerville employee or official that the employee or official is prohibited by law from accepting.

§ 14.5.14.2 For purposes of this Section 14.5.14, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

§ 14.5.14.3 Notwithstanding any other legal remedies, Owner may require Construction Manager to remove any employee of Construction Manager, a Subcontractor or any employee of a Subcontractor from the Project who has violated the restrictions of this Section 14.5.14 or any similar State or Federal law and Owner may obtain reimbursement for any expenditures made to Construction Manager as a result of an improper offer, an agreement to confer or the conferring of a benefit to a City of Pflugerville employee or official.

# § 14.5.15 Prevailing Wages

The provisions of Chapter 2258 of the Texas Government Code expressly are made a part of this Contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform this Contract is part of the Contract Documents for all purposes. Construction Manager shall forfeit, as a penalty to City, sixty dollars (\$60.00) for each laborer, worker or mechanic employed for each calendar day, or portion thereof, in which such laborer, worker or mechanic is paid less than the stipulated prevailing wage rates for any Work done under this Contract by the Construction Manager or any Subcontractor or Sub-subcontractor employed on the project. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Construction Manager from its obligation under any federal or state law, regarding the wages to be paid to or hours worked by laborers, workers or mechanics, insofar as applicable to the Work to be performed hereunder.

# § 14.5.16 Unavailability of Funds

Construction Manager accepts and agrees that all payments pursuant to this Contract are subject to the availability and appropriation of funds by the Pflugerville City Council. If funds are not available and appropriated, this Contract may immediately be terminated by Ownerwith no liability to any Party to this Contract.

# § 14.5.17 No Waiver of Governmental Immunity.

Nothing in this Contract shall be construed to waive Owner's Governmental Immunity from a lawsuit, which Immunity is expressly retained to the extent it is not clearly and unambiguously waived by Applicable Law.

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- .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 PricePrice, as modified by the parties
- .3 AIA Document A133<sup>TM</sup> 2019, Exhibit B, Insurance and Bonds Not used.
- .4 AIA Document A201<sup>TM</sup>–2017, General Conditions of the Contract for Construction Construction, as modified by the parties.
- .5 Building Information Modeling Exhibit, if completed:

Not used.

(Check all boxes that apply.)

[—] AIA Document E234<sup>TM</sup> 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

(Insert the date of the E234-2019 incorporated into this Agreement.)

N/A

Exhibit B	Insurance Requirements
Exhibit C	Rates and Salaries
Evhibit D	Vay Dargannal

# Certification of Document's Authenticity

AIA® Document D401™ - 2003

I, , hereby certify, to the best of my knowledge, information a simultaneously with its associated Additions and Deletions Repunder Order No. 3104241752 from AIA Contract Documents a document I made no changes to the original text of AIA® Document Owner and Construction Manager as Constructor where with a Guaranteed Maximum Price, other than those additional Deletions Report.	port and this certification at $09:12:14$ ET on $08/07/2024$ software and that in preparing the attached final nument A133 <sup>TM</sup> – 2019, Standard Form of Agreement here the basis of payment is the Cost of the Work Plus a
(Signed)	
(Title) (Dated)	

# General Conditions of the Contract for Construction

# for the following PROJECT:

(Name and location or address)

City of Pflugerville Public Works Complex Pflugerville, Texas

### THE OWNER:

(Name and address)

City of Pflugerville P.O. Box 589 Pflugerville, TX 78691

# THE CONSTRUCTION MANAGER:

(Name, legal status, and address. The Term "Contractor" as used in A201-2017 shall mean the Construction Manager)

CORE Construction Services of Texas, Inc. 6320 Research Road Frisco, Texas 75033

#### THE ARCHITECT:

(Name and address)

Marmon Mok, LP 1020 NE Loop 410, Suite 201 San Antonio, Texas 78209

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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.

- 11 INSURANCE AND BONDS
  12 UNCOVERING AND CORRECTION OF WORK
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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.

If and to the extent of any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order:

- (i) Modifications issued after the execution of the Agreement;
- (ii) GMP Amendment to the Agreement, once executed, including any attachments thereto;
- (iii) The Agreement, as modified, and any attached Exhibits and documents identified in Section 15.7 of the Agreement;
- (iv) AIA Document A201-2017 General Conditions, as modified;
- (v) Addenda to the Drawings and Specifications issued prior to execution of the Agreement;
- (vi) Drawings and Specifications.
- § 1.1.1.1 In the event of inconsistencies within Contract Documents, the exhibits, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall:
  - .1 provide the better quality or greater quantity of Work; or
  - .2 comply with the more stringent requirement.

The terms and conditions of this Section 1.1.1.1, however, shall not relieve the Contractor of any of the obligations set forth in Section 3.2 and 3.7.

# § 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.

# § 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 that are reasonably inferable to be required by the Contract Documents to produce the completed Project. The Work may constitute the whole or a part of the Project.

§ 1.1.3.1 Nothing in the Agreement or General Conditions shall be interpreted as imposing on the Owner, any other Indemnitees, or Owner's consultants, any duty, obligation, or authority with respect to any items that are not intended to be incorporated into the completed Project, or that do not comprise the Work, including but not limited to shoring, scaffolding, hoists, weather-proofing, or any temporary facility or activity, all of which are the sole responsibility of the Contractor.

# § 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

(Paragraph deleted)

Not used.

# § 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. Subject to Section 1.1.1, the Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Any known conflicts between the requirements of the Drawings and the Specifications or any known conflicts noted within the Drawings themselves or within the Specifications themselves have been or shall be referred to the Owner and Architect by Contractor, and Contractor agrees that those that have been referred to Owner and Architect have been clarified to the satisfaction of Contractor. Any 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. Contractor shall coordinate the Work and Drawings to conform to the requirements of the Contract Documents. Dimensions to be utilized shall be figures, or computations based on given figures, rather than scale or rule. Computed dimensions shall take precedence over scale dimensions, and large-scale drawings shall take precedence over small scale drawings. The General Conditions, Specifications, and Drawings contemplate a finished Project of such character and quality as is described in and is reasonably inferable from them and the Contractor, recognizing the impossibility of producing Drawings and Specifications with perfect accuracy, agrees that Contractor's submitted Contract Sum for the Work hereunder includes a sufficient allowance to make Contractor's Work complete and operable, fitting with the work of other contractors and the Owner and in compliance with good practice and Applicable Laws. Contractor agrees that inadvertent discrepancies or the failure to repeat, on any drawing, the figures or notes given on another shall not be the cause for extensions of Contract Time or any increase of the Contract Sum.
- § 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 Applicable 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.

**User Notes:** 

# § 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 Contractor, Subcontractors, and Sub-subcontractors, shall not own or claim a copyright in the Instruments of Service. All Drawings, Specifications and other documents prepared in connection with the Project, and all copies thereof are and shall remain the Owner's property. All copies of Instruments of Service, except the Contractor's record set and copies provided to Subcontractors or Sub-subcontractors, shall be returned or suitably accounted for to the Owner, upon completion of the Work. The Drawings, Specifications and other documents prepared in connection with the Project, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. 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 Owner's, Architect's or Architect's consultants' reserved rights.
- § 1.5.2 The Contractor, Subcontractors, and Sub-subcontractors are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.6.3 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 and all Modifications thereto. The Contractor, Subcontractors, and Sub-subcontractors may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work.
- § 1.5.3 During construction, the Contractor shall maintain one complete set of Drawings and Specifications for record purposes and shall note timely all significant changes, Modifications, and additions thereon.

#### § 1.6 Notice

- § 1.6.1 Except as expressly 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 or an officer of the corporation for whom the notice is intended, and shall be deemed to have been duly served if delivered in person, by registered mail, or 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.

(Paragraphs deleted)

# § 1.6.3 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 establish, in writing, the protocols for the development, use, transmission, and exchange of digital data.

§ 1.7 Not used.

# § 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 Section 1.6.3, 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

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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 (15) 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 the Owner fails to make payments to the Contractor as the Contract Documents require.

(Paragraphs deleted)

# § 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 whose status under the Contract Documents shall be that of the Architect.
- § 2.3.4 The Owner shall furnish any available 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. The furnishing of those surveys and legal description of the Project Site shall not relieve the Contractor from its duties under the Contract Documents. In addition to the foregoing, if Owner or Architect furnishes Contractor with any information concerning subsoil characteristics or conditions of the area where the Work is to be performed, then if Contractor becomes aware of any discrepancies, omissions, ambiguities, or conflicts in any such information, Contractor shall promptly notify Owner and Architect in writing of such information.
- § 2.3.4.1 In connection with the forgoing, prior to any Work occurring, Contractor shall be responsible for verifying the location of all utility lines, telephone lines and cables, sewer lines, water pipes, gas lines, electrical lines, including without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such manner so as to avoid damaging any such lines, cables, pipes and pipelines. Where there are intersections involving various piping and equipment, etc., particular consideration shall be given to clearances. If tight conditions develop, the Contractor and Subcontractors for the various Work involved shall make arrangements to jointly prepare coordination drawings, showing the suggested solution and submit it to the Architect for comment, and if necessary, approval. Contractor and all Subcontractors and Sub-subcontractors are deemed to have taken into consideration that interferences will occur at various points, and it is understood and agreed that extras for necessary variation will not be approved. Contractor shall verify all measurements at the site.
- § 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. Such copy of the Contract Documents may be furnished electronically as provided herein. In the event that more than one copy of the Contract Documents are requested by Contractor, its Subcontractors, or Sub-subcontractors, the additional expense of procuring such copies (either hard copy or electronically) shall not be included as a Project Cost and shall not be reimbursed by Owner as included in the GMP.

# § 2.4 Owner's Right to Stop the Work

If the Contractor (i) fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2; (ii) repeatedly fails to carry out Work in accordance with the Contract Documents; (iii) fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials or equipment so as to be able to complete the Work within the Contract Time; or (iv) disregards the instructions of Architect or Owner that are in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the affected Work or any portion thereof, or any Work reasonably related to the affected Work, 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, and any delay resulting from such Work stoppage shall not extend the Contract Time or required dates of Substantial or Final Completion. If such stoppage results from any faulty or defective performance by the Contractor or any Subcontractors or Sub-subcontractors, or other person working through the Contractor, then the Contract Time shall not be extended and the Contract Sum shall not be increased, and the Contractor shall, at its sole cost and expense, perform on an accelerated basis such portions of the Work as may be necessary in order to comply with the Project schedule. The Contractor shall resume the Work after such stoppage promptly upon written notice to do so from the Owner. The Owner shall incur no liability for delays occasioned by any stop work order issued in accordance with this Section. Nothing herein shall be deemed to limit the Owner's rights with respect to termination as set out in Article 14 herein.

# § 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. The Owner may, pursuant to Section 9.5.1, withhold 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 and expenses including engineering, accounting, consulting and attorney's fees and costs made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

# § 2.6 Extent of Owner Rights

§ 2.6.1 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

# 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.

**User Notes:** 

## § 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. In accordance with Section 59.051 of the Texas Business and Commerce Code, Contractor must, within a reasonable time of learning of a defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications, or other design documents, disclose in writing to the Owner the existence of any known defect in the plans, specifications, or other design documents that is discovered by Contractor, or that reasonably should have been discovered by the Contractor using ordinary diligence, before or during construction. For purposes of Section 3.2.2, "ordinary diligence" means the observations of the plans, specifications, or other design documents or the improvement to real property that a contractor would make in the reasonable preparation of a bid or fulfillment of its scope of work under normal circumstances. Ordinary diligence does not require that the Contractor engage a person licensed or registered under Title 6, Occupations Code, or any other person with specialized skills. A disclosure under this subsection is made in the Contractor's capacity as Contractor and not as a licensed professional under Title 6, Occupations Code. If Contractor fails to disclose a defect as required in the Agreement, Contractor shall be liable for the consequences of defects that result from the failure to disclose.

§ 3.2.3 The Contractor shall report in writing to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require.

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

§ 3.2.5 The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including:

- .1 the location, condition, layout and nature of the Project site and surrounding areas;
- .2 generally prevailing climatic conditions,
- .3 anticipated labor supply and costs; and
- .4 availability and cost of materials, tools and equipment.

§ 3.2.6 Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's excessive requests 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, prior Project correspondence, or documentation.

#### § 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, as between the Owner and Contractor, 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. Nothing herein shall constitute an assumption by Owner of control of the means and methods of the Work, which shall remain solely with Contractor. The Contractor shall engage Subcontractors and workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a workmanlike manner under the full-time supervision of an approved superintendent. Further, the Contractor shall advise the Owner and Architect: (a) if a specified product deviates from good construction practices; (b) if following the Specifications will adversely affect any warranties; and (c) of any objections which the Contractor may have to the Specifications.

- § 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, Sub-subcontractors and the agents and employees of any of them, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any Subcontractors or Sub-subcontractors, and for any damages, losses, costs and expenses, including but not limited to attorney's fees, resulting from such acts and omissions.
- § 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- § 3.3.4 Contractor shall maintain daily reports which shall record the date, weather conditions, deliveries received, Subcontractors and Sub-subcontractors on site, manpower counts, general description of Work accomplished and problems or conflicts in the field. Said reports shall be maintained at the Project in an orderly manner and shall be delivered to the Owner at least once a week. Copies of all daily reports shall also be available to Owner and its designated representative for review at any time. Contractor shall submit the format of such daily reports to Owner for approval prior to commencement of the Work. In the event Contractor fails to deliver copies of Contractor's daily reports, Owner may withhold a portion of Contractor's Fee in making a progress payment as may be necessary to protect the Owner from a loss resulting therefrom.

## § 3.3.5 Not used.

- § 3.3.6 Contractor's supervision of Work shall include expediting and coordination of work of Subcontractors and Sub-subcontractors. Contractor shall perform all supervising and procuring required to ensure delivery of materials to maintain work schedules of Subcontractors and Sub-subcontractors and progress schedule of the Project to ensure full completion of Work. Contractor shall ensure all Subcontractors and Sub-Subcontractors and their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment.
- § 3.3.7 The Contractor shall establish and maintain benchmarks and all other grades, lines, and levels necessary for the Work, report errors, or inconsistencies to the Owner and Architect before commencing Work as required by these General Conditions, review the placement of the building(s) and permanent facilities on the site with the Owner and Architect after all lines are staked out and before foundation Work is started, and provide a form survey as part of such review. Contractor shall provide access to the Work for the Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors or Sub-subcontractors on adjacent properties due to construction and revealed by any improvement survey, except for encroachments arising from error or omissions that are not reasonably discoverable by Contractor, shall be corrected by Contractor within thirty (30) days of the improvement survey (or as soon thereafter as possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.
- § 3.3.8 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in the Contract Documents shall be deemed or constructed to (1) make the 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 or Architect in respect of the Work shall relate to the result the Owner desires to obtain from the Work and shall in no way affect Contractor's independent contractor status

as described herein. Neither Owner nor Architect shall participate in any way in the administration or supervision of the Work. The means, methods, techniques, sequences, procedures, and safety measures utilized in the performance of the Work are the sole responsibility of the Contractor. Any means, method, technique, sequence or procedure set forth in the Contract Documents is solely to specify the desired end product. If Contractor discovers that such means, methods, technique, sequence or procedure will not result in the specified end product or is unsafe or illegal, it is Contractor's responsibility to notify the Architect and Owner and propose a correct means, method, technique, sequence or procedure prior to performing the Work at issue. Nothing in Owner's or Architect's review of the general quality and progress of the Work shall be construed as the assumption of authority or supervision over the performance of the Work.

- § 3.3.9 Contractor, Subcontractors, and Sub-subcontractors shall not install any product or equipment in a manner that is in direct conflict with the manufacturer's recommended requirements. If the manufacturer of the product or equipment has requirements that cannot be met by the specific application indicated, the Contractor shall bring this information to the attention of the Architect and Owner. Any products or equipment that are installed contrary to the manufacturer's requirements shall be replaced at no additional cost to the Owner unless specifically authorized in writing by the Owner.
- § 3.3.10 The Contractor shall execute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction management and practice for construction of projects similar to the Project, using qualified, careful and efficient workers and in conformity with the provisions of this Agreement and the other Contract Documents.

## § 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.
- § 3.4.1.1 The Contractor shall inspect all materials delivered to the Project to ensure that all materials, equipment and labor incorporated into or working on the Project meets or exceeds industry standards for quality and craftsmanship. Contractor shall reject any materials that will not conform with the Contract Documents when properly installed. All material delivered to the Project site shall be handled in a manner to preclude inclusion of any foreign substances or causing of any discoloration therein and to prevent any damage thereto which might reduce its effectiveness as part of the Work.
- § 3.4.1.2 When Contractor desires to use Owner's water in connection with the Work, Contractor shall make complete and satisfactory arrangements with the Pflugerville Water Service Department and shall be responsible for the cost of the water Contractor uses. Where meters are required and used, the charge shall be at the regular established rate; where no meters are required and used, the charge shall be as prescribed by City of Pflugerville ordinance, or where no ordinance applies, payment shall be based on estimates made by the representatives of the Pflugerville Water Service Department.
- § 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 written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making a request for substitutions, Contractor represents and warrants the following: (1) that Contractor has investigated the proposed product or material and determined that it is equal or superior in all respects to that specified; (2) that Contractor shall provide an equal or greater warranty for the substitution that the Contractor would for that specified; (3) that Contractor certifies that the cost data presented is complete and includes all related costs under the Contract, except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and (4) that Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- § 3.4.3 The Contractor shall enforce strict discipline, safety, job cleanliness 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. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgment as an experienced contractor to adopt and implement

policies and practices designed to avoid work stoppages; slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain labor harmony on the Project.

§ 3.4.4 Contractor recognizes, accepts and hereby acknowledges the Project site is a public facility representing the City of Pflugerville. As such, Contractor shall prohibit the possession or use of alcohol, controlled substances, tobacco and any prohibited weapons on the Project site and shall require appropriate dress of Contractor's forces consistent with the nature of the Work being performed, including the wearing of shirts at all times. Harassment of any kind, including sexual harassment, of employees of Contractor or any Subcontractor or Sub-subcontractor, employees or consultants of Owner or of any visitor to the Project site, by Contractor, employee(s) of Contractor, a Subcontractor or Sub-contractor or an employee of either is strictly forbidden. Any person, Contractor, employee of Contractor, Subcontractor or Sub-subcontractor or an employee of either who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Contractor and Owner, including the removal and exclusion of the violating person(s) or employee(s) of Contractor, Subcontractor, or Sub-subcontractor from the Project site and, if Owner so elects, termination from the Project.

#### § 3.5 Warranty

(Paragraph deleted)

- § 3.5.1 The Contractor warrants to the Owner and Architect that the Work will be performed in a good and workmanlike manner and 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 shall 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 Owner or 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.
- § 3.5.3 The warranties of Contractor provided in this Section 3.5 and set forth elsewhere in the Contract Documents shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

#### § 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 seven(7) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner 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 Owner 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 Owner shall promptly notify the Contractor, stating the reasons. If the Contractor disputes the Owner's determination or recommendation, Contractor 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.

§ 3.7.6 Copies of any and all permits, licenses, and certifications shall be delivered to the Architect and Owner as soon as they are obtained. Upon receipt of final payment, the Contractor shall deliver the originals of such permits, licenses, and certificates to the Owner.

#### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Each allowance item shall contain a detailed breakdown of the assumptions for each allowance, including assumptions pertaining to quantity, quality, assembly factors and inclusion or exclusion of cost. By inclusion of allowance items in the Contract Sum, Contractor represents to Owner that each such allowance is a reasonable estimate, using Contractor's skill and professional judgment, of the cost pertaining to such allowance item taking into account: (a) the Drawings and Specifications and other information existing at the time the allowance is determined; (b) the labor and material standards and construction means, methods and techniques prevailing in the industry for first class construction; and (c) the level of labor and material costs generally prevailing in the locality of the Project at the time the allowance is determined. Where an allowance item has been provided to Contractor by Owner, Contractor shall review such allowance item, and before including such allowance item in the Contract Sum, determine to the best of Contractor's knowledge, that the cost pertaining to such allowance item is a reasonable estimate taking into account the above criteria. If requested by Owner, Contractor shall provide Owner with a written explanation of how each allowance was determined.

#### § 3.8.2 Unless otherwise provided in the Contract Documents,

- 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
- 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 Under no circumstances shall Contractor incur any costs greater than an allowance on behalf of Owner without prior written authorization of Owner. Notwithstanding anything to the contrary, and notwithstanding if Contractor incurs costs greater than allowances, unless a Change Order is executed by Contractor and Owner prior to commencement of Work under an allowance, Contractor shall not be entitled to, and waives any right to receive, additional consideration, or any other compensation with respect to such allowance, whether based on implied

consent, quantum meruit or otherwise.

- § 3.8.4 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.
- § 3.8.5 The Contractor shall develop and manage an allowance tracking process with regular reports to the Owner. These reports shall be provided to the Owner no less frequently than each Owner-Architect-Contractor meeting. The information to be tracked and reported shall be sufficient to provide a thorough status of monies expended, scope covered by the allowance, timing of the expense and completion of the associated Work.

## § 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 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. Should a superintendent leave the employ of Contractor, Contractor shall promptly submit a new superintendent to Owner for approval, which shall not be unreasonably withheld or delayed. Owner shall have the right, at any time, to direct a change in Contractor's superintendent if their performance is unsatisfactory to Owner. In the event of such demand, Contractor shall promptly replace said superintendent with a superintendent satisfactory to Owner. If a suitable replacement cannot be provided, the Contractor may be terminated by Owner. 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 fourteen (14) days of receipt of the information, the Owner 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 Owner to provide notice within the fourteen (14)-day period shall constitute notice of no reasonable objection.
- § 3.9.3 Not used.

## § 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 utilizing the critical path method (CPM). The schedule shall be in time scaled precedence format with the critical path clearly indicated and in such electronic format to ensure that the Owner can understand the logic and all aspects of the schedule. Contractor shall give notice to the Owner of any change in the logic of the schedule or any part thereof, or the removal of any restraints, or the reduction of any duration. The construction schedule shall cover field tasks, significant material deliveries, other off-site restraints such as permits, inspections, approvals, and milestones for start dates, completion dates, and availability dates as required. Tasks shall be broken down into activities that allowing monitoring monthly progress The construction 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 construction schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents.
- § 3.10.1.1 The construction schedule shall be coordinated with the Owner's overall Project schedule. The Contractor is responsible for coordinating document packages and deliverables from the Owner and Architect.
- § 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 review and Owner's approval. The Owner'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 resulting from 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 and approved by the Owner. Neither submission of revised or updated construction schedules,

nor indications on the construction schedule of activities, including critical path activities, that have fallen behind or were completed later than the original construction schedule, shall relieve the Contractor from the requirements to achieve any designated milestone dates. Contractor shall update the construction schedule regularly, or as requested by Owner, and deliver updated schedules to Owner monthly or as otherwise requested. Extensions of Contract Time will be granted only through written Change Order signed by Owner and shall not be implied by Owner's conduct or failure to object.

- § 3.10.4 The Contractor shall be solely responsible for the original schedule, any and all updates, changes, alterations, or amendments. Neither the Owner nor any of the Owner's consultants or contractors shall be responsible for the accuracy or sufficiency of any schedule prepared or presented to the Owner.
- § 3.10.5 The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will minimize resulting additional time and costs. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:
  - .1 provide a graphic representation of all activities and events that will occur during performance of Work:
  - .2 identify each phase of construction and occupancy; and
  - 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.

The construction schedule shall be updated to reflect actual conditions (sometimes referred to herein as progress reports) as set forth in Section 3.10.1 or if requested by the Owner. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

## § 3.11 Documents and Samples at the Site

§ 3.11.1 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. ("Record Drawings"). The Record Drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from Contract Change Orders, and all concealed and buried installations of piping, conduit, and utility services changed as part of the Work. All buried items outside the facility shall be accurately located on the Record Drawings as to the depth and in relationship to not less than two permanent features, such as interior or exterior wall faces. The Record Drawings shall be clean and all changes, corrections, and dimensions shall be given in a neat and legible manner in contrasting color.

§ 3.11.2 At the date of Substantial Completion and as a condition precedent to Final Payment, the Contractor shall furnish the Record Drawings to the Owner. Architect shall issue a complete set of "as-built" drawings incorporating all changes made during the construction.

## § 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 or Sub-subcontractor 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 Owner and Architect in writing 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. Contractor warrants the adequacy for the purpose intended of any shop drawings or portion of a shop drawing.
- § 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 cause such services or certifications to be provided by a properly 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, accuracy, and completeness 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 and Owner in a reasonably prompt manner so as not to delay the progress of the Work.

#### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by Applicable Laws and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Owner shall have the right to refuse admittance to the Project site to any employee or agent of the Contractor, Subcontractors, or Sub-subcontractors whose presence the Owner reasonably deems contrary to the Owner's interest.

## § 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 withheld from the Owner or a Separate Contractor its consent to cutting or otherwise altering the Work.

## (Paragraph deleted)

## § 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. Contractor recognizes the importance of performing the Work in a safe manner so as to assist with preventing damage, injury or loss to, all individuals at the Site, whether working or visiting, shall report to the Contractor's field office and sign in before entering the Project Site.

#### § 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 all resulting loss and expense (including attorneys' fees) unless the information is promptly furnished to the Owner and Architect.

## § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, (and except for employee injury claims covered by Section 3.18.1.1 below) the Contractor shall indemnify, defend and hold harmless the Owner, and their elected officials, representatives, volunteers, agents, employees, officers, directors, board members, successors in interest, and partners (collectively "Indemnitees" and individually "Indemnitee") from and against any and all losses, expenses, attorney's fees, claims, liens, liability, demands, suits, causes of action, damages, settlements, fines, and penalties of every kind (except as hereinafter excluded) including all expenses and costs of litigation, settlement, dispute resolution, or claim adjustment (collectively "Indemnified Claims" and individually "Indemnified Claim") to the extent such Indemnified Claims arise out of or result from performance of the Work; provided, however, this indemnity provision shall not

apply to the extent it requires Contractor to indemnify an Indemnitee against a claim caused by the negligence or fault, breach or violation of a statute, ordinance, governmental regulation, standard, or rule or the breach of contract of the Indemnitee, its agent, employee or any third party under the Indemnitee's direction and control (other than Contractor, its agents, employees, Subcontractors or Sub-subcontractors).

Except as provided in Subsections 3.18.1.1 below, in the event that an Indemnitee or their design professionals, consultants, or separate contractors (other than the Contractor, its agents, employees or Subcontractors and Sub-subcontractors) are found, by final judgment or arbitration award, to be negligent or at fault in whole or in part, the indemnity and hold harmless obligation of the Contractor with regard to attorney's fees and litigation or arbitration costs and expenses incurred by an Indemnitee in defense of such claim shall be reduced by the percentage of negligence or fault of the Indemnitee and/or their design professionals, consultants, or separate contractors (other than the Contractor, its agents, employees or Subcontractors and Sub-subcontractors).

#### (Paragraph deleted)

- § 3.18.1.1 WITHOUT LIMITING THE FOREGOING INDEMNIFICATION IN SECTION 3.18.1, TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST INDEMNIFIED CLAIMS DUE TO BODILY INJURY OR DEATH AT THE PROJECT SITE OF AN EMPLOYEE OF CONTRACTOR, EMPLOYEE OF ITS SUBCONTRACTORS OR SUB-SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, REGARDLESS OF WHETHER AN INDEMNIFIED CLAIM IS CAUSED IN WHOLE OR IN PART BY THE FAULT, ACT, OMISSION OR NEGLIGENCE OF THE INDEMNITEES.
- § 3.18.2 Other provisions in the Contract Documents containing indemnification obligations shall be deemed to be cumulative of and to operate independently of the indemnities provided above such that all indemnities provided in the Contract Documents shall be construed to grant indemnity to the Indemnitees to the fullest extent possible.
- § 3.18.3 It is agreed that the indemnification provisions set for this Agreement shall be reformed and amended as necessary to comply with any legal limitations now or hereafter in effect and affecting the validity or enforceability of such provisions set forth in this Agreement to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.
- § 3.18.4 The Contractor shall indemnify and hold harmless the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.
- § 3.18.5 Owner shall have the right to approve defense counsel, of which approval shall not be unreasonably withheld, to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify Owner, unless such right is expressly waived by Owner in writing. Contractor shall retain Owner- approved defense counsel within ten (10) calendar days of Owner's written notice that Owner is invoking its right to Indemnification under this Contract. If Contractor fails to retain counsel within such time period, Owner shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by Owner. Owner also shall have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

## § 3.19 Liens

§ 3.19.1 In accordance with Texas law, neither Contractor nor any Subcontractors, Sub-subcontractors, nor any others claiming by and through Contractor have any lien rights against the Owner, the Project, the Work, or Owner's lands, buildings, or funds. Contractor hereby agrees to indemnify, defend, and hold the Owner harmless from and against all liens filed by Contractor, Subcontractors, Sub-subcontractors, and all others claiming by and through Contractor, against the Owner, the Project, the Work, or Owner's lands, buildings, or funds, arising out of or concerning the Work or the Project, including, but not limited to attorneys' fees and all expenses and costs of litigation, settlement, dispute resolution, or claim adjustment.

#### 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** Not used.

#### § 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. 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 approved by the Owner and Architect, 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 Sub-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 Sub-subcontractors 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 recommend the Owner reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to recommend to the Owner inspection or testing of the Work, 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, Sub-subcontractors, 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. 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

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approval of a specific item shall not indicate approval of an assembly of which the item is a component. Contractor shall remain responsible for errors or deviations from what is required in the Contract Documents in Contractor's submittals even if the error or deviation is not discovered by the Architect during the submittal review and approval.

- § 4.2.8 The Architect may order minor changes in the Work as provided in Section 7.4.
- § 4.2.9 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.

(Paragraphs deleted)

## 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 and those who are to furnish materials or equipment fabricated to a special design. 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 and those who are to furnish materials or equipment fabricated to a special design. 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. Contractor shall provide contact information for all Subcontractors and Sub-subcontractors, including addresses and phone numbers. Within fourteen (14) days of receipt of the information, the Architect or Owner 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 fourteen (14)-day period shall constitute notice of no reasonable objection.
- § 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- § 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.
- § 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.
- § 5.2.5 To the extent Contractor wishes to change a Subcontractor, Contractor shall provide Owner with written notification. Acceptable reason for change of a Subcontractor pursuant to Paragraph 5.2.4 shall be limited to the following:
  - .1 Business failure of Subcontractor;
  - .2 Inability of Subcontractor to provide bonds where required; and
  - **.3** Failure of Subcontractor to perform according to approved schedule or other provisions of the Contract Documents.

- § 5.2.6 Prior to solicitation of bids from Subcontractors, Contractor shall submit to the Owner and Architect a proposed list of bidders. The Owner reserves the right to approve and add to such bidders list. After Contractor's completion of its bid solicitation, Contractor shall submit to Owner a detailed comparative analysis of the bids received together with Contractor's recommendations for award.
- § 5.2.7 Within ten (10) days after Contractor's execution of a subcontract, Contractor shall deliver to Owner the fully executed subcontract agreement.

## § 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 and materials furnished or equipment fabricated to a special design, 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** Not used.

(Paragraphs deleted)

## § 5.5 Contingent Assignment of Subcontracts

- § 5.5.1 Each subcontract agreement for a portion of the Work will expressly provide that it is assigned by the Contractor to the Owner, provided that:
  - 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 which the Owner accepts by notifying the Subcontractor and Contractor, in writing; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.
- § 5.5.1.3 When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract. All sums due and owing by Contractor to the designated Subcontractors for Work performed prior to Owner's acceptance of the subcontracts shall constitute a debt between such parties and Contractor.
- § 5.5.2 If the Work in connection with a subcontract has been suspended for more than sixty (60) days after termination of the Contract by the Owner pursuant to Section 14.2, and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a direct result of the suspension.
- § 5.5.3 Upon assignment to the Owner, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.
- § 5.5.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those services and materials furnished and approved by the Owner subsequent to the Owner's exercise of any rights under this conditional assignment.

## 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. Contractor shall use its best efforts to cooperate with Owner and separate contractors, if any. 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 and Owner 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 and Owner 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 and damages 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 Owner 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. All Change Orders shall be accompanied by detailed price breakdowns.
- § 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.
- § 7.1.4 Contractor shall not proceed with any changes in the Work or additional work without previously receiving a written Change Order or Construction Change Directive executed by Owner authorizing such change in the Work or additional work. Contractor shall accept no directions, correspondence, or communications from anyone with regard to any change in the Work or additional work other than those issued in accordance with the Contract Documents. If Contractor performs such change in Work without prior receipt of such executed Change Order or Construction Change Directive, Contractor does so at its own risk and cost. All such Change Orders or Construction Change Directives shall be incorporated into the schedule of values for the Cost of the Work utilizing separate line items.

## § 7.2 Change Orders

- § 7.2.1 A Change Order is a written instrument prepared by the Architect or Owner and signed by the Owner, Contractor, and Architect (and approved by City Council of the City of Pflugerville, Texas ("City Council"), if required) stating their agreement upon all of the following:
  - .1 The change in the Work;
  - .2 The amount of the adjustment, if any, in the Contract Sum; and
  - .3 The extent of the adjustment, if any, in the Contract Time.
- § 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters and pending claims by Contractor relating to the change in the Work which is the subject of the Change Order including, but not limited to all direct and indirect costs associated with such change, and any and all adjustments to the Contract Sum and the Construction Schedule.
- § 7.2.3 Contractor's Change Order shall provide either (i) a lump sum; (ii) unit price or (iii) a not-to-exceed amount properly itemized and supported by sufficient substantiating data to permit evaluation by Owner and Architect. Notwithstanding anything to the contrary, and notwithstanding if Contractor performs such changed Work, unless a Change Order is executed by Contractor and Owner prior to commencement of the changed Work the Contractor shall not be entitled to, and forever waives any right to receive, additional consideration, or any other compensation with respect to such changed Work.
- § 7.2.4 All Change Orders require written approval by Owner or the duly elected members of the City Council or, where authorized by the state law and City of Pflugerville ordinance, by City of Pflugerville's City Manager or designee, pursuant to administrative action. The approval process requires a minimum of forty-five (45) days after submission to Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal shall be authorized by Owner or City Council resolution or administrative action. The time required for the approval process shall not be considered a delay and no extensions to the Contract Time or increase in the Guaranteed Maximum Price shall be considered or granted as a result of this process. Pending the approval of a Change Order as described above, Contractor shall proceed with the work under a pending Change Order only if directed in writing to do so by Owner.

#### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner 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 as determined by the Owner:
  - .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 Owner 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 Owner 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 Owner;
  - .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 Owner 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. 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 amounts not in dispute for such change in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.
- § 7.3.10 When the Owner and Contractor agree on the determination made by the Owner 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 Owner 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 Owner'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 Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Owner's order for a minor change without prior notice to the Owner 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 and approved by Owner 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. Except as otherwise specifically provided in Section 8.3 of these General Conditions, the Contractor shall bear all costs for overtime or acceleration and all additional expenses which may arise in order to 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 an act or neglect of the Owner, its employee, or a Separate Contractor employed by the Owner; or by changes ordered in the Work (not caused or resulting from the failure of Contractor or its Subcontractors, Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to comply with their obligation arising under the Contract); by labor disputes (not arising from the labor practices of Contractor, its Subcontractors, Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable); fire (not caused by the negligence or wrongful acts of the Contractor, its Subcontractors, Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable); unusual delay in deliveries (not attributable to or caused by the negligence or wrongful acts of the Contractor, its Subcontractors, Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable); adverse weather conditions (beyond the number of weather days established pursuant to Section 8.3.1.1); governmental orders, moratorium on construction, epidemics or pandemics or other causes beyond the control and reasonable ability to avoid by the Contractor, its Subcontractors, Sub-subcontractors or anyone directly employed by any of them or for whose acts any of them may be liable including acts of God, provided that such causes were not known by Contractor at the time of this Agreement; then the Contract Time for the impacted milestone date or the entirety of the Work, as applicable, shall be extended by Change Order by the number of days by which the critical path to completion of the milestone date or the Project has been delayed by the event giving rise to the right to an extension. The Contractor shall provide written explanation and critical path method schedule evidencing such impact has occurred. Notwithstanding the foregoing, the Contractor acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay to the critical path (1) is not caused, or could not have been reasonably anticipated and mitigated, by the Contractor, its Subcontractors, Sub-subcontractors or

anyone directly or indirectly employed by any of them or for whose acts any of them may be liable and (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay.

- § 8.3.1.1 A Claim for additional time will be granted when the Project experiences adverse weather conditions in excess of the weather days established in the GMP Amendment ("Anticipated Weather Days"). If any of the four weather events listed below delay or hinder the commencement, prosecution or completion of the Work for any activity on the Project's critical path for more days during a given month than the number of Anticipated Weather Days for that given month as set forth below, the Project schedule shall be extended by the number of days by which the Anticipated Weather Days are exceeded by such weather events. A "Weather Day" that may entitle Contractor to an extension of the Contract Time are as follows:
  - .1 0.3 inches or more of rain during a calendar day.
  - .2 0.5 inches or more of snow or sleet.
  - .3 Temperature of 32 degrees Fahrenheit or lower for more than 4 hours during normal working hours.
  - .4 Wind conditions in excess of levels required for safe prosecution of the Work.

"Mud" days and "Dry-Out" days caused by one of the above-referenced weather events shall be considered as part of the delay event for purposes of granting an extension to the extent critical path activities are hindered. Weather records to be used for evaluating the above conditions shall be National Weather Service official records obtained at the NOAA weather location closest to the Project site. Weather Days are calculated Monday through Saturday provided, however, a Weather Day delay cannot be counted if Contractor is able to perform critical path work on the ensuing Sunday. Contractor will notify Owner of any such Weather Day delay in writing within twenty-four (24) hours of the alleged weather day and shall include photographic evidence substantiating the alleged Weather Day(s). Contractor shall also, on a monthly basis, submit a report in a form acceptable to Owner substantiating any days claimed to have been lost.

- § 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.
- § 8.3.3 Nothing in the Contract Documents shall authorize the Contractor to recover an increase in the Contract Sum as a result of price escalations in the marketplace or price increases due to labor or materials shortages.
- § 8.3.4 Except as otherwise provided herein, extensions of time shall be the Contractor's sole remedy for any delay, unless the delay shall have been caused solely by intentional acts or default of the Owner or Architect ("Owner-Caused Delays"), and then, only if the Contractor properly files a Claim for such delay. In addition, Contractor, upon timely notice of its delay Claim to the Owner, with substantiation by Owner and Architect and upon approval of Owner, shall be entitled to an adjustment in the Guaranteed Maximum Price for its general conditions costs incurred as a direct result of the Owner-Caused Delay, limited to directly incurred incremental daily costs attributable to field management overhead expenses and non-labor related general conditions costs on a per diem basis for the period of the critical path delay directly and exclusively attributable to an Owner-Caused Delay. Any such adjustment to the Guaranteed Maximum Price shall be subject to the limitations of this Contract, including without limitation, Article 15 herein. In no event shall Contractor be entitled to home office, other off-site expenses or any other damages of any kind from whatever source derived. Delays resulting from Owner's reasonable exercise of any of its rights or remedies under the Contract Documents, regardless of the extent or frequency, shall not under any circumstances be deemed Owner-Caused Delays.
- § 8.3.5 Contractor shall be entitled to costs related to Owner's suspension for convenience in accordance with Section 14.3. Such costs may include actual documented Project overhead costs of Contractor, consisting of administrative and supervisory expenses incurred at the Project site. Equipment costs for such suspension shall not be allowed during periods when the equipment would otherwise have been idle. For Projects where Contractor is working a five (5) day work week, with a working day measured from 6:00 a.m. to Dusk, Monday through Friday, no more than eight (8) hours of suspension related time shall be paid during a 24-hour day, no more than forty (40) hours shall be paid per week for suspension related time and no more than one hundred seventy-six (176) hours per month shall be paid for suspension related time. Suspension related time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 176, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor. For Projects where Contractor is working a six (6) day work week with a working day measured from 6:00 a.m. to Dusk Monday through Saturday, no more than eight (8) hours of

suspension related time shall be paid during a 24-hour day, no more than forty eight (48) hours shall be paid per week for suspension related time and no more than two hundred and eight (208) hours per month shall be paid for suspension related time. Suspension related time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 208, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor.

§ 8.3.6 If the Contractor (a) fails to prosecute the Work in accordance with the approved Schedule of the Work, as updated; (b) fails to supply sufficient skilled workmen; or (c) fails to timely arrange for delivery of materials or equipment to the Project such that the critical path is adversely impacted, the Owner may, after seven (7) days written notice (and without prejudice to any other right or remedy) either (i) supplement the Contractor's forces or (ii) require Contractor to furnish additional labor, expedite the delivery of material and/or equipment, and/or have workers work overtime. The foregoing will be provided without an increase in the Contract Sum. If the Owner retains supplemental contractors, the costs will be charged against the Contract Sum. If the Contract Sum is exceeded after including payments to supplemental contractors, Contractor shall reimburse the difference to the Owner.

#### 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

The Contractor shall submit a schedule of values to the Owner and 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 Owner. This schedule, once approved by Owner, 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 Owner and Architect and supported by such data to substantiate its accuracy as the Owner may require, and unless objected to by the Owner, 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 (10) days before the date established for each progress payment, the Contractor shall submit to the Owner and 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 claims from Contractor and its Subcontractors and Sub-subcontractors, and shall reflect retainage as 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 Sub-subcontractor, unless such Work has been performed by others whom the Contractor intends to pay. To the extent Contractor does not intend to pay a Subcontractor or Sub-subcontractor due to a dispute or other reason, such application shall describe, for Owner's information, all amounts claimed by the Subcontractor or Sub-subcontractor and the facts surrounding the dispute or other non-payment decision.
- § 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 claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, Sub-subcontractors, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 Any allowances included in the Application for Payment shall be separately itemized with supporting data attached.

## § 9.4 Certificates for Payment

§ 9.4.1 To the extent required by Owner, 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 Sub-subcontractors 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 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;
- reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;

- .8 failure to maintain insurance as required hereunder; or
- .9 any other breach of the Agreement.
- § 9.5.2 Even if the Architect certifies a payment, the Owner may withhold all or part of a payment, and may also set-off any amounts due the Contractor under this Contract or otherwise, for any of the reasons set forth in Section 9.5.1.
- § 9.5.3 If the Contractor disputes Architect's decision regarding a Certificate for Payment under Section 9.5.1 or the Contractor disputes the Owner's decision regarding a withholding of payment under Section 9.5.2, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.
- § 9.5.4 When the reasons for withholding payment or certification are removed, payment or certification will be made for amounts previously withheld, as the case may be.
- § 9.5.5 The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor 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, unless the Owner reasonably disputes such certification and withholds payment under Section 9.5.2 and notifies the Contractor in writing of the reason therefor, 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 (7) 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 Not used.
- § 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors 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.
- § 9.6.5 Not used.
- § 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 Not used.
- **§ 9.6.8** Not used.

#### § 9.7 Failure of Payment

If the Owner does not issue payment, through no fault of the Contractor, within seven (7) days after the date established in the Contract Documents for payment, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven (7) 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 The Work (whether the entire Project or a designated Portion of the Work as described in Section 4.53.3 of the Agreement) as set out herein will not be considered substantially complete until (and the term "Substantial Completion" shall mean) the performance of the Work is to the point where (1) all Project systems included in the Work or designated portion thereof are operational, (2) as to such Work, all required governmental inspections and certifications required of Contractor have been made and posted, and (3) as to such Work, designated initial instruction described in the Contract Documents of Owner's personnel in the operation of systems has been completed, (4) as to such Work, all the required finishes set out in the Contract Documents are in place, (5) Contractor has provided As-Builts to Owner for any areas that are requested to be the Owner agrees to accept as substantially complete and (6) all warranty documents have been submitted to and approved by the Architect and Owner for any areas that the Owner agrees to accept as are requested to be substantially complete. For the avoidance of doubt, the requirements set forth in this Section 9.8.1 will apply to the designated Portion of the Work in accordance with Section 4.53.3 of the Agreement, except to the extent that such requirements apply only to the entire Project. The only remaining work shall be minor in nature, so that the Owner could occupy the applicable portion of the Project on that date, and the completion of the Work by the Contractor would not materially interfere with or hamper the Owner or Owner's tenants' normal operations or other intended use. As a further condition of Substantial Completion of the whole or designated portion thereof, the Contractor shall certify that all remaining Work with respect thereto will be completed within the time specified by the Architect and Owner for Final Completion, which time shall not exceed sixty (60) days.

§ 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 Owner a comprehensive list of items to be completed or corrected prior to final payment, together with the estimated value of completing or correcting such item (the "Punch List"). The failure to include any items on the Punch 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 and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Punch 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 or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect or Owner to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, as agreed in writing by the parties, the parties 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 Not used.

#### § 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 and Owner 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, shall be resolved in accordance with the Claims process set forth in Article 15.

- § 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 and Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed ("Final Completion"), the Owner will promptly direct the Contractor to submit its final Application for Payment requesting final payment.
- § 9.10.1.1 If the Owner believes, in its sole discretion, that Contractor will not complete or correct the Punch List work within the time listed in the Certificate of Substantial Completion, Owner may complete or correct such Punch List work not completed or corrected by Contractor within the time listed in the Certificate of Substantial Completion pursuant to 9.8 of the General Conditions without jeopardizing any of Owner's rights or warranties under the Contract Documents. Such costs for correction or completion of Punch List work shall be the responsibility of Contractor.
- § 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by 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 or Sub-subcontractor warranties, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of 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 or Sub-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 claim, security interest, or encumbrance. If a 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 claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 Not used.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the (*Paragraphs deleted*) Owner.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a Sub-subcontractor, 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. Contractor shall take and observe all necessary measures and precautions for the safety and protection of all property and persons in connection with performance of the Work. The Contractor shall review the safety programs of each of the Subcontractors and Sub-subcontractors and make appropriate recommendations where any deficiencies are found.

§ 10.1.1 Contractor shall take reasonable precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of the Owner

## § 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. and;
  - 4 the work of the Owner or other separate contractors.
- § 10.2.2 The Contractor shall comply with, and give notices required by Applicable Laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. For Contractor's work, Contractor shall provide all facilities and shall follow all procedures required by the Occupational Safety and Health Act (OSHA) including, but not limited to providing and posting all required posters and notices and shall otherwise be responsible for all other mandatory safety laws. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.
- § 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; removal of snow and ice; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.
- § 10.2.3.1 Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the Project site limits shall be kept orderly and clean and all combustible rubbish shall be promptly removed from the Project site.
- § 10.2.3.2 The Contractor shall at all times protect excavations, trenches, buildings, and materials from rain water, ground water, backup or leakage of sewers, drains and other piping, and from other water originating from the Project site which the Contractor could reasonably expect to encounter based on the Drawings, Specifications, geotechnical reports or other information provided to the Contractor in connection with the Project or which an experienced contractor would otherwise reasonably expect to encounter at this Project site and shall remove promptly any such accumulation of water. The Contractor shall provide an operate all pumps, piping and other equipment necessary to this end.
- § 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.
- § 10.2.4.1 Contractor shall maintain one (1) set of MSDS on the site for periodical inspection by the Owner and the Architect. The Contractor shall be responsible for compliance with OSHA and the Hazard Communications Standard.
- § 10.2.5 The Contractor shall promptly remedy at its sole cost 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.

(Paragraphs deleted)

§ 10.2.8 When required by law or for the safety of the Work, Contractor shall shore-up, brace, underpin, and protect foundations and other portions of existing structures which are in any way affected by the Work. Contractor, before commencement of any part of the Work, shall give notices required to be given adjoining landowners and other parties.

§ 10.2.9 Not used.

## § 10 2.10 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 twenty-one (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 concealed or undisclosed 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. 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 Not used.
- § 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 or 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 as described in **Exhibit B** – Owner's Insurance Requirements.

§ 11.1.2 The payment bond, performance bond, and warranty bond shall be issued by approved sureties. No surety shall be accepted by Owner that is in default, delinquent on any bonds or that is a party to any litigation against the Owner. Such bonds shall be: (i) issued with the Owner as the named obligee; (ii) executed by a corporate surety company authorized to do business in the State of Texas with such financial standing to have a rating from A.M. Best Company (or other equivalent rating company) equal to or better than "A –" and on the approved list of sureties issued by the United States Department of Treasury and shall have a Power of Attorney attached; (iii) maintained for the benefit of the Owner; and (iv) approved by the Owner and made and executed on the Owner's standard forms, which shall be provided to ContractorC. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Travis County, Texas. Each surety shall designate an agent resident in Travis County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.

#### (Paragraphs deleted)

## § 11.2 Payment and Performance Bonds

§ 11.2.1 Contractor shall, in accordance with Texas Government Code Chapter 2253, before beginning construction at the Project site, and as a condition precedent to any obligation the Owner may have under this Contract, obtain and deliver to Owner payment and performance bonds on forms approved by the Owner within the earlier of: (i) ten (10) days of execution of the GMP Amendment and (ii) commencement of construction at the Project site. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price in the GMP Amendment, and should the Guaranteed Maximum Price in the GMP Amendment be amended, the penal sum of the payment and performance bonds shall be amended to be equal to the amended Guaranteed Maximum Price such that the penal sum of the payment and performance bonds is always equal to the Guaranteed Maximum Price, as amended.

## (Paragraphs deleted)

## § 11.3 Warranty Bond

§ 11.3.1 With its Final Application for Payment, the Contractor shall provide a one (1) year warranty bond on a form approved by the Owner. The penal sum of the warranty bond shall be equal to Ten Percent (10%) of the Guaranteed Maximum Price in the GMP Amendment, and should the Guaranteed Maximum Price be modified, the penal sum of the warranty bond shall be amended to be equal to the specified percentage of the modified Guaranteed Maximum Price such that the penal sum of the warranty bond is always equal to the specified percentage of Guaranteed Maximum Price, as modified.

#### (Paragraphs deleted)

§ 11.4 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.

## 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 Owner's or Architect's request or to requirements specifically expressed in the Contract Documents or prior to any inspection required under Applicable Law, it must, if requested in writing by the Architect, Owner, or inspector, be uncovered for the Owner's, Architect's, or inspector's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

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§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner 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 at its sole expense promptly correct Work rejected by the Architect or Owner for 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 and Owner's other consultants' 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, 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 and reimburse the Owner for all costs incurred arising from such Work, including testing and inspections of the non-conforming Work. 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.
- § 12.2.2.1.1 Contractor shall perform such Work in a timely manner, consistent with Owner's reasonable requirements.
- § 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.
- § 12.2.2.4 Contractor shall perform a warranty walkthrough with the Owner of the Project prior to the expiration of the one-year period for correction of Work. Any additional Work needing correction discovered on such warranty walkthrough shall be performed promptly by the Contractor.
- § 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. If Contractor does not proceed with the correction of such non-conforming Work within seven (7) days' notice from Architect or Owner, the Owner may remove and correct the non-conforming Work at Contractor's expense. If Contractor does not pay costs of performing such corrective Work within ten (10) days after written request by Owner, then Owner may utilize such unpaid amounts due the Contractor including retainage as necessary to reimburse Owner in accordance with the Contract Documents.
- § 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 affected 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.

## § 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 Except as expressly provided in the Contract Documents, 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 or under the Contract Documents.
- § 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. 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 and Owner 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.
- § 13.4.2.1 Whether indicated or not in the Contract Documents, all materials utilized on this Project shall be asbestos-free and lead-free. If any suspected asbestos-containing or lead-containing materials are installed, the Owner has the right to have the material in question tested in accordance with this Section 13.4. If such tests indicate the materials contain asbestos or lead, the Contractor shall remove all material in question and replace it with acceptable material at no additional cost to the Owner in accordance with Section 13.4.3, below.

- § 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, without limitation, those costs of additional testing, inspections, and repeated procedures, the costs of uncovering, replacement, and correction and compensation for the Architect's or Owner's other consultants' 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 Owner and 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 one hundred twenty (120) 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, (Paragraphs deleted)

because the Owner has not made payment within the time stated in the Contract Documents.

- § 14.1.2 The Contractor may terminate the Contract in accordance with Section 14.1.3 if, through no act or fault of the Contractor, 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 consecutive days in any 365-day period, whichever is less.
- § 14.1.3 If the reason described in Section 14.1.1 or 14.1.2 exists for the period stated therein, the Contractor may, upon fourteen (14) days' notice to the Owner, terminate the Contract and recover from the Owner payment for Work actually performed, as well as reasonable demobilization costs actually incurred.
- § 14.1.4 If the Work is stopped for a period of one hundred twenty (120) consecutive days through no act or fault of the Contractor, 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 (7) 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, in whole or in part, if the Contractor:
  - .1 refuses or fails to supply enough properly skilled workers or proper materials;
  - .2 fails to make payment to Subcontractors in accordance with the respective agreements between the Contractor and the Subcontractors;
  - .3 disregards Applicable Laws; or
  - .4 otherwise commits a substantial breach of a provision of the Contract Documents.
  - .5 files a Petition in Bankruptcy, is adjudicated bankrupt, makes a general assignment to the benefit of its creditors, cannot pay its debts as they become due, or otherwise takes action evidencing insolvency;

- fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days for reasons other than as permitted under the Contract Documents; or
- .7 suspends its business operations or otherwise fails to operate its business in the ordinary course.
- § 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice except for the items set forth in 14.2.1.5 and 14.2.1.7 above, for which no notice is required, terminate employment of the Contractor and may, subject to any prior rights of the surety:
  - 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 and Owner's other consultants' services and expenses made necessary thereby, and other damages incurred by the Owner in finishing the Work 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.

## § 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 in accordance with Section 8.3.5. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent that:
  - .1 performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
  - .2 an equitable adjustment is made or denied under another provision of the Contract.
- § 14.3.3 If the Project is delayed by order of federal, state, or local government due to outbreak of any disease or virus, the Owner may order the Contractor in writing to suspend the Work, in whole or in part for such period of time as necessary to comply with the applicable governmental order. During any suspension under this Section 14.3.3, Contractor shall not be excused from its responsibilities under Article 10.

#### § 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;
  - .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; and reasonable demobilization costs actually incurred by reason of the termination.
- § 14.4.4 Not used.

#### 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.

## § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor shall be initiated by notice to the Owner within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the Contractor first recognizes the condition giving rise to the Claim. The Contractor acknowledges and understands it is imperative that Owner be given timely, specific notice of any potential differing subsurface or physical condition which may cause an increase in the Contract Sum or Contract Time such that the Owner is afforded the maximum opportunity to mitigate cost and time impacts associated with such differing condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

§ 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.

## § 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 Not used.

#### § 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 a Time Impact Analysis as set forth in Section 15.1.6.2. In the case of a continuing delay, only one Claim is necessary.

## § 15.1.6.2 Time Impact Analysis

When Contractor makes a Claim for an increase in the Contract Time, Contractor shall submit to Owner a written Time Impact Analysis describing the influence of each change or impact. A "Time Impact Analysis" is an evaluation of the effects of changes in the construction sequence, contract, design or site conditions on Contractor's plan for constructing the Project, as represented by the Project schedule. The purpose of the Time Impact Analysis is to determine if the overall Project has been delayed and, if necessary, to provide Contractor and Owner a basis for making adjustments to the Contract.

## (Paragraphs deleted)

§ 15.1.6.2.1 A Time Impact Analysis shall consist of one or all of the steps below:

- .1 Establish the status of the Project before the impact using the most recent Project schedule update prior to the impact occurrence.
- .2 Predict the effect of the impact on the most recent Project schedule update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.
- .3 Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing and mitigation efforts.
- .4 Compare the status of the Work prior to the impact (Subsection 1 above) to the prediction of the effect of the impact (Subsection 2 above), and to the status of the work during and after the effects of the impact are over (Subsection 3 above). Note: if an impact causes a lack of access to a portion of the Project, the effects of the impact may extend to include a reasonable period for remobilization.

§ 15.1.6.2.2 The Time Impact Analysis shall be electronically submitted to the Owner. If the Project schedule is revised after the submittal of a Time Impact Analysis but prior to its approval, Contractor promptly shall indicate in writing to Owner the need for any modification to its Time Impact Analysis. One (1) copy of each Time Impact Analysis shall be submitted within fourteen (14) days after the occurrence of an impact. Owner may require the steps of the Time Impact Analysis outlined in Section 15.1.6.2.1.1 and Section 15.1.6.2.1.2 be submitted at the commencement of the impact, if needed, to make a decision regarding the suspension of Contract Time. Approval or rejection of each Time Impact Analysis by Owner shall be made within fourteen (14) days after receipt, unless subsequent meetings and negotiations are necessary.

§ 15.1.6.2 Not used.

## § 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 but is not limited to:

- damages incurred by the Owner for rental expenses, for losses of use, income, rents, profit, financing, business and reputation, for loss of management or employee productivity or of the services of such persons, for diminished value, and impairment of capital; and
- 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.

Without expanding the waiver provided above, consequential damages shall not mean or include the costs incurred by the Owner for design professional services, costs to supplement or accelerate the Work of the Contractor, and costs of corrective or completion work caused by or resulting from the Contractor's failure to comply with the requirements imposed on the Contractor by the Contract Documents. Except as may otherwise be expressly provided in the Agreement or these General Conditions, this mutual waiver is applicable to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained herein shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Notwithstanding the foregoing, this waiver or limitation on recovery of consequential damages shall not apply to the amount or type of damages recoverable by an Indemnitee under Sections 3.18, above arising from a claim brought by any person or party other than an Indemnitee. Further, this waiver or limitation on recovery of consequential damages shall not apply to consequential damages to the extent recoverable from the proceeds paid by insurance maintained by the party responsible for such damages or any such project-specific insurance procured in accordance with the Contract Documents and for the amount of any deductibles required to be paid for such insurance coverage.

§ 15.2 Not used.

(Paragraphs deleted)

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, 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 sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If the selected method of binding dispute resolution is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to agree upon a schedule for later proceedings.

§ 15.3.3 Not used.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. 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. In no event shall any mediator in connection with a Claim be permitted to serve as an arbitrator for that, or any other Claim that is not resolved pursuant to mediation.

#### § 15.4 Arbitration

Not used.

(Paragraphs deleted)

## § 15.5 Subcontractor Pass-Through Claims

§ 15.5.1 In the event any Subcontractor asserts a Claim to Contractor that Contractor seeks to pass through to Owner under the Contract Documents, any entitlement to submit and assert the Claim as to Owner shall be subject to the requirements of this Article 15 and the following three (3) additional requirements listed below, all three of which shall be conditions precedent to the entitlement of Contractor to seek and assert such Claim against the Owner:

1 Contractor shall (i) have direct legal liability as a matter of contract, common law or statutory law to Subcontractor

for the claim Subcontractor is asserting; or (ii) have entered into a written liquidating agreement with Subcontractor, prior to the Claim's occurrence, under which Contractor has agreed to be legally responsible to the Subcontractor for pursing the assertion of such Claim against Owner under said Contract and for paying to Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The relationship, liability or responsibilities shall be identified in writing by Contractor to Owner at the time such Claim is submitted to Owner and a copy of any liquidating agreement shall be included by Contractor in the Claim submittal materials; .2 Contractor shall have reviewed the Claim of the Subcontractor prior to its submittal to Owner and independently shall have evaluated such Claim in good faith to determine the extent to which the Claim is believed in good faith to be valid. Contractor shall inform Owner in writing that it has made a review, evaluation and determination the Claim is being made in good faith and the Claim is believed to be valid; and Subcontractor making the Claim to Contractor shall certify to both Contractor and Owner that Subcontractor has compiled, reviewed and evaluated the merits of such Claim and the Claim is believed in good faith by Subcontractor to be valid. A copy of the certification by Subcontractor

shall be included by Contractor in the Claim submittal materials.

§ 15.5.2 Any failure of Contractor to comply with any of the foregoing requirements and conditions precedent with

regard to any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim.

§ 15.6 Receipt and review of a Claim by Owner under this Article 15 shall not be construed as a waiver of any defenses to the Claim available to Owner under the Contract Documents or Applicable Law.

#### ARTICLE 16 OTHER PROVISIONS

#### § 16.1 General Provisions

§ 16.1.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 16.1.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under Applicable Law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed servable.

§ 16.1.3 Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

## § 16.2 No Oral Waiver

The Provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by writing.

## Additions and Deletions Report for

AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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#### PAGE 1

City of Pflugerville **Public Works Complex** Pflugerville, Texas

THE OWNER:

(Name and address)

City of Pflugerville P.O. Box 589

Pflugerville, TX 78691

(Name, legal status and address) THE CONSTRUCTION MANAGER:

(Name, legal status, and address. The Term "Contractor" as used in A201-2017 shall mean the Construction Manager)

CORE Construction Services of Texas, Inc.

6320 Research Road

Frisco, Texas 75033

(Name, legal status (Name and address)

Marmon Mok, LP 1020 NE Loop 410, Suite 201 San Antonio, Texas 78209 PAGE 2

15 **CLAIMS AND DISPUTES** 

# OTHER PROVISIONS

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If and to the extent of any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order:

- Modifications issued after the execution of the Agreement;
- (ii) GMP Amendment to the Agreement, once executed, including any attachments thereto;
- (iii) The Agreement, as modified, and any attached Exhibits and documents identified in Section 15.7 of the Agreement;
- (iv) AIA Document A201-2017 General Conditions, as modified;
- Addenda to the Drawings and Specifications issued prior to execution of the Agreement;
- (vi) Drawings and Specifications.

- § 1.1.1.1 In the event of inconsistencies within Contract Documents, the exhibits, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall:
  - .1 provide the better quality or greater quantity of Work; or
  - .2 comply with the more stringent requirement.

The terms and conditions of this Section 1.1.1.1, however, shall not relieve the Contractor of any of the obligations set forth in Section 3.2 and 3.7.

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.

..

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. that are reasonably inferable to be required by the Contract Documents to produce the completed Project. The Work may constitute the whole or a part of the Project.

§ 1.1.3.1 Nothing in the Agreement or General Conditions shall be interpreted as imposing on the Owner, any other Indemnitees, or Owner's consultants, any duty, obligation, or authority with respect to any items that are not intended to be incorporated into the completed Project, or that do not comprise the Work, including but not limited to shoring, scaffolding, hoists, weather-proofing, or any temporary facility or activity, all of which are the sole responsibility of the Contractor.

#### **PAGE 11**

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.

Not used.

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§ 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 Subject to Section 1.1.1, the Contract Documents are complementary, and what is required by one shall be as binding as if required by all; by all. Any known conflicts between the requirements of the Drawings and the Specifications or any known conflicts noted within the Drawings themselves or within the Specifications themselves have been or shall be referred to the Owner and Architect by Contractor, and Contractor agrees that those that have been referred to Owner and Architect have been clarified to the satisfaction of Contractor. Any 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. Contractor shall coordinate the Work and Drawings to conform to the requirements of the Contract Documents. Dimensions to be utilized shall be figures, or computations based on given figures, rather than scale or rule. Computed dimensions shall take precedence over scale dimensions, and large-scale drawings shall take precedence over small scale drawings. The General Conditions, Specifications, and Drawings contemplate a finished Project of such character and quality as is described in and is reasonably inferable from them and the Contractor, recognizing the impossibility of producing Drawings and Specifications with perfect accuracy, agrees that Contractor's submitted Contract Sum for the Work hereunder includes a sufficient allowance to make Contractor's Work complete and operable, fitting with the work of other contractors and the Owner and in compliance with good practice and Applicable Laws. Contractor agrees that inadvertent discrepancies or the failure to repeat, on any drawing, the figures or notes given on another shall not be the cause for extensions of Contract Time or any increase of the Contract Sum.

§ 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, Applicable Law, to give effect to the parties' intentions and purposes in executing the Contract. PAGE 12

- § 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. Contractor, Subcontractors, and Sub-subcontractors, shall not own or claim a copyright in the Instruments of Service. All Drawings, Specifications and other documents prepared in connection with the Project, and all copies thereof are and shall remain the Owner's property. All copies of Instruments of Service, except the Contractor's record set and copies provided to Subcontractors or Sub-subcontractors, shall be returned or suitably accounted for to the Owner, upon completion of the Work. The Drawings, Specifications and other documents prepared in connection with the Project, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. 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 Owner's, Architect's or Architect's consultants' reserved rights.
- § 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers and Sub-subcontractors are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 4.7-1.6.3 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-Service and all Modifications thereto. The Contractor, Subcontractors, and Sub-subcontractors 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. Work.
- § 1.5.3 During construction, the Contractor shall maintain one complete set of Drawings and Specifications for record purposes and shall note timely all significant changes, Modifications, and additions thereon.

§ 1.6.1 Except as otherwise expressly 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 or an officer of the corporation for whom the notice is addressed intended, and shall be deemed to have been duly served if delivered in person, by registered mail, or by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

## § 1.7 Digital Data Use and Transmission

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

# § 1.6.3 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 establish, in writing, the protocols for the development, use, transmission, and exchange of digital data.

#### **§ 1.7** Not used.

Any use of, or reliance on, all or a portion of a building information model without agreement to written-protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in Section 1.6.3, 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.

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§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen (15) 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.

...

- § 2.2.2 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.require.
- **§ 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.

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- § 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 any available 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. The furnishing of those surveys and legal description of the Project Site shall not relieve the Contractor from its duties under the Contract Documents. In addition to the foregoing, if Owner or Architect furnishes Contractor with any information concerning subsoil characteristics or conditions of the area where the Work is to be performed, then if Contractor becomes aware of any discrepancies, omissions, ambiguities, or conflicts in any such information, Contractor shall promptly notify Owner and Architect in writing of such information.
- § 2.3.4.1 In connection with the forgoing, prior to any Work occurring, Contractor shall be responsible for verifying the location of all utility lines, telephone lines and cables, sewer lines, water pipes, gas lines, electrical lines, including without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such manner so as to avoid damaging any such lines, cables, pipes and pipelines. Where there are intersections involving various piping and equipment, etc., particular consideration shall be given to clearances. If tight conditions develop, the Contractor and Subcontractors for the various Work involved shall make arrangements to jointly prepare coordination drawings, showing the suggested solution and submit it to the Architect for comment, and if necessary, approval. Contractor and all Subcontractors and Sub-subcontractors are deemed to have taken into consideration that interferences will occur at

various points, and it is understood and agreed that extras for necessary variation will not be approved. Contractor shall verify all measurements at the site.

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§ 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. Such copy of the Contract Documents may be furnished electronically as provided herein. In the event that more than one copy of the Contract Documents are requested by Contractor, its Subcontractors, or Sub-subcontractors, the additional expense of procuring such copies (either hard copy or electronically) shall not be included as a Project Cost and shall not be reimbursed by Owner as included in the GMP.

...

If the Contractor (i) fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or Section 12.2; (ii) repeatedly fails to carry out Work in accordance with the Contract Documents; (iii) fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials or equipment so as to be able to complete the Work within the Contract Time; or (iv) disregards the instructions of Architect or Owner that are in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, affected Work or any portion thereof, or any Work reasonably related to the affected Work, until the cause for such order has been eliminated; however, 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 and any delay resulting from such Work stoppage shall not extend the Contract Time or required dates of Substantial or Final Completion. If such stoppage results from any faulty or defective performance by the Contractor or any Subcontractors or Sub-subcontractors, or other person working through the Contractor, then the Contract Time shall not be extended and the Contract Sum shall not be increased, and the Contractor shall, at its sole cost and expense, perform on an accelerated basis such portions of the Work as may be necessary in order to comply with the Project schedule. The Contractor shall resume the Work after such stoppage promptly upon written notice to do so from the Owner. The Owner shall incur no liability for delays occasioned by any stop work order issued in accordance with this Section. Nothing herein shall be deemed to limit the Owner's rights with respect to termination as set out in Article 14 herein.

...

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 The Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment 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 and expenses including engineering, accounting, consulting and attorney's fees and costs made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

# § 2.6 Extent of Owner Rights

§ 2.6.1 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

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**User Notes:** 

§ 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 In accordance with Section 59.051 of the Texas Business and Commerce Code, Contractor must, within a reasonable time of learning of a defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications, or other design documents, disclose in writing to the Owner the existence of any known defect in the plans, specifications, or other design documents that is discovered by Contractor, or that reasonably should have been discovered by the Contractor using ordinary diligence, before or during construction. For purposes of Section 3.2.2, "ordinary diligence" means the observations of the plans, specifications, or other design documents or the improvement to real property that a contractor would make in the reasonable preparation of a bid or fulfillment of its scope of work under normal circumstances. Ordinary diligence does not require that the Contractor engage a person licensed or registered under Title 6, Occupations Code, or any other person with specialized skills. A disclosure under this subsection 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. Contractor and not as a licensed professional under Title 6, Occupations Code. If Contractor fails to disclose a defect as required in the Agreement, Contractor shall be liable for the consequences of defects that result from the failure to disclose.

- § 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 in writing to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner 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, Applicable Laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.
- § 3.2.5 The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including:
  - .1 the location, condition, layout and nature of the Project site and surrounding areas;
  - .2 generally prevailing climatic conditions,
  - .3 anticipated labor supply and costs; and
  - .4 availability and cost of materials, tools and equipment.
- § 3.2.6 Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's excessive requests 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, prior Project correspondence, or documentation.

...

§ 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, as between the Owner and Contractor, 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. Nothing herein shall constitute an assumption by Owner of control of the means and methods of the Work, which shall remain solely with Contractor. The Contractor shall engage Subcontractors and workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a workmanlike manner under the full-time supervision of an approved superintendent. Further, the Contractor shall advise the Owner and Architect: (a) if a specified product deviates from good construction practices; (b) if following the Specifications will adversely affect any warranties; and (c) of any objections which the Contractor may have to the Specifications.

§ 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, Subcontractors, Sub-subcontractors and the agents and employees of any of them, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. Subcontractors or Sub-subcontractors, and for any damages, losses, costs and expenses, including but not limited to attorney's fees, resulting from such acts and omissions.

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§ 3.3.4 Contractor shall maintain daily reports which shall record the date, weather conditions, deliveries received, Subcontractors and Sub-subcontractors on site, manpower counts, general description of Work accomplished and problems or conflicts in the field. Said reports shall be maintained at the Project in an orderly manner and shall be delivered to the Owner at least once a week. Copies of all daily reports shall also be available to Owner and its designated representative for review at any time. Contractor shall submit the format of such daily reports to Owner for approval prior to commencement of the Work. In the event Contractor fails to deliver copies of Contractor's daily reports, Owner may withhold a portion of Contractor's Fee in making a progress payment as may be necessary to protect the Owner from a loss resulting therefrom.

# § 3.3.5 Not used.

§ 3.3.6 Contractor's supervision of Work shall include expediting and coordination of work of Subcontractors and Sub-subcontractors. Contractor shall perform all supervising and procuring required to ensure delivery of materials to maintain work schedules of Subcontractors and Sub-subcontractors and progress schedule of the Project to ensure full completion of Work. Contractor shall ensure all Subcontractors and Sub-Subcontractors and their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment.

§ 3.3.7 The Contractor shall establish and maintain benchmarks and all other grades, lines, and levels necessary for the Work, report errors, or inconsistencies to the Owner and Architect before commencing Work as required by these General Conditions, review the placement of the building(s) and permanent facilities on the site with the Owner and Architect after all lines are staked out and before foundation Work is started, and provide a form survey as part of such review. Contractor shall provide access to the Work for the Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors or Sub-subcontractors on adjacent properties due to construction and revealed by any improvement survey, except for encroachments arising from error or omissions that are not reasonably discoverable by Contractor, shall be corrected by Contractor within thirty (30) days of the improvement survey (or as soon thereafter as possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

§ 3.3.8 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in the Contract Documents shall be deemed or constructed to (1) make the 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 or Architect in respect of the Work shall relate to the result the Owner desires to obtain from the Work and shall in no way affect Contractor's independent contractor status as described herein. Neither Owner nor Architect shall participate in any way in the administration or supervision of the Work. The means, methods, techniques, sequences, procedures, and safety measures utilized in the performance of the Work are the sole responsibility of the Contractor. Any means, method, technique, sequence or procedure set forth in the Contract Documents is solely to specify the desired end product. If Contractor discovers that such means,

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methods, technique, sequence or procedure will not result in the specified end product or is unsafe or illegal, it is Contractor's responsibility to notify the Architect and Owner and propose a correct means, method, technique, sequence or procedure prior to performing the Work at issue. Nothing in Owner's or Architect's review of the general quality and progress of the Work shall be construed as the assumption of authority or supervision over the performance of the Work.

- § 3.3.9 Contractor, Subcontractors, and Sub-subcontractors shall not install any product or equipment in a manner that is in direct conflict with the manufacturer's recommended requirements. If the manufacturer of the product or equipment has requirements that cannot be met by the specific application indicated, the Contractor shall bring this information to the attention of the Architect and Owner. Any products or equipment that are installed contrary to the manufacturer's requirements shall be replaced at no additional cost to the Owner unless specifically authorized in writing by the Owner.
- § 3.3.10 The Contractor shall execute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction management and practice for construction of projects similar to the Project, using qualified, careful and efficient workers and in conformity with the provisions of this Agreement and the other Contract Documents.

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- § 3.4.1.1 The Contractor shall inspect all materials delivered to the Project to ensure that all materials, equipment and labor incorporated into or working on the Project meets or exceeds industry standards for quality and craftsmanship. Contractor shall reject any materials that will not conform with the Contract Documents when properly installed. All material delivered to the Project site shall be handled in a manner to preclude inclusion of any foreign substances or causing of any discoloration therein and to prevent any damage thereto which might reduce its effectiveness as part of the Work.
- § 3.4.1.2 When Contractor desires to use Owner's water in connection with the Work, Contractor shall make complete and satisfactory arrangements with the Pflugerville Water Service Department and shall be responsible for the cost of the water Contractor uses. Where meters are required and used, the charge shall be at the regular established rate; where no meters are required and used, the charge shall be as prescribed by City of Pflugerville ordinance, or where no ordinance applies, payment shall be based on estimates made by the representatives of the Pflugerville Water Service Department.
- § 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 written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making a request for substitutions, Contractor represents and warrants the following: (1) that Contractor has investigated the proposed product or material and determined that it is equal or superior in all respects to that specified; (2) that Contractor shall provide an equal or greater warranty for the substitution that the Contractor would for that specified; (3) that Contractor certifies that the cost data presented is complete and includes all related costs under the Contract, except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and (4) that Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- § 3.4.3 The Contractor shall enforce strict discipline discipline, safety, job cleanliness 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. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages; slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain labor harmony on the Project.
- § 3.4.4 Contractor recognizes, accepts and hereby acknowledges the Project site is a public facility representing the City of Pflugerville. As such, Contractor shall prohibit the possession or use of alcohol, controlled substances, tobacco and any prohibited weapons on the Project site and shall require appropriate dress of Contractor's forces consistent with the nature of the Work being performed, including the wearing of shirts at all times. Harassment of any kind, including sexual harassment, of employees of Contractor or any Subcontractor or Sub-subcontractor, employees or

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consultants of Owner or of any visitor to the Project site, by Contractor, employee(s) of Contractor, a Subcontractor or Sub-contractor or an employee of either is strictly forbidden. Any person, Contractor, employee of Contractor, Subcontractor or Sub-subcontractor or an employee of either who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Contractor and Owner, including the removal and exclusion of the violating person(s) or employee(s) of Contractor, Subcontractor, or Sub-subcontractor from the Project site and, if Owner so elects, termination from the Project.

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- § 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.
- § 3.5.1 The Contractor warrants to the Owner and Architect that the Work will be performed in a good and workmanlike manner and 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 shall 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 Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- § 3.5.3 The warranties of Contractor provided in this Section 3.5 and set forth elsewhere in the Contract Documents shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

...

- § 3.7.2 The Contractor shall comply with and give notices required by applicable laws, 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, 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.

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If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14-seven(7) days after first observance of the conditions. The Architect-Owner will promptly investigate such conditions and, if the Architect Owner 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 Owner 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 Owner shall promptly notify the Owner and Contractor, stating the reasons. If either party the Contractor disputes the Architect's Owner's determination or recommendation, that party-Contractor may submit a Claim as provided in Article 15.

- § 3.7.6 Copies of any and all permits, licenses, and certifications shall be delivered to the Architect and Owner as soon as they are obtained. Upon receipt of final payment, the Contractor shall deliver the originals of such permits, licenses, and certificates to the Owner.
- § 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. Each allowance item shall contain a detailed breakdown of the assumptions for each allowance, including assumptions pertaining to quantity, quality, assembly factors and inclusion or exclusion of cost. By inclusion of allowance items in the Contract Sum, Contractor represents to Owner that each such allowance is a reasonable estimate, using Contractor's skill and professional judgment, of the cost pertaining to such allowance item taking into account: (a) the Drawings and Specifications and other information existing at the time the allowance is determined; (b) the labor and material standards and construction means, methods and techniques prevailing in the industry for first class construction; and (c) the level of labor and material costs generally prevailing in the locality of the Project at the time the allowance is determined. Where an allowance item has been provided to Contractor by Owner, Contractor shall review such allowance item, and before including such allowance item in the Contract Sum, determine to the best of Contractor's knowledge, that the cost pertaining to such allowance item is a reasonable estimate taking into account the above criteria. If requested by Owner, Contractor shall provide Owner with a written explanation of how each allowance was determined.

- § 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness. Under no circumstances shall Contractor incur any costs greater than an allowance on behalf of Owner without prior written authorization of Owner. Notwithstanding anything to the contrary, and notwithstanding if Contractor incurs costs greater than allowances, unless a Change Order is executed by Contractor and Owner prior to commencement of Work under an allowance, Contractor shall not be entitled to, and waives any right to receive, additional consideration, or any other compensation with respect to such allowance, whether based on implied consent, quantum meruit or otherwise.
- § 3.8.4 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.
- § 3.8.5 The Contractor shall develop and manage an allowance tracking process with regular reports to the Owner. These reports shall be provided to the Owner no less frequently than each Owner-Architect-Contractor meeting. The information to be tracked and reported shall be sufficient to provide a thorough status of monies expended, scope covered by the allowance, timing of the expense and completion of the associated Work. PAGE 20
- § 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 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. Should a superintendent leave the employ of Contractor, Contractor shall promptly submit a new superintendent to Owner for approval, which shall not be unreasonably withheld or delayed. Owner shall have the right, at any time, to direct a change in Contractor's superintendent if their performance is unsatisfactory to Owner. In the event of such demand, Contractor shall promptly replace said superintendent with a superintendent satisfactory to Owner. If a suitable replacement cannot be provided, the Contractor may be terminated by Owner. 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 fourteen (14) days of receipt of the information, the Architect Owner 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 Owner to provide notice within the 14-day-fourteen (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. Not used.

- § 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 Work utilizing the critical path method (CPM). The schedule shall be in time scaled precedence format with the critical path clearly indicated and in such electronic format to ensure that the Owner can understand the logic and all aspects of the schedule. Contractor shall give notice to the Owner of any change in the logic of the schedule or any part thereof, or the removal of any restraints, or the reduction of any duration. The construction schedule shall cover field tasks, significant material deliveries, other off-site restraints such as permits, inspections, approvals, and milestones for start dates, completion dates, and availability dates as required. Tasks shall be broken down into activities that allowing monitoring monthly progress The construction 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 construction schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.
- § 3.10.1.1 The construction schedule shall be coordinated with the Owner's overall Project schedule. The Contractor is responsible for coordinating document packages and deliverables from the Owner and Architect.
- § 3.10.2 The Contractor, 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 review and Owner's approval. The Architect's Owner'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, 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 resulting from 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. Architect and approved by the Owner. Neither submission of revised or updated construction schedules, nor indications on the construction schedule of activities, including critical path activities, that have fallen behind or were completed later than the original construction schedule, shall relieve the Contractor from the requirements to achieve any designated milestone dates. Contractor shall update the construction schedule regularly, or as requested by Owner, and deliver updated schedules to Owner monthly or as otherwise requested. Extensions of Contract Time will be granted only through written Change Order signed by Owner and shall not be implied by Owner's conduct or failure to object.
- § 3.10.4 The Contractor shall be solely responsible for the original schedule, any and all updates, changes, alterations, or amendments. Neither the Owner nor any of the Owner's consultants or contractors shall be responsible for the accuracy or sufficiency of any schedule prepared or presented to the Owner.
- § 3.10.5 The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the

Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will minimize resulting additional time and costs. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:

- .1 provide a graphic representation of all activities and events that will occur during performance of Work;
- .2 identify each phase of construction and occupancy; and
- 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.

The construction schedule shall be updated to reflect actual conditions (sometimes referred to herein as progress reports) as set forth in Section 3.10.1 or if requested by the Owner. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

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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.§ 3.11.1 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. ("Record Drawings"). The Record Drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from Contract Change Orders, and all concealed and buried installations of piping, conduit, and utility services changed as part of the Work. All buried items outside the facility shall be accurately located on the Record Drawings as to the depth and in relationship to not less than two permanent features, such as interior or exterior wall faces. The Record Drawings shall be clean and all changes, corrections, and dimensions shall be given in a neat and legible manner in contrasting color.

§ 3.11.2 At the date of Substantial Completion and as a condition precedent to Final Payment, the Contractor shall furnish the Record Drawings to the Owner. Architect shall issue a complete set of "as-built" drawings incorporating all changes made during the construction.

...

§ 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 Subcontractor or Sub-subcontractor to illustrate some portion of the Work.

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§ 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 Owner and Architect in writing 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. Contractor warrants the adequacy for the purpose intended of any shop drawings or portion of a shop drawing.

• • •

§ 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. 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 a properly 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 adequacy, accuracy, and completeness 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 and Owner in a reasonably prompt manner so as not to delay the progress of the Work.

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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 Applicable Laws and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Owner shall have the right to refuse admittance to the Project site to any employee or agent of the Contractor, Subcontractors, or Sub-subcontractors whose presence the Owner reasonably deems contrary to the Owner's interest.

. . .

§ 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 withheld, withhold from the Owner or a Separate Contractor, Contractor its consent to cutting or otherwise altering the Work.

# § 3.15 Cleaning Up § 3.15 Cleaning Up

...

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. Contractor recognizes the importance of performing the Work in a safe manner so as to assist with preventing damage, injury or loss to, all individuals at the Site, whether working or visiting, shall report to the Contractor's field office and sign in before entering the Project Site.

...

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

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patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss-all resulting loss and expense (including attorneys' fees) unless the information is promptly furnished to the Owner and Architect.

§ 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. (and except for employee injury claims covered by Section 3.18.1.1 below) the Contractor shall indemnify, defend and hold harmless the Owner, and their elected officials, representatives, volunteers, agents, employees, officers, directors, board members, successors in interest, and partners (collectively "Indemnitees" and individually "Indemnitee") from and against any and all losses, expenses, attorney's fees, claims, liens, liability, demands, suits, causes of action, damages, settlements, fines, and penalties of every kind (except as hereinafter excluded) including all expenses and costs of litigation, settlement, dispute resolution, or claim adjustment (collectively "Indemnified Claims" and individually "Indemnified Claim") to the extent such Indemnified Claims arise out of or result from performance of the Work; provided, however, this indemnity provision shall not apply to the extent it requires Contractor to indemnify an Indemnitee against a claim caused by the negligence or fault, breach or violation of a statute, ordinance, governmental regulation, standard, or rule or the breach of contract of the Indemnitee, its agent, employee or any third party under the Indemnitee's direction and control (other than Contractor, its agents, employees, Subcontractors or Sub-subcontractors).

Except as provided in Subsections 3.18.1.1 below, in the event that an Indemnitee or their design professionals, consultants, or separate contractors (other than the Contractor, its agents, employees or Subcontractors and Sub-subcontractors) are found, by final judgment or arbitration award, to be negligent or at fault in whole or in part, the indemnity and hold harmless obligation of the Contractor with regard to attorney's fees and litigation or arbitration costs and expenses incurred by an Indemnitee in defense of such claim shall be reduced by the percentage of negligence or fault of the Indemnitee and/or their design professionals, consultants, or separate contractors (other than the Contractor, its agents, employees or Subcontractors and Sub-subcontractors).

§ 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.

§ 3.18.1.1 WITHOUT LIMITING THE FOREGOING INDEMNIFICATION IN SECTION 3.18.1, TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST INDEMNIFIED CLAIMS DUE TO BODILY INJURY OR DEATH AT THE PROJECT SITE OF AN EMPLOYEE OF CONTRACTOR, EMPLOYEE OF ITS SUBCONTRACTORS OR SUB-SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, REGARDLESS OF WHETHER AN INDEMNIFIED CLAIM IS CAUSED IN WHOLE OR IN PART BY THE FAULT, ACT, OMISSION OR NEGLIGENCE OF THE INDEMNITEES.

§ 3.18.2 Other provisions in the Contract Documents containing indemnification obligations shall be deemed to be cumulative of and to operate independently of the indemnities provided above such that all indemnities provided in the Contract Documents shall be construed to grant indemnity to the Indemnitees to the fullest extent possible.

§ 3.18.3 It is agreed that the indemnification provisions set for this Agreement shall be reformed and amended as necessary to comply with any legal limitations now or hereafter in effect and affecting the validity or enforceability of such provisions set forth in this Agreement to the minimum extent necessary to bring the provision into conformity

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with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.4 The Contractor shall indemnify and hold harmless the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

§ 3.18.5 Owner shall have the right to approve defense counsel, of which approval shall not be unreasonably withheld, to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify Owner, unless such right is expressly waived by Owner in writing. Contractor shall retain Owner- approved defense counsel within ten (10) calendar days of Owner's written notice that Owner is invoking its right to Indemnification under this Contract. If Contractor fails to retain counsel within such time period, Owner shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by Owner. Owner also shall have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

## § 3.19 Liens

§ 3.19.1 In accordance with Texas law, neither Contractor nor any Subcontractors, Sub-subcontractors, nor any others claiming by and through Contractor have any lien rights against the Owner, the Project, the Work, or Owner's lands, buildings, or funds. Contractor hereby agrees to indemnify, defend, and hold the Owner harmless from and against all liens filed by Contractor, Subcontractors, Sub-subcontractors, and all others claiming by and through Contractor, against the Owner, the Project, the Work, or Owner's lands, buildings, or funds, arising out of or concerning the Work or the Project, including, but not limited to attorneys' fees and all expenses and costs of litigation, settlement, dispute resolution, or claim adjustment.

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§ 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. Not used.

- § 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, Contractor and approved by the Owner and Architect, 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 Sub-subcontractors or their agents or employees, or any other persons or entities performing portions of the Work.

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

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suppliers-Sub-subcontractors shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

- § 4.2.6 The Architect has authority to recommend the Owner 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 to recommend to the Owner inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3. Work, 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, Sub-subcontractors, 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. promptness. 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. Contractor shall remain responsible for errors or deviations from what is required in the Contract Documents in Contractor's submittals even if the error or deviation is not discovered by the Architect during the submittal review and approval.
- § 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 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.
- § 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.

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- § 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. site and those who are to furnish materials or equipment fabricated to a special design. 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. site and those who are to furnish materials or equipment fabricated to a special design. 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.

§ 5.2.1 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-Contractor shall provide contact information for all Subcontractors and Sub-subcontractors, including addresses and phone numbers. Within fourteen (14) days of receipt of the information, the Architect or Owner 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 fourteen (14)-day period shall constitute notice of no reasonable objection.

- § 5.2.5 To the extent Contractor wishes to change a Subcontractor, Contractor shall provide Owner with written notification. Acceptable reason for change of a Subcontractor pursuant to Paragraph 5.2.4 shall be limited to the following:
  - .1 Business failure of Subcontractor;
  - .2 Inability of Subcontractor to provide bonds where required; and
  - .3 Failure of Subcontractor to perform according to approved schedule or other provisions of the Contract Documents.
- § 5.2.6 Prior to solicitation of bids from Subcontractors, Contractor shall submit to the Owner and Architect a proposed list of bidders. The Owner reserves the right to approve and add to such bidders list. After Contractor's completion of its bid solicitation, Contractor shall submit to Owner a detailed comparative analysis of the bids received together with Contractor's recommendations for award.
- § 5.2.7 Within ten (10) days after Contractor's execution of a subcontract, Contractor shall deliver to Owner the fully executed subcontract agreement.

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, Subcontractor and materials furnished or equipment fabricated to a special design, 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 Not used.
- § 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that
  - 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 assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

- § 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.
- § 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## § 5.5 Contingent Assignment of Subcontracts

- § 5.5.1 Each subcontract agreement for a portion of the Work will expressly provide that it is assigned by the Contractor to the Owner, provided that:
  - 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 which the Owner accepts by notifying the Subcontractor and Contractor, in writing; and
  - assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.
- § 5.5.1.3 When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract. All sums due and owing by Contractor to the designated Subcontractors for Work performed prior to Owner's acceptance of the subcontracts shall constitute a debt between such parties and Contractor.
- § 5.5.2 If the Work in connection with a subcontract has been suspended for more than sixty (60) days after termination of the Contract by the Owner pursuant to Section 14.2, and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a direct result of the suspension.
- § 5.5.3 Upon assignment to the Owner, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.
- § 5.5.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those services and materials furnished and approved by the Owner subsequent to the Owner's exercise of any rights under this conditional assignment.

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§ 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

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Separate Contractors and the Owner in reviewing their construction schedules. Contractor shall use its best efforts to cooperate with Owner and separate contractors, if any. 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.

§ 6.2.2 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 and Owner 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 and Owner 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 and damages 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.

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 Owner will allocate the cost among those responsible.

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§ 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. All Change Orders shall be accompanied by detailed price breakdowns.

- § 7.1.4 Contractor shall not proceed with any changes in the Work or additional work without previously receiving a written Change Order or Construction Change Directive executed by Owner authorizing such change in the Work or additional work. Contractor shall accept no directions, correspondence, or communications from anyone with regard to any change in the Work or additional work other than those issued in accordance with the Contract Documents. If Contractor performs such change in Work without prior receipt of such executed Change Order or Construction Change Directive, Contractor does so at its own risk and cost. All such Change Orders or Construction Change Directives shall be incorporated into the schedule of values for the Cost of the Work utilizing separate line items.
- § 7.2.1 A Change Order is a written instrument prepared by the Architect or Owner and signed by the Owner, Contractor, and Architect (and approved by City Council of the City of Pflugerville, Texas ("City Council"), if required) stating their agreement upon all of the following:

- .3 The extent of the adjustment, if any, in the Contract Time.
- § 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters and pending claims by Contractor relating to the change in the Work which is the subject of the Change Order including, but not limited to all direct and indirect costs associated with such change, and any and all adjustments to the Contract Sum and the Construction Schedule.

- § 7.2.3 Contractor's Change Order shall provide either (i) a lump sum; (ii) unit price or (iii) a not-to-exceed amount properly itemized and supported by sufficient substantiating data to permit evaluation by Owner and Architect.

  Notwithstanding anything to the contrary, and notwithstanding if Contractor performs such changed Work, unless a Change Order is executed by Contractor and Owner prior to commencement of the changed Work the Contractor shall not be entitled to, and forever waives any right to receive, additional consideration, or any other compensation with respect to such changed Work.
- § 7.2.4 All Change Orders require written approval by Owner or the duly elected members of the City Council or, where authorized by the state law and City of Pflugerville ordinance, by City of Pflugerville's City Manager or designee, pursuant to administrative action. The approval process requires a minimum of forty-five (45) days after submission to Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal shall be authorized by Owner or City Council resolution or administrative action. The time required for the approval process shall not be considered a delay and no extensions to the Contract Time or increase in the Guaranteed Maximum Price shall be considered or granted as a result of this process. Pending the approval of a Change Order as described above, Contractor shall proceed with the work under a pending Change Order only if directed in writing to do so by Owner.

...

- § 7.3.1 A Construction Change Directive is a written order prepared by the Architect-Owner 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.

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- § 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:methods as determined by the Owner:

...

- § 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the <u>Architect-Owner</u> 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 <u>Architect-Owner</u> 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:
  - 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; Owner;

•••

§ 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 <u>Architect-Owner</u> 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.

•••

- § 7.3.8 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 eost as confirmed by the Architect. cost. 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-amounts not in dispute for such change in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

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

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The Architect-Owner 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 Owner'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 Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's Owner's order for a minor change without prior notice to the Architect Owner 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.

...

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect <u>and approved by Owner in accordance</u> with Section 9.8.

...

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Except as otherwise specifically provided in Section 8.3 of these General Conditions, the Contractor shall bear all costs for overtime or acceleration and all additional expenses which may arise in order to achieve Substantial Completion within the Contract Time.

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§ 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. Owner, its employee, or a Separate Contractor employed by the Owner; or by changes ordered in the Work (not caused or resulting from the failure of Contractor or its Subcontractors, Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to comply with their obligation arising under the Contract); by labor disputes (not arising from the labor practices of Contractor, its Subcontractors, Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable); fire (not caused by the negligence or wrongful acts of the Contractor, its Subcontractors, Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable); unusual delay in deliveries (not attributable to or caused by the negligence or wrongful acts of the Contractor, its Subcontractors, Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable); adverse weather conditions (beyond the number of weather days established pursuant to Section 8.3.1.1); governmental orders, moratorium on construction, epidemics or pandemics or other causes beyond the control and reasonable ability to avoid by the Contractor, its Subcontractors, Sub-subcontractors or anyone directly employed by any of them or for whose acts any of them may be liable including acts of God, provided that such causes were not known by Contractor at the time of this Agreement; then the Contract Time for the impacted milestone date or the entirety of the Work, as applicable, shall be extended by Change Order by the number of days by which the critical path to completion of the milestone date or the Project has been delayed by the event giving rise to the right to

an extension. The Contractor shall provide written explanation and critical path method schedule evidencing such impact has occurred. Notwithstanding the foregoing, the Contractor acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay to the critical path (1) is not caused, or could not have been reasonably anticipated and mitigated, by the Contractor, its Subcontractors, Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable and (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay.

§ 8.3.1.1 A Claim for additional time will be granted when the Project experiences adverse weather conditions in excess of the weather days established in the GMP Amendment ("Anticipated Weather Days"). If any of the four weather events listed below delay or hinder the commencement, prosecution or completion of the Work for any activity on the Project's critical path for more days during a given month than the number of Anticipated Weather Days for that given month as set forth below, the Project schedule shall be extended by the number of days by which the Anticipated Weather Days are exceeded by such weather events. A "Weather Day" that may entitle Contractor to an extension of the Contract Time are as follows:

- 0.3 inches or more of rain during a calendar day.
  - .2 0.5 inches or more of snow or sleet.
- .3 Temperature of 32 degrees Fahrenheit or lower for more than 4 hours during normal working hours.
  - .4 Wind conditions in excess of levels required for safe prosecution of the Work.

"Mud" days and "Dry-Out" days caused by one of the above-referenced weather events shall be considered as part of the delay event for purposes of granting an extension to the extent critical path activities are hindered. Weather records to be used for evaluating the above conditions shall be National Weather Service official records obtained at the NOAA weather location closest to the Project site. Weather Days are calculated Monday through Saturday provided, however, a Weather Day delay cannot be counted if Contractor is able to perform critical path work on the ensuing Sunday. Contractor will notify Owner of any such Weather Day delay in writing within twenty-four (24) hours of the alleged weather day and shall include photographic evidence substantiating the alleged Weather Day(s). Contractor shall also, on a monthly basis, submit a report in a form acceptable to Owner substantiating any days claimed to have been lost.

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- § 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-Nothing in the Contract Documents shall authorize the Contractor to recover an increase in the Contract Sum as a result of price escalations in the marketplace or price increases due to labor or materials shortages.
- § 8.3.4 Except as otherwise provided herein, extensions of time shall be the Contractor's sole remedy for any delay, unless the delay shall have been caused solely by intentional acts or default of the Owner or Architect ("Owner-Caused Delays"), and then, only if the Contractor properly files a Claim for such delay. In addition, Contractor, upon timely notice of its delay Claim to the Owner, with substantiation by Owner and Architect and upon approval of Owner, shall be entitled to an adjustment in the Guaranteed Maximum Price for its general conditions costs incurred as a direct result of the Owner-Caused Delay, limited to directly incurred incremental daily costs attributable to field management overhead expenses and non-labor related general conditions costs on a per diem basis for the period of the critical path delay directly and exclusively attributable to an Owner-Caused Delay. Any such adjustment to the Guaranteed Maximum Price shall be subject to the limitations of this Contract, including without limitation, Article 15 herein. In no event shall Contractor be entitled to home office, other off-site expenses or any other damages of any kind from whatever source derived. Delays resulting from Owner's reasonable exercise of any of its rights or remedies under the Contract Documents, regardless of the extent or frequency, shall not under any circumstances be deemed Owner-Caused Delays.
- § 8.3.5 Contractor shall be entitled to costs related to Owner's suspension for convenience in accordance with Section 14.3. Such costs may include actual documented Project overhead costs of Contractor, consisting of administrative and supervisory expenses incurred at the Project site. Equipment costs for such suspension shall not be allowed during periods when the equipment would otherwise have been idle. For Projects where Contractor is working a five (5) day work week, with a working day measured from 6:00 a.m. to Dusk, Monday through Friday, no more than eight (8) hours of suspension related time shall be paid during a 24-hour day, no more than forty (40) hours shall be paid per week for suspension related time and no more than one hundred seventy-six (176) hours per month shall be paid for suspension related time. Suspension related time shall be computed at fifty percent (50%) of the rates found in the

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Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 176, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor. For Projects where Contractor is working a six (6) day work week with a working day measured from 6:00 a.m. to Dusk Monday through Saturday, no more than eight (8) hours of suspension related time shall be paid during a 24-hour day, no more than forty eight (48) hours shall be paid per week for suspension related time and no more than two hundred and eight (208) hours per month shall be paid for suspension related time. Suspension related time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 208, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor.

§ 8.3.6 If the Contractor (a) fails to prosecute the Work in accordance with the approved Schedule of the Work, as updated; (b) fails to supply sufficient skilled workmen; or (c) fails to timely arrange for delivery of materials or equipment to the Project such that the critical path is adversely impacted, the Owner may, after seven (7) days written notice (and without prejudice to any other right or remedy) either (i) supplement the Contractor's forces or (ii) require Contractor to furnish additional labor, expedite the delivery of material and/or equipment, and/or have workers work overtime. The foregoing will be provided without an increase in the Contract Sum. If the Owner retains supplemental contractors, the costs will be charged against the Contract Sum. If the Contract Sum is exceeded after including payments to supplemental contractors, Contractor shall reimburse the difference to the Owner.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the The Contractor shall submit a schedule of values to the Owner and 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, Owner. This schedule, once approved by Owner, 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 Owner and Architect and supported by such data to substantiate its accuracy as the Architect-Owner may require, and unless objected to by the Architect, Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Owner and 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 claims from Contractor and its Subcontractors and Sub-subcontractors, and shall reflect retainage as provided for in the Contract Documents.

§ 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, Sub-subcontractor, unless such Work has been performed by others whom the Contractor intends to pay. To the extent Contractor does not intend to pay a Subcontractor or Sub-subcontractor due to a dispute or other reason, such application shall describe, for Owner's information, all amounts claimed by the Subcontractor or Sub-subcontractor and the facts surrounding the dispute or other non-payment decision.

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§ 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, Sub-subcontractors, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 Any allowances included in the Application for Payment shall be separately itemized with supporting data attached.

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- § 9.4.1 The To the extent required by Owner, 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—Sub-subcontractors 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.

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§ 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 the owner for the owner of the owner of the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of the owner of

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failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

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- reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents. Documents;
- .8 failure to maintain insurance as required hereunder; or
- .9 any other breach of the Agreement.

§ 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. Even if the Architect certifies a payment, the Owner may withhold all or part of a payment, and may also set-off any amounts due the Contractor under this Contract or otherwise, for any of the reasons set forth in Section 9.5.1.

- § 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. If the Contractor disputes Architect's decision regarding a Certificate for Payment under Section 9.5.1 or the Contractor disputes the Owner's decision regarding a withholding of payment under Section 9.5.2, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.
- § 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. When the reasons for withholding payment or certification are removed, payment or certification will be made for amounts previously withheld, as the case may be.
- § 9.5.5 The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor 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.

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- § 9.6.1 After the Architect has issued a Certificate for Payment, <u>unless the Owner reasonably disputes such</u> certification and withholds payment under Section 9.5.2 and notifies the Contractor in writing of the reason therefor, 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, Subcontractor no later than seven (7) 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. Not used.
- § 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, Subcontractor, 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. Not used.

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- § 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. Not used.
- § 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. Not used.

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If the Architect-Owner does not issue a Certificate for Payment, 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, (7) days after the date established in the Contract Documents for payment, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven (7) 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.

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- § 9.8.1 Substantial Completion is the stage in the progress of the Work when The Work (whether the entire Project or a designated Portion of the Work as described in Section 4.53.3 of the Agreement) as set out herein will not be considered substantially complete until (and the term "Substantial Completion" shall mean) the performance of the Work is to the point where (1) all Project systems included in 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 are operational, (2) as to such Work, all required governmental inspections and certifications required of Contractor have been made and posted, and (3) as to such Work, designated initial instruction described in the Contract Documents of Owner's personnel in the operation of systems has been completed, (4) as to such Work, all the required finishes set out in the Contract Documents are in place, (5) Contractor has provided As-Builts to Owner for any areas that are requested to be the Owner agrees to accept as substantially complete and (6) all warranty documents have been submitted to and approved by the Architect and Owner for any areas that the Owner agrees to accept as are requested to be substantially complete. For the avoidance of doubt, the requirements set forth in this Section 9.8.1 will apply to the designated Portion of the Work in accordance with Section 4.53.3 of the Agreement, except to the extent that such requirements apply only to the entire Project. The only remaining work shall be minor in nature, so that the Owner could occupy the applicable portion of the Project on that date, and the completion of the Work by the Contractor would not materially interfere with or hamper the Owner or Owner's tenants' normal operations or other intended use. As a further condition of Substantial Completion of the whole or designated portion thereof, the Contractor shall certify that all remaining Work with respect thereto will be completed within the time specified by the Architect and Owner for Final Completion, which time shall not exceed sixty (60) days.
- § 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 Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list payment, together with the estimated value of completing or correcting such item (the "Punch List"). The failure to include any items on the Punch 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 and Owner 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, Punch 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. Architect or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect or Owner to determine Substantial Completion.
- § 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect as agreed in writing by the parties, the parties 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.

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§ 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. Not used.

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§ 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 and Owner 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.shall be resolved in accordance with the Claims process set forth in Article 15.

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- § 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 and Owner will promptly make such inspection. When the Architect Owner 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 performed ("Final Completion"), the Owner will promptly direct the Contractor to submit its final Application for Payment requesting final payment.
- § 9.10.1.1 If the Owner believes, in its sole discretion, that Contractor will not complete or correct the Punch List work within the time listed in the Certificate of Substantial Completion, Owner may complete or correct such Punch List work not completed or corrected by Contractor within the time listed in the Certificate of Substantial Completion pursuant to 9.8 of the General Conditions without jeopardizing any of Owner's rights or warranties under the Contract Documents. Such costs for correction or completion of Punch List work shall be the responsibility of Contractor.
- § 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by 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 or Sub-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 or Sub-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 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

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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. Not used.

- § 9.10.4 The making of final payment shall <u>not</u> 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. Owner.
- § 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, Sub-subcontractor, 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.

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The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall take and observe all necessary measures and precautions for the safety and protection of all property and persons in connection with performance of the Work. The Contractor shall review the safety programs of each of the Subcontractors and Sub-subcontractors and make appropriate recommendations where any deficiencies are found.

§ 10.1.1 Contractor shall take reasonable precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of the Owner

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- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. and;
- .4 the work of the Owner or other separate contractors.
- § 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, 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. For Contractor's work, Contractor shall provide all facilities and shall follow all procedures required by the Occupational Safety and Health Act (OSHA) including, but not limited to providing and posting all required posters and notices and shall otherwise be responsible for all other mandatory safety laws. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.
- § 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; removal of snow and ice; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.
- § 10.2.3.1 Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the Project site limits shall be kept orderly and clean and all combustible rubbish shall be promptly removed from the Project site.
- § 10.2.3.2 The Contractor shall at all times protect excavations, trenches, buildings, and materials from rain water, ground water, backup or leakage of sewers, drains and other piping, and from other water originating from the Project site which the Contractor could reasonably expect to encounter based on the Drawings, Specifications, geotechnical

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reports or other information provided to the Contractor in connection with the Project or which an experienced contractor would otherwise reasonably expect to encounter at this Project site and shall remove promptly any such accumulation of water. The Contractor shall provide an operate all pumps, piping and other equipment necessary to this end.

§ 10.2.4.1 Contractor shall maintain one (1) set of MSDS on the site for periodical inspection by the Owner and the Architect. The Contractor shall be responsible for compliance with OSHA and the Hazard Communications Standard.

§ 10.2.5 The Contractor shall promptly remedy at its sole cost 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.

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# § 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.

§ 10.2.8 When required by law or for the safety of the Work, Contractor shall shore-up, brace, underpin, and protect foundations and other portions of existing structures which are in any way affected by the Work. Contractor, before commencement of any part of the Work, shall give notices required to be given adjoining landowners and other parties.

§ 10.2.9 Not used.

# § 10 2.10 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 twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 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 concealed or undisclosed 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.

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When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. resume. 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. Not used.

§ 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 or 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.

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- § 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. liability as described in **Exhibit B** – Owner's Insurance Requirements.
- § 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 payment bond, performance bond, and warranty bond shall be issued by approved sureties. No surety shall be accepted by Owner that is in default, delinquent on any bonds or that is a party to any litigation against the Owner. Such bonds shall be: (i) issued with the Owner as the named obligee; (ii) executed by a corporate surety company authorized to do business in the State of Texas with such financial standing to have a rating from A.M. Best Company (or other equivalent rating company) equal to or better than "A -" and on the approved list of sureties issued by the United States Department of Treasury and shall have a Power of Attorney attached; (iii) maintained for the benefit of the Owner; and (iv) approved by the Owner and made and executed on the Owner's standard forms, which shall be provided to ContractorC. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Travis County, Texas. Each surety shall designate an agent resident in Travis County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.
- § 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 Payment and Performance Bonds

§ 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. Contractor shall, in accordance with Texas Government Code Chapter 2253, before beginning construction at the Project site, and as a condition precedent to any obligation the Owner may have under this Contract, obtain and deliver to Owner payment and performance bonds on forms approved by the Owner within the earlier of: (i) ten (10) days of execution of the GMP Amendment and (ii) commencement of construction at the Project site. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price in the GMP Amendment, and should the Guaranteed Maximum Price in the GMP Amendment be amended, the penal sum of the payment and performance bonds shall be amended to be equal to the amended Guaranteed Maximum Price such that the penal sum of the payment and performance bonds is always equal to the Guaranteed Maximum Price, as amended.

§ 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 Warranty Bond

§ 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. With its Final Application for Payment, the Contractor shall provide a one (1) year warranty bond on a form approved by the Owner. The penal sum of the warranty bond shall be equal to Ten Percent (10%) of the Guaranteed Maximum Price in the GMP Amendment, and should the Guaranteed Maximum Price be modified, the penal sum of the warranty bond shall be

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amended to be equal to the specified percentage of the modified Guaranteed Maximum Price such that the penal sum of the warranty bond is always equal to the specified percentage of Guaranteed Maximum Price, as modified.

§ 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.

§ 11.4 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.

...

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, Documents or prior to any inspection required under Applicable Law, it must, if requested in writing by the Architect, Owner, or inspector, be uncovered for the Architect's Owner's, Architect's, or inspector's examination and be replaced at the Contractor's expense without change in the Contract Time. Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner 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.

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The Contractor shall <u>at its sole expense</u> promptly correct Work rejected by the Architect or <u>Owner for failing</u> 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 <u>and Owner's other</u> consultants' services and expenses made necessary thereby, shall be at the Contractor's expense.

...

§ 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. condition and reimburse the Owner for all costs incurred arising from such Work, including testing and inspections of the non-conforming Work. 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.

§ 12.2.2.1.1 Contractor shall perform such Work in a timely manner, consistent with Owner's reasonable requirements.

...

§ 12.2.2.4 Contractor shall perform a warranty walkthrough with the Owner of the Project prior to the expiration of the one-year period for correction of Work. Any additional Work needing correction discovered on such warranty walkthrough shall be performed promptly by the Contractor.

§ 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. If Contractor does not proceed with the correction of such non-conforming Work within seven (7) days' notice from Architect or Owner, the Owner may remove and correct the non-conforming Work at Contractor's expense. If Contractor does not pay costs of performing such corrective Work within ten (10) days after written request by Owner, then Owner may utilize such unpaid amounts due the Contractor including retainage as necessary to reimburse Owner in accordance with the Contract Documents.

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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 affected whether or not final payment has been made.

...

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.

• • •

§ 13.3.1 <u>Duties Except as expressly provided in the Contract Documents, 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-law or under the Contract Documents.</u>

...

§ 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. Applicable Laws. 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 and Owner 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-Applicable Laws or regulations so require.

...

- § 13.4.2.1 Whether indicated or not in the Contract Documents, all materials utilized on this Project shall be asbestos-free and lead-free. If any suspected asbestos-containing or lead-containing materials are installed, the Owner has the right to have the material in question tested in accordance with this Section 13.4. If such tests indicate the materials contain asbestos or lead, the Contractor shall remove all material in question and replace it with acceptable material at no additional cost to the Owner in accordance with Section 13.4.3, below.
- § 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, Documents all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, including, without limitation, those costs of additional testing, inspections, and repeated procedures, the costs of uncovering, replacement, and correction and compensation for the Architect's or Owner's other consultants' 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 Owner and Architect.

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- § 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30-one hundred twenty (120) 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. <u>Documents.</u>
- § 14.1.2 The Contractor may terminate the Contract in accordance with Section 14.1.3 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 consecutive days in any 365-day period, whichever is less.
- § 14.1.3 If one of the reasons the reason described in Section 14.1.1 or 14.1.2 exists, exists for the period stated therein, the Contractor may, upon seven fourteen (14) days' notice to the Owner and Architect, Owner, 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. actually performed, as well as reasonable demobilization costs actually incurred.
- § 14.1.4 If the Work is stopped for a period of 60-one hundred twenty (120) consecutive days through no act or fault of the Contractor, 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 (7)

additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

- § 14.2.1 The Owner may terminate the Contract if the Contractor Contract, in whole or in part, if the Contractor:
  - 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; Subcontractors;
  - .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ordisregards Applicable Laws; or
  - otherwise is guilty of commits a substantial breach of a provision of the Contract Documents.
  - files a Petition in Bankruptcy, is adjudicated bankrupt, makes a general assignment to the benefit of its .5 creditors, cannot pay its debts as they become due, or otherwise takes action evidencing insolvency;
  - fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days for reasons other than as permitted under the Contract Documents: or
  - suspends its business operations or otherwise fails to operate its business in the ordinary course.
- § 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, (7) days' notice except for the items set forth in 14.2.1.5 and 14.2.1.7 above, for which no notice is required, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's and Owner's other consultants' services and expenses made necessary thereby, and other damages incurred by the Owner in finishing the Work 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.

- § 14.3.2 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. Section 14.3.1 in accordance with Section 8.3.5. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent that:
  - 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.
- § 14.3.3 If the Project is delayed by order of federal, state, or local government due to outbreak of any disease or virus, the Owner may order the Contractor in writing to suspend the Work, in whole or in part for such period of time as necessary to comply with the applicable governmental order. During any suspension under this Section 14.3.3, Contractor shall not be excused from its responsibilities under Article 10.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor <del>shall</del>shall:

§ 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 and reasonable demobilization costs actually incurred by reason of the termination.

# § 14.4.4 Not used. PAGE 45

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. Applicable Law.

...

§ 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, the Contractor 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 Owner within twenty-one (21) days after occurrence of the event giving rise to such Claim or within 21-twenty-one (21) days after the elaimant Contractor first recognizes the condition giving rise to the Claim, whichever is later.the Claim. The Contractor acknowledges and understands it is imperative that Owner be given timely, specific notice of any potential differing subsurface or physical condition which may cause an increase in the Contract Sum or Contract Time such that the Owner is afforded the maximum opportunity to mitigate cost and time impacts associated with such differing condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

§ 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.

...

§ 15.1.4.2 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.Not used.

...

§ 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. a Time Impact Analysis as set forth in Section 15.1.6.2. 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. Time Impact Analysis

When Contractor makes a Claim for an increase in the Contract Time, Contractor shall submit to Owner a written Time Impact Analysis describing the influence of each change or impact. A "Time Impact Analysis" is an evaluation of the effects of changes in the construction sequence, contract, design or site conditions on Contractor's plan for constructing the Project, as represented by the Project schedule. The purpose of the Time Impact Analysis is to determine if the overall Project has been delayed and, if necessary, to provide Contractor and Owner a basis for making adjustments to the Contract.

## § 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
- 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.

## § 15.1.6.2.1 A Time Impact Analysis shall consist of one or all of the steps below:

- <u>.1</u> Establish the status of the Project before the impact using the most recent Project schedule update prior to the impact occurrence.
- Predict the effect of the impact on the most recent Project schedule update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.
- .3 Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing and mitigation efforts.
- 2.4 Compare the status of the Work prior to the impact (Subsection 1 above) to the prediction of the effect of the impact (Subsection 2 above), and to the status of the work during and after the effects of the impact are over (Subsection 3 above). Note: if an impact causes a lack of access to a portion of the Project, the effects of the impact may extend to include a reasonable period for remobilization.

§ 15.1.6.2.2 The Time Impact Analysis shall be electronically submitted to the Owner. If the Project schedule is revised after the submittal of a Time Impact Analysis but prior to its approval, Contractor promptly shall indicate in writing to Owner the need for any modification to its Time Impact Analysis. One (1) copy of each Time Impact Analysis shall be submitted within fourteen (14) days after the occurrence of an impact. Owner may require the steps of the Time Impact Analysis outlined in Section 15.1.6.2.1.1 and Section 15.1.6.2.1.2 be submitted at the commencement of the impact, if needed, to make a decision regarding the suspension of Contract Time. Approval or rejection of each Time Impact Analysis by Owner shall be made within fourteen (14) days after receipt, unless subsequent meetings and negotiations are necessary.

# § 15.1.6.2 Not used.

# § 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 but is not limited to:

- damages incurred by the Owner for rental expenses, for losses of use, income, rents, profit, financing, business and reputation, for loss of management or employee productivity or of the services of such persons, for diminished value, and impairment of capital; 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.

Without expanding the waiver provided above, consequential damages shall not mean or include the costs incurred by the Owner for design professional services, costs to supplement or accelerate the Work of the Contractor, and costs of corrective or completion work caused by or resulting from the Contractor's failure to comply with the requirements imposed on the Contractor by the Contract Documents. Except as may otherwise be expressly provided in the Agreement or these General Conditions, this mutual waiver is applicable to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained herein shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

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Notwithstanding the foregoing, this waiver or limitation on recovery of consequential damages shall not apply to the amount or type of damages recoverable by an Indemnitee under Sections 3.18, above arising from a claim brought by any person or party other than an Indemnitee. Further, this waiver or limitation on recovery of consequential damages shall not apply to consequential damages to the extent recoverable from the proceeds paid by insurance maintained by the party responsible for such damages or any such project-specific insurance procured in accordance with the Contract Documents and for the amount of any deductibles required to be paid for such insurance coverage.

#### § 15.2 Initial Decision Not used.

- § 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.
- § 15.3.1 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-sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration the selected method of binding dispute resolution 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. Not used.
- § 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation 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. In no event shall any mediator in connection with a Claim be permitted to serve as an arbitrator for that, or any other Claim that is not resolved pursuant to mediation.

## PAGE 47

Not used.

- § 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.

#### § 15.5 Subcontractor Pass-Through Claims

§ 15.5.1 In the event any Subcontractor asserts a Claim to Contractor that Contractor seeks to pass through to Owner under the Contract Documents, any entitlement to submit and assert the Claim as to Owner shall be subject to the requirements of this Article 15 and the following three (3) additional requirements listed below, all three of which shall be conditions precedent to the entitlement of Contractor to seek and assert such Claim against the Owner: 1Contractor shall (i) have direct legal liability as a matter of contract, common law or statutory law to Subcontractor

for the claim Subcontractor is asserting; or (ii) have entered into a written liquidating agreement with Subcontractor, prior to the Claim's occurrence, under which Contractor has agreed to be legally responsible to the Subcontractor for pursing the assertion of such Claim against Owner under said Contract and for paying to Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The relationship, liability or responsibilities shall be identified in writing by Contractor to Owner at the time such Claim is submitted to Owner and a copy of any liquidating agreement shall be included by Contractor in the Claim submittal materials; .2 Contractor shall have reviewed the Claim of the Subcontractor prior to its submittal to Owner and independently shall have evaluated such Claim in good faith to determine the extent to which the Claim is believed in good faith to be valid. Contractor shall inform Owner in writing that it has made a review, evaluation and determination the Claim is being made in good faith and the Claim is believed to be valid; and Subcontractor making the Claim to Contractor shall certify to both Contractor and Owner that Subcontractor has compiled, reviewed and evaluated the merits of such Claim and the Claim is believed in good faith by Subcontractor to be valid. A copy of the certification by Subcontractor shall be included by Contractor in the Claim submittal materials.

§ 15.5.2 Any failure of Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim.

§ 15.6 Receipt and review of a Claim by Owner under this Article 15 shall not be construed as a waiver of any defenses to the Claim available to Owner under the Contract Documents or Applicable Law.

#### ARTICLE 16 OTHER PROVISIONS

# § 16.1 General Provisions

§ 16.1.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 16.1.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under Applicable Law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner

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invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed servable.

§ 16.1.3 Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

#### § 16.2 No Oral Waiver

The Provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by writing.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

# Certification of Document's Authenticity

AIA® Document D401™ - 2003

created the attached final document tification at 09:17:01 ET on 08/07/2024 at in preparing the attached final – 2017, General Conditions of the he associated Additions and Deletions
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# EXHIBIT B INSURANCE REQUIREMENTS

#### I. Contractor's Insurance

A. For purposes of this **Exhibit B**, the term "Contractor" shall be synonymous with the term "Construction Manager" as such term is used in the Agreement. Except as otherwise expressly stated herein, before commencing performance of any portion of the Work, including Preconstruction services, Contractor shall obtain insurance coverages of the types described in this Section I with insurers authorized to do business in the State of Texas at the time the policy is issued (and at all times during the term of this Agreement) and rated by A.M. Best Company as A-VII or better, which are reasonably acceptable to Owner Group (as defined in Section I (C), below) and under forms of policies reasonably satisfactory to Owner Group. Contractor shall continuously maintain such coverages in effect for the applicable time periods required herein.

None of the requirements as to types, limits or Owner Group's approval of insurance coverages to be maintained by Contractor is intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Contractor under the Contract Documents, or otherwise as provided by law. If Contractor maintains broader coverage or higher limits than the minimum limits set forth below, Owner Group requires and shall be entitled to the broader coverage and the higher limits of insurance maintained by Contractor.

If Contractor fails to obtain or maintain any insurance coverage required to be obtained and maintained by Contractor under the terms of this Section I, Owner may (but shall not be obligated to) purchase and maintain such insurance at Contractor's expense and in the name and for the account of Contractor, which expense Contractor shall reimburse to Owner no later than thirty (30) days after demand. The Owner's purchase and maintenance of such insurance shall not relieve or excuse Contractor from its obligations hereunder to obtain and maintain such insurance amounts and coverages, nor shall these obligations in any way compromise or waive any right or remedy otherwise available to Owner at law or in equity. Contractor agrees that if Owner purchases such insurance, Contractor shall furnish upon demand all information that may be required in connection with such insurance. Owner shall purchase such insurance at reasonable pricing given applicable market conditions at the time of purchase. Owner shall have in addition to all other rights and remedies set forth herein, the right, in its sole discretion, (i) to suspend Contractor's performance or terminate this Agreement should there be a lapse in coverage at any time during this Agreement or (ii) to withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the insurance requirements of the Agreement.

- B. Before commencing performance of any portion of the Work, including Preconstruction services, Contractor shall furnish to Owner a certificate of insurance on an ACORD 25 form, or equivalent, reasonably acceptable to Owner, executed in duplicate by the insurance representatives, and evidencing the insurance coverages required to be obtained by Contractor attaching all endorsements required herein. Contractor shall provide Owner with updated certificates of insurance upon renewal of the required coverages for the term of the Agreement.
- C. Contractor shall procure and maintain the following insurance coverages: 1) workers' compensation and employers' liability insurance; 2) commercial general liability insurance; 3)

automobile liability insurance; 4) excess liability insurance; 5) pollution insurance; 6) contractor's professional liability insurance and 7) builders' risk, all in accordance with this **Exhibit B**. The commercial general liability, automobile liability, excess liability and pollution insurance obtained by Contractor pursuant to this **Exhibit B** shall provide, by an appropriate endorsement or otherwise, that the following entities will be listed as certificate holders and named as additional insureds: the Indemnitees (collectively referred to herein as the "Owner Group").

## 1. Workers' Compensation and Employers' Liability Insurance

Contractor shall carry Workers' Compensation insurance with statutory coverage as required in the State of Texas in connection with the performance of the Work (including, where applicable, coverage under U.S. Longshore and Harborworkers Compensation Act, Jones Act, Maritime & Federal Employer's Liability Act coverage and Defense Base Act) and Employers' Liability Insurance. The minimum limits required for the employer's liability insurance are as follows:

Bodily Injury by Accident
Bodily Injury by Disease
Bodily Injury by Disease
S1,000,000 each accident
\$1,000,000 policy limit
\$1,000,000 each employee

# 2. Commercial General Liability Insurance

Such insurance shall be written on an Insurance Services Office (ISO) general liability form CG 00 01 04 13 or equivalent, name each entity in the Owner Group as an additional insured using ISO Forms CG 20 10 07 04 and CG 20 37 07 04, or their equivalent, to the maximum extent allowed by law and insure against liability for bodily injury or death and/or property damage occurring in connection with the Work, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate, and \$2,000,000 completed operations. The policy shall not include any type of subsidence or earth movement exclusion; classification or business description limitation endorsement; or punitive, exemplary or multiplied damages exclusion.

Such insurance shall include the following specific coverages:

- (a) premises and operations coverage with explosion, collapse and underground exclusions deleted;
- (b) products and completed operations coverage, to be maintained for ten (10) years after Substantial Completion;
- (c) blanket contractual coverage, including written contracts, subject to the standard policy terms and conditions;
- (d) personal injury coverage with no exclusion modifying or limiting the employer liability exclusion set forth in ISO Form CG 00 01 04 13 or limitation for independent contractors or subcontractors of any tier;
- (e) coverage for work performed by subcontractors in the completed operations phase, with no exclusion or endorsement modifying the subcontract exception to the "Your Work" exclusion; and

(f) cross liability and severability of interest.

# 3. Automobile Liability Insurance

Such insurance shall cover all owned, non-owned and hired or borrowed vehicles used by Contractor and its employees or agents in connection with the performance of the Work and insure against liability for bodily injury and death and/or property damage in an amount not less than \$1,000,000 combined single limit per accident.

## 4. Excess Liability Insurance

Excess Liability Insurance over Employers' Liability, Commercial General Liability, and Automobile Liability Policies, following form over and affording coverage no less broad than the coverage in such underlying policies, including, but not limited to designated construction project(s) aggregate limit, in an amount not less than \$20,000,000 per occurrence and \$20,000,000 in the aggregate for bodily injury, death, property damage or employers' liability. Such coverage is to be maintained for ten years after Substantial Completion.

#### 5. Pollution Insurance

Contractor's Pollution Liability ("CPL") policy providing coverage for bodily injury, property damage, or cleanup resulting from pollution conditions including mold or other similar fungi arising out of or exacerbated by the work with limits of not less than \$5,000,000 each claim, and \$5,000,000 general aggregate. The CPL policy shall be maintained for six years after Substantial Completion. If written on a claims-made basis, the CPL insurance policy shall not have a retroactive date or, if a retroactive date is included, such retroactive date shall be prior to the commencement date of this Agreement.

The policy must contain coverage for claims arising from:

- a) Legionella Pneumophila bacteria or Legionnaires Disease.
- b) Owned and non-owned disposal sites.
- c) Transportation coverage for the loading, unloading, and hauling of materials and waste to and from project site and to final disposal location, as evidenced by the contractor or applicable waste hauler.
- d) Asbestos and lead-based paint.
- e) "Pay on behalf" rather than "indemnify" the insured.
- f) Work performed by Subcontractors or Sub-subcontractors.
- g) Punitive, exemplary or multiplied damages, if allowed by law.
- h) Insured vs. insured actions (however, an exclusion for claims made between insureds within the same economic family is acceptable).

Contractor shall, with diligence and dispatch, do everything reasonably practical to minimize any loss.

#### 6. Contractor's Professional Liability Insurance

Contractor shall obtain and keep in force, at its sole cost and expense, a contractor's professional liability insurance policy written on a claims made basis, with minimum limits of \$5,000,000 per claim and \$5,000,000 aggregate. The retroactive date, if any, shall be no later than the commencement date of this agreement. Such insurance shall cover damage by reason of any acts, errors, or omissions committed or alleged to have been committed by the Contractor, or any acts for which Contractor is liable. Contractor shall keep the policy in full force and effect for six years after Substantial Completion.

#### 7. Builders' Risk Insurance.

Unless otherwise directed by the Owner in writing, before commencement of the Construction Phase and up until the time provided below, Contractor shall maintain "All-Risk" Builders' Risk insurance, providing coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm, with a minimum limit of coverage not less than the amount of the Contract Sum. Coverage shall be increased for the amount of any change orders or other amendment to the Agreement that increase the price of the Work. Such insurance shall (a) designate the Contractor as the named insured and the Owner, and all Subcontractors of any tier, as additional insureds on the policy; (b) be primary and non-contributing to any other insurance coverage available to the additional insureds, as to whom their other insurance shall be excess, secondary and noncontributing to losses covered by this Builders' Risk insurance; and (c) waive all rights of subrogation against all insureds. Contractor agrees that placement and maintenance of protective safeguards on the Project required by the Builders' Risk policy are included in the Contract Sum. The termination of coverage provision shall be endorsed to permit coverage during occupancy of the covered property. This insurance shall be maintained in effect until the earlier of the following dates: (i) Substantial Completion of the Work or (ii) the date on which the insurable interests in the covered property of all insureds other than the Owner and Landlord, if applicable, has ceased.

The Builders' Risk insurance shall cover all costs for labor, supervision, materials, equipment, design professional fees, permit fees, and other costs and expenses directly required to remove debris otherwise hereinafter provided. Proceeds of the Builders' Risk policy for debris removal, rebuilding and restoring the Project shall be paid to the Contractor to hold in trust and to be applied solely to the rebuilding and restoring of the project to the condition prior to the loss. The foregoing notwithstanding, if such proceeds will not be reasonably sufficient to rebuild and restore the project, then, prior to any expenditure thereof, Contractor shall obtain Owner approval to use of such funds to settle the Contractor's and Owner's financial interests relating to the loss, to preserve, alter or abandon the project, and to take such other actions as may be in the best interest of Owner.

The Builders' Risk policy shall include the following coverages: (1) All structure(s) under

construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling, (2) All temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site, (3) All property including materials and supplies on site for installation, (4) All property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit, (5) Other property for which Contractor, its Subcontractors or anyone for whom either is responsible a named insured or additional insured an insured is are liable in connection with the Project, including Owner furnished or assigned property, (6) Ensuing loss arising from error, omission in construction methods, design, specifications, workmanship or materials, (7) Preservation of Property. If any of the required coverages specified in this Section 7 are subject to a sublimit, Contractor shall disclose the sublimit to Owner prior to the commencement of construction and such sublimit shall be subject to Owner approval.

# 8. Insurance required from Subcontractors

Contractor shall require each of its Subcontractors to maintain the following minimum insurance coverages and limits:

- a) Commercial general liability insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 for liability, including products and completed operations coverage through the expiration of the statute of repose for the jurisdiction in which the Project is located;
- b) Automobile liability insurance with minimum limits of \$1,000,000;
- c) Workers' compensation insurance with statutory coverage in the State where work is performed and employers' liability coverage with minimum limits of:

Bodily Injury by Accident
Bodily Injury by Disease
Bodily Injury by Disease
Bodily Injury by Disease
S1,000,000 each employee

#### d) Excess Liability or Umbrella Insurance

Such excess or umbrella liability insurance shall be written on an occurrence basis, in an amount not less than the limits stated below for bodily injury, death, property damage or employers' liability. Such policies shall be written on an excess basis above the coverages required under Section I (C)(8)(a) and I(C)(8)(b) and the employers' liability coverage required under Section I (C)(8)(c). Coverage shall remain in effect for ten years after Substantial Completion of the Project. If Contractor's Subcontractors or Suppliers cannot meet the excess or umbrella liability insurance limit, Owner may elect to waive such requirements at its sole discretion upon receipt of a written request from Contractor requesting such a waiver.

Excess / Umbrella Liability minimum limits are determined by Industry Risk Category as defined below:

- **High Risk** Subcontractors require \$5,000,000 Excess / Umbrella Liability per occurrence and annual aggregate
- **Moderate Risk** Subcontractors require \$2,000,000 Excess / Umbrella Liability per occurrence and annual aggregate

**High Risk:** Piling, Electrical, HVAC, Masonry/Concrete/Pre-Cast, Elevator, Site Utility, Plumbing, Curtain Wall, Roofing, Structural Steel and Fire Protection.

**Moderate Risk:** All other Subcontractors.

# e) Professional Liability Insurance

Any Subcontractor preparing the contractor designs shall maintain professional liability insurance with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate. Such insurance shall remain in effect for five (5) years after Substantial Completion. The retroactive date, if any, shall be no later than the commencement date of this agreement. The Contractor shall provide to the Owner a certificate of insurance evidencing such coverage. If no design work is being performed, the professional liability requirement for Subcontractors may be waived.

- f) Any Subcontractor performing any demolition of pre-existing structures, excavation, moving or removal of any hazardous materials, or handling of any hazardous materials shall carry CPL in compliance with the requirements set forth in Section I (C)(5), above.
- g) Subcontractor's general liability, pollution liability, excess liability and automobile liability policies required by this Agreement shall name the Owner Group as additional insureds to the maximum extent allowed by law.
- 9. Contractor shall continuously maintain in force during the course of performance of the Work and cause the Subcontractors to maintain all of the required insurance coverages until Substantial Completion of the Work, and beyond Substantial Completion as expressly provided in this **Exhibit B** or in the Contract Documents. This Subcontractor insurance provision may be modified by the City of Pflugerville's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. Such insurance coverage modification may be enacted by letter signed by the City of Pflugerville's Risk Manager, which shall become a part of this Contract for all purposes.

#### **II.** General Provisions

A. All insurance that Contractor and Subcontractors are required to provide hereunder shall be primary and non-contributory with any policy of insurance in which a member of the Owner

Group is a named insured and contain an appropriate waiver of subrogation endorsement waving the insurers rights of subrogation against the Owner Group.

- B. All of Contractor's policies required herein shall be endorsed to provide thirty (30) days advance written notice to the Owner in the event of cancellation.
- C. Except as expressly provided herein, all deductibles for insurance provided by Contractor, Subcontractors and Sub-subcontractors shall be paid by, assumed by, for the account of, and at sole risk of Contractor without any right of reimbursement.
- D. Contractor's policies of insurance shall not include (i) any self-insured retention or (ii) deductible that exceeds \$150,000, without prior written approval of Owner.
- E. Contractor agrees to provide Owner true and correct copies of all policies of insurance Contractor is required to maintain within five (5) days of its receipt of Owner's written request to provide such policies.
- F. Contractor shall indemnify Owner for Owner's damages and costs of any kind or character arising from Contractor's failure or Subcontractors' failure to carry and maintain the insurance required by this Agreement.
- G. Owner is not responsible for any loss or damage to any personal property of Contractor, Subcontractors or Sub-subcontractors ("Contractor Parties"), and Contractor Parties shall cause their insurers to waive their right of subrogation and any rights of recovery against the Owner Group with respect thereto.
- H. CONTRACTOR PARTIES WAIVE ALL RIGHTS OF RECOVERY AND RELEASE, OWNER GROUP FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION WHATSOEVER WHICH CONTRACTOR PARTIES MIGHT OTHERWISE NOW OR HEREAFTER POSSESS RESULTING IN OR FROM OR IN ANY WAY CONNECTED WITH ANY LOSS COVERED BY INSURANCE, WHETHER REQUIRED HEREIN OR NOT, OR WHICH SHOULD HAVE BEEN COVERED BY INSURANCE REQUIRED HEREIN, INCLUDING THE DEDUCTIBLE AND UNINSURED PORTION THEREOF, MAINTAINED OR REQUIRED TO BE MAINTAINED BY THE CONTRACTOR PARTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING RELEASE AND WAIVER SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER GROUP.

All terms which are defined in the Agreement shall have the same respective meanings in this **Exhibit B**.



# Exhibit C Rates & Salaries

6320 Research Rd. Frisco, TX 75033

T 972.668.9340F 972.668.9351

Precon Fee \$30,000

1. Pre-Construction Services may include all costs for pre-construction phase services including cost estimating, scheduling, building systems and material cost analysis.

Construction Manager Fee shall be 5% of the Cost of the Work

General Condition's: To be determined at time of GMP Amendment

	Standard Rate	Overtime Rate
Pre-Construction:		
Director of Preconstruction	\$165.00	-
Preconstruction Manager	\$132.00	-
Preconstruction Coordinator	\$87.00	-
Project Management:		
Project Director	\$160.00	-
Sr. Project Manager	\$145.00	-
Project Manager	\$138.00	-
Scheduler	\$121.00	
Asst. Project Manager	\$105.00	-
Contracts Administrator	\$88.00	-
Information Systems Technician	\$83.00	-
Intern	\$37.00	\$50.00
Field Operations:		
Director of Field Operations	\$165.00	-
General Superintendent	\$160.00	
Sr. Superintendent	\$145.00	-
Superintendent	\$121.00	-
Safety Director	\$115.00	-
Asst. Superintendent	\$105.00	-
Quality Control Manager	\$100.00	-



City of Pflugerville Public Works Complex Pflugerville, Texas

# Exhibit D Key Personnel

Executive Vice President - Gary Aanenson

(214) 885-1039

GaryAanenson@COREConstruction.com

Director of PreConstruction - Steven Normand

(214) 548-2678

StevenNormand@COREConstruction.com

Director of Business Operations - David Sabo

(239) 253-7755

DavidSabo@COREConstruction.com