

# DRAFT AIA® Document A133™ – 2019

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

**AGREEMENT** made as of the « » day of « » in the year « »  
(In words, indicate day, month, and year.)

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

« City of Mansfield, Texas »

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

« TBD »

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

« Mansfield Multi-Use Stadium at Harvest Point»

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

« Perkins & Will, Inc.  
2218 Bryan St., Suite 200,  
Dallas, TX 75201 »

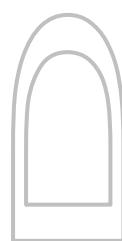
The Owner and Construction Manager agree as follows.

## ADDITIONS AND DELETIONS:

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

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

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.



**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

|           |   |
|-----------|---|
| 1         | INITIAL INFORMATION   |
| 2         | GENERAL PROVISIONS  |
| 3         | CONSTRUCTION MANAGER'S RESPONSIBILITIES   |
| 4         | OWNER'S RESPONSIBILITIES  |
| 5         | COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES  |
| 6         | COMPENSATION FOR CONSTRUCTION PHASE SERVICES  |
| 7         | COST OF THE WORK FOR CONSTRUCTION PHASE   |
| 8         | DISCOUNTS, REBATES, AND REFUNDS   |
| 9         | SUBCONTRACTS AND OTHER AGREEMENTS   |
| 10        | ACCOUNTING RECORDS  |
| 11        | PAYMENTS FOR CONSTRUCTION PHASE SERVICES  |
| 12        | DISPUTE RESOLUTION  |
| 13        | TERMINATION OR SUSPENSION   |
| 14        | MISCELLANEOUS PROVISIONS  |
| 15        | <b>SCOPE OF THE AGREEMENT - The following documents comprise the Agreement:</b>   |
| .1        | AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified and amended herein. |
| .2        | AIA Document A201–2017, General Conditions of the Contract for Construction, as modified and amended herein.  |
| .3        | <b><u>EXHIBITS to the Agreement</u></b>   |
| Exhibit A | AIA Document - Guaranteed Maximum Price Amendment(s)  |
| Exhibit B | AIA Document Insurance and Performance, Payment, and Maintenance Bonds  |
| Exhibit C | AIA Document E203TM-2013 BIM and Digital Data Exhibit   |
| Exhibit D | CM Supplemental Scope of Services   |
| Exhibit E | Key Personnel and Staffing  |
| Exhibit F | Milestone Schedule  |
| Exhibit G | Cost Proposal Form and Cost Allocation Summary  |
| Exhibit H | Owner Supplied Items (FF&E) Responsibility Matrix   |
| Exhibit I | Preliminary Facility Requirements   |
| Exhibit J | Project Description   |
| Exhibit K | Plat of Survey and/or Site Description  |
| Exhibit L | Geotechnical Investigations   |
| Exhibit M | Construction Testing and Inspection Matrix  |
| Exhibit N | Special Development and/or City Requirements  |
| Exhibit O | Billing Procedures and Waiver of Lien Forms   |

## 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.)*

« Reference Exhibit I - Facility Requirements »

§ 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.)*

« Reference Exhibit G - Cost Proposal Form and Cost Allocation Summary»

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

Per Exhibit F – Milestone Schedule

§ 1.1.5 Agreement assumes fast-track scheduling and phased construction as required to meet the schedule as outlined in Exhibit F - Milestone Schedule.

§ 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.)*

§ 1.1.6.1 [Intentionally Omitted]

« »

§ 1.1.7 [Intentionally Omitted]

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

Owner Representative:

Vieste, LLC

27299 Riverview Center Boulevard, Suite 105

Bonita springs, FL 34134

Attention: Don Currise

OR

REV Sports Management LLC

734 Stadium Drive

Arlington, TX 76011

Attn: Sean Decker, President

SDecker@REVEntertainment.com

**§ 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.)

« TBD »

**§ 1.1.10** The Architect or the Owner has retained the following consultants and contractors for the Project:  
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« »« TBD »  
« »  
« »  
« »  
« »



.2 Civil Engineer & Surveyor:

« »« TBD »  
« »  
« »  
« »  
« »



.3 Other, if any:

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



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

« TBD »



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

« TBD »



**§ 1.1.13** The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:  
(List any Owner-specific requirements to be included in the staffing plan.)

Refer to this Agreement and Exhibit D – CM Supplemental Scope of Services

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

«Subcontractor procurement by the Construction Manager shall be made in accordance with the Texas Gov't Code Ch. 2269.»

Refer to this Agreement and Exhibit D - CM Supplemental Scope of Services

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

Refer to this Agreement and all Exhibits

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

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

## **ARTICLE 2 GENERAL PROVISIONS**

### **§ 2.1 The Contract Documents**

The "Contract Documents" or "Contract" 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 and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction (herein after referred to as "A201-2017" in this Agreement), shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 3.18, Indemnification; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Article 11, Insurance and Bonds; Article 13 Miscellaneous Provisions. The term "Contractor" as used in A201-2017 and in this Agreement shall also mean the Construction Manager or the CM.

**§ 2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 and in this Agreement shall also 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 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. **The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.** The Construction Manager shall identify a representative authorized to

act on behalf of the Construction Manager with respect to the Project. The Construction Manager's Preconstruction and Construction Phase Services and responsibilities are further delineated in Exhibit D – CM Supplemental Scope of Services.

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require, or as required by Texas Business & Commerce Code Ch. 59.

**§ 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 advise 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; 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. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

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

#### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

#### **§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

#### **§ 3.1.6 Cost Estimates**

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

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

**§ 3.1.6.3** [Intentionally Omitted]

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

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

**§ 3.1.9** The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval attached hereto as Exhibit E - Key Personnel and Staffing.

**§ 3.1.10** [Intentionally Omitted]

**§ 3.1.11 Subcontractors and Suppliers**

**§ 3.1.11.1** [Intentionally Omitted]

**§ 3.1.11.2** The Construction Manager shall develop bidders' interest in the Project in accordance with Texas Gov't Code Ch. 2269. Nothing in this Agreement shall be construed as creating a privity of contract between the Owner and any subcontractor, materialmen, or suppliers, or any other third-party performing Work under the Contract. The Construction Manager shall not assign by power of attorney, pass through agreement, or otherwise, any claims, rights, or causes of action to any subcontractors, materialmen, or suppliers, or any other third-party performing Work under the Contract, without the express written consent of the Owner.

**§ 3.1.11.3** [Intentionally Omitted]

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

**§ 3.1.14 Other Preconstruction Services**

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document as described in this Agreement and as further delineated in the attached Exhibit D – CM Supplemental Scope of Services.

*(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.)*

« »

### § 3.2 Guaranteed Maximum Price Proposal

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2., as set forth attached in the Cost of Services hereto as Exhibit G - Cost Proposal Form and Cost Allocation Summary.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee; attached hereto as Exhibit G - Cost Proposal Form and Cost Allocation Summary;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

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

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

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

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

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

**§ 3.2.9** Subject to Section 3.6 through 3.6.3 of A201-2017, 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. [Tax Exempt language here?]

**§ 3.3 Construction Phase**

**§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 3.3.1.2** The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

**§ 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, attached hereto as Exhibit F - Milestone Schedule.

**§ 3.3.2.3 Monthly Report**

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

**§ 3.3.2.4 Daily Logs**

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

**§ 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.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

**§ 4.1 Information and Services Required of the Owner**

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

**§ 4.1.2** [Intentionally Omitted]

**§ 4.1.3** The Owner shall establish 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.

**§ 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** To the extent available and in the Owner's possession, 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. Testing and Inspection responsibilities are as set forth in the Testing and Inspection Matrix attached hereto as Exhibit M.

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

**§ 4.1.4.3** The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations, as set forth in Exhibit L – Geotechnical Investigations.

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

**§ 4.1.6** [Intentionally Omitted]

#### **§ 4.2 Owner's Designated Representative**

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

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

#### **§ 4.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as required by Texas Gov't Code Ch. 2269, including any additional services that are necessary for the Preconstruction and Construction Phase services under this Agreement.

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

#### **§ 5.1 Compensation**

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

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

« The total compensation for Preconstruction Phase Services for Phase 1 of the project shall not exceed the amount set forth in Exhibit G - Cost Proposal Form and Cost Allocation Summary. The Parties may execute one or more amendments to adjust the Guaranteed Maximum Price, Contract Time, and Scope of Work to facilitate the efficient construction of the entire project, whether constructed in one or more phases. The final Guaranteed Maximum Price shall not exceed the Owner's total budget for the Project under any circumstances.»

**§ 5.1.2** [Intentionally Omitted]

**§ 5.1.2.1** [Intentionally Omitted]

**§ 5.1.3** [Intentionally Omitted]

## § 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice in accordance with Texas Gov't Code Ch. 2251.

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment, in accordance with A201-2017.. 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 shall be as set forth in Exhibit G - Cost Proposal Form and Cost Allocation Summary.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work shall be as set forth in Exhibit G - Cost Proposal Form and Cost Allocation Summary.

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

«Subcontractor's overhead and profit shall not exceed seven percent (7%) of the cost of the work, applicable to those elements of the Work to be performed by the subcontractor, but shall not include unabsorbed home office overhead»

§ 6.1.5 [Intentionally Omitted]

§ 6.1.6 Terms and conditions for Liquidated damages are applicable in accordance with A201-2017

« TBD »

### § 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.)*  
If the final Cost of the Work plus the Construction Manager's Fee is less than the final Guaranteed Maximum Price, as adjusted by Change Order, the difference shall be deemed "Savings." The savings shall accrue to and be retained by Owner.

« TBD »

### § 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. 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 to the extent allowed by Texas Local Gov't Code Sec. 252.048.. 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 A201-2017.

§ 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 A201-2017.

§ 6.3.3 [Intentionally Omitted]

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

**§ 6.3.5** [Intentionally Omitted]

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7., and as set forth in Exhibit G - Cost Proposal Form and Cost Allocation Summary.

**§ 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.

### § 7.2 Labor Costs

**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

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

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

All labor and supervisory cost are to be reimbursed in accordance with Exhibit G - Cost Proposal Form and Cost Allocation Summary.

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

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law, for taxes, insurance, contributions, assessments and benefits and, for personnel, 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.

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

### § 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts this Agreement, and applicable law, including, but not limited to Texas Gov’t Code Ch. 2251, 2253, and 2258.

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

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

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

**§ 7.5.3** 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** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

## **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be 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.

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

**§ 7.6.2** Subject to Section 3.6 through 3.6.3 of A201-2017, the sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.[Tax exempt?]

**§ 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 by A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

**§ 7.6.5.1** [Intentionally Omitted]

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

**§ 7.6.7** Costs of document reproductions and delivery charges.

**§ 7.6.8** [Intentionally Omitted]

**§ 7.6.9** [Intentionally Omitted]

**§ 7.6.10** [Intentionally Omitted]

**§ 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.

**§ 7.7 Other Costs and Emergencies**

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

**§ 7.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of A201-2017.

**§ 7.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

**§ 7.7.4** [Intentionally Omitted]

**§ 7.8** [Intentionally Omitted]

**§ 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;  
Fee and other cost items as further clarified in Exhibit G - Cost Proposal Form and Cost Allocation Summary.
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead, which shall not include unabsorbed home office overhead, and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

**ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

**§ 8.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

**ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the

requirements of the Contract Documents and in accordance with Texas Gov't Code Ch. 2269. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

**§ 9.1.1** The Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in A201-2017. The Construction Manager may seek to perform portions of the work itself if: (1) the Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and (2) the Owner determines that the Construction Manager's bid or proposal provides the best value for the governmental entity.

If the Construction Manager reviews, evaluates, and recommends to the Owner a bid or proposal from a trade contractor or subcontractor but the Owner requires another bid or proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the Construction Manager incurs because of the Owner's requirement that another bid or proposal be accepted. However, the Owner shall not be required to compensate the Construction Manager under this Section 9.1.1, if an actual or perceived conflict of interest exists under Texas Local Gov't Code Ch. 176, or any other law, rule, or ordinance as determined by the Owner in its sole discretion.

**§ 9.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall be awarded in accordance with Texas Gov't Code Chapter 2269.

## ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred, as further provided in Section 13.7 of A201-2017. 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 seven (7) years after final payment, or for such longer period as may be required by law.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

**§ 11.1 Progress Payments**, Payment procedures shall comply with Exhibit O Billing Procedures and Waiver of Lien Forms.

**§ 11.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

**§ 11.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

« »

**§ 11.1.3** Provided that an Application for Payment is received by the Architect not later than the «25th» day of a month, the Owner shall make payment of the amount certified to the Construction Manager in accordance with Texas Gov't Code Ch. 2251. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «thirty» ( «30» ) days after the Architect receives the Application for Payment or as required by Texas Gov't Code Ch. 2251.

**§ 11.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments

already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

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

**§ 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, and the Construction Manager shall obtain approval from Owner prior to the allocation of any amount that exceeds \$50,000. In addition, the contingency shall not be used to fund deficiencies in the cost of General Conditions, Staffing, Insurance, Bonds or the Construction Managers Fee.

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

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing. Stored material must be unique material and equipment specifically for the project (not normal construction items such as drywall, conduit, paint) and be accompanied with a bill of sale, UCC registration, certificate of insurance. This is further clarified in Article 9.3.2 of AIA Document A201–2017;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified subject to the Owner's approval; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation;
- .6 Retainage withheld pursuant to Section 11.1.8; and
- .7 Amounts, if any, withheld by the Owner as liquidated damages under the Contract.

#### **§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Final Completion of the Work, the Owner may withhold Retainage, from the payment otherwise due, as provided in Section 9.3.4 of A201–2017:

**§ 11.1.8.1.1** [Intentionally Omitted]

**§ 11.1.8.2** [Intentionally Omitted]

**§ 11.1.8.3** [Intentionally Omitted]

**§ 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 A201–2017.

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

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts shall not be greater than the percentage withheld from the Construction Manager by the Owner in accordance with Texas Gov't Code Ch. 2252, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

#### **§ 11.2 Final Payment**

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

Prior to final payment, the Construction Manager shall also furnish the Owner with the following, which items are in addition to the deliveries required by Section 9.10.2.1 of the General Conditions: (i) an "as built" plan showing the location on the site of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements in hard copy, current version of Auto and PDF formats to the extent such underlying work is within the Construction Manager's scope of Work; (ii) all original maintenance and operating manuals and schematics from all manufacturers of materials and equipment used in the Work which describe the use and maintenance of such materials and equipment; (iii) marked sets of Drawings and PDF/AutoCAD Drawings which accurately reflect the Work as actually constructed and installed, show all field changes and selections affecting all of the general construction, mechanical, and piping systems and other components of the Work, and show any other "as built"

changes from the Architect's drawings and indicate changes in the Work from that described in the Drawings and Specifications; (iv) reproducible AutoCAD and mylar drawings upon which the Construction Manager shall have transferred all changes in the location of any concealed utilities, mechanical or electrical systems and components; (v) originals of any special guarantees or warranties required by the Contract Documents; (vi) original guarantees and warranties from all Subcontractors, vendors, suppliers and manufacturers of materials and equipment used in the Work which have been properly addressed or otherwise assigned and/or transferred to the Owner; (vii) a list of the names, addresses and phone numbers of all Subcontractors and other persons providing guarantees and warranties; (viii) a complete source listing of all major components and finish materials utilized in the Project, including, without limitation, paint and stain mix specifications; (ix) a complete set of close out documents; and (x) attic stock of materials as per the Project Manual.

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

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

**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Owner shall notify the Construction Manager of the error or disputed amount in a partial or final statement or invoice submitted under this Contract not later than the 21<sup>st</sup> day after the date the Owner receives the partial or final statement or invoice, and the Owner shall include in such notice a detailed statement of the amount of the partial or final statement or invoice which is disputed, or that a bona fide dispute exists under Texas Gov't Code Ch. 2251.

**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, subject to the Contract Documents and Texas Gov't Code Ch. 2251.

« »

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

### **§ 11.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated in Texas Gov't Code Ch. 2251.

## **ARTICLE 12 DISPUTE RESOLUTION**

### **§ 12.1 Initial Decision Maker**

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

**§ 12.1.2** The Owner will serve as the Initial Decision Maker pursuant to Article 15 of A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services.

**§ 12.2 [Intentionally Omitted]**

**ARTICLE 13 TERMINATION OR SUSPENSION**

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

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

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

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

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

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

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

**§ 13.1.6** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1, subject to the limitations of Texas Local Gov't Code Ch. 271.

**§ 13.1.6.1 [Intentionally Omitted]**

**§ 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 A201–2017.

**§ 13.2.2 Termination by the Owner for Cause**

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

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

In the event of a conflict between this Section 13.2.2.1 and the termination provisions of A201-2017, the termination provisions of A201-2017 shall control.

**§ 13.2.2.2 [Intentionally Omitted]**

**§ 13.2.3 [Intentionally Omitted]**

**§ 13.3 Suspension**

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

**ARTICLE 14 MISCELLANEOUS PROVISIONS**

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

**§ 14.2 Successors and Assigns**

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201-2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 14.2.2 [Intentionally Omitted]**

**§ 14.3 Insurance and Bonds**

**§ 14.3.1 Preconstruction and Construction Phase**

For all phases of the Project, the Construction Manager shall purchase and maintain insurance as required by Article 11 of A201-2017, and the Construction Manager shall provide performance, payment, and maintenance bonds as set forth in the Contract Documents, including performance and payment bonds as required by Section 2269.258 and Chapter 2253 of the Texas Gov’t Code. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum, or the construction budget as applicable under Section 2269.258 of the Texas Gov’t Code, and shall automatically include any adjustment in time or cost as the Work progresses. The bonds shall be provided on the Owner’s forms, which are attached to this Agreement as Exhibit B.

**§ 14.3.1.1 [Intentionally Omitted]**

**§ 14.3.1.2 [Intentionally Omitted]**

**§ 14.3.1.3 [Intentionally Omitted]**

**§ 14.3.1.4 [Intentionally Omitted]**

**§ 14.3.1.5 [Intentionally Omitted]**

**§ 14.3.1.6 [Intentionally Omitted]**

**§ 14.3.1.7 [Intentionally Omitted]**

**§ 14.3.1.8** The Construction Manager shall provide certificates of insurance or endorsements as may be required by the Owner that evidence compliance with the requirements in this Section 14.3.1.

**§ 14.3.2 [Intentionally Omitted]**

**§ 14.3.2.1 [Intentionally Omitted]**

§ 14.4 [Intentionally Omitted]

§ 14.5 [Intentionally Omitted]

« »

## ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The documents identified in the Table of Articles (page 2 of this Agreement) comprise the Agreement.

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

**OWNER** (*Signature*)

« »« »

(*Printed name and title*)

**CONSTRUCTION MANAGER** (*Signature*)

« »« »

(*Printed name and title*)

**EXHIBIT B**  
**Performance, Payment, and Maintenance Bonds**  
**(Date of all Bonds must not be prior to date of the Contract)**

**PERFORMANCE BOND**

**BOND No. \_\_\_\_\_**

**STATE OF TEXAS**  
**COUNTY OF TARRANT**

**§**  
**§**

KNOW ALL PERSONS BY THESE PRESENTS: That \_\_\_\_\_ (contractor's company) of the City of \_\_\_\_\_ County of \_\_\_\_\_, and the State of \_\_\_\_\_, as Principal, and \_\_\_\_\_ (surety company) authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bond unto City of Mansfield (Owner), in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Contract with the Owner, for the \_\_\_\_\_ (name of project) which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions, and agreements in and by said Contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect:

"PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code for Public Works, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein."

Surety, for value received, stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder.

**IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.  
\_\_\_\_\_**

**Principal**  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

**Surety**  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

**The name and address of the Resident Agent of Surety is:**  
\_\_\_\_\_  
\_\_\_\_\_

## **PAYMENT BOND**

**BOND No.** \_\_\_\_\_

**STATE OF TEXAS  
COUNTY OF TARRANT**

**§  
§**

KNOW ALL PERSONS BY THESE PRESENTS: That \_\_\_\_\_ (contractor's company) of the City of \_\_\_\_\_ County of \_\_\_\_\_, and the State of \_\_\_\_\_, as Principal, and \_\_\_\_\_ (surety company) authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bond unto the City of Mansfield (Owner), in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Contract with the Owner, for the \_\_\_\_\_ (name of project) which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to Principal, or a subcontractor, in the prosecution of the work provided for in said Contract, then, this obligation shall be void; otherwise to remain in full force and effect:

"PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code for Public Works, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein."

Surety, for value received, stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder.

**IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this**  
\_\_\_\_\_**day of** \_\_\_\_\_ **20** \_\_\_\_\_.

**Principal**

By \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

**Surety**

By \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

**The name and address of the Resident Agent of Surety is:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## **MAINTENANCE BOND**

**BOND No. \_\_\_\_\_**

**STATE OF TEXAS  
COUNTY OF TARRANT**

**§  
§**

KNOW ALL PERSONS BY THESE PRESENTS: That \_\_\_\_\_ (contractor's company) of the City of \_\_\_\_\_ County of \_\_\_\_\_, and the State of \_\_\_\_\_, as Principal, and \_\_\_\_\_ (surety company) authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bond unto the City of Mansfield (Owner), in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Contract with the Owner, for the \_\_\_\_\_ (name of project) which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

WHEREAS, under the plans, specifications, and Contract, it is provided that the Principal will maintain and keep in good repair, the work herein contracted to be done and performed, for a period of one (1) year from the date of the acceptance of said work by the Owner, and to do all necessary repairing and/or reconstructing in whole or in part of said improvements that should be occasioned by settlement of foundation, soil conditions, defective workmanship or materials furnished in the construction or any part thereof or any of the accessories thereto constructed by the Principal. It being understood that the purpose of this bond is to cover said defective work, material, and other conditions and charge the same against the said Principal, and Surety on this bond obligation, and the said Principal and Surety hereon shall be subject to the liquidated damages mentioned in said Contract for each day's failure on its part to comply with the terms of said provisions of said Contract. Now, therefore, if the said Principal shall keep and perform its obligation to maintain said work and keep the same in repair for the maintenance period of one (1) year, as provided, then these presents shall be null and void, and have not further effect, but if default shall be made by the Principal in the performance of its Contract to so maintain and repair said work, then these presents shall have full force and effect, and the City of Mansfield shall have and recover from the Principal and Surety damages in the premises, as provided; and it is further agreed that this obligation shall be continuing one against the Principal and Surety, hereon, and that successive recoveries may be and had hereon for successive breaches until the full amount of this bond shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any cause during said time.

**IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this day of \_\_\_\_\_ 20\_\_\_\_\_.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**

**Principal**

**By \_\_\_\_\_**

**Title \_\_\_\_\_**

**Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**

**Surety**

**By \_\_\_\_\_**

**Title \_\_\_\_\_**

**Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**

**The name and address of the Resident Agent of Surety is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**

# DRAFT AIA® Document A201® – 2017

## *General Conditions of the Contract for Construction*

for the following PROJECT:

(Name and location or address)

Mansfield Multi-Use Stadium at Harvest Point

THE OWNER:

(Name, legal status and address)

City of Mansfield, Texas

THE ARCHITECT:

(Name, legal status and address)

« Perkins & Will, Inc.

2218 Bryan St., Suite 200,

Dallas, TX 75201»

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

#### ADDITIONS AND DELETIONS:

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

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

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



**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## INDEX

(Topics and numbers in bold are Section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

#### Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### Access to Work

**3.16**, 6.2.1, 12.1

#### Accident Prevention

10

#### Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

#### Addenda

1.1.1

#### Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

#### Advertisement or Invitation to Bid

1.1.1

#### Aesthetic Effect

4.2.13

### Allowances

**3.8**

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

#### Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

## ARCHITECT

4

### Architect, Definition of

**4.1.1**

#### Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

#### Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

#### Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

#### Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

#### Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

#### Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

### Architect's Copyright

1.1.7, 1.5

### Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

### Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

### Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

### Architect's Interpretations

4.2.11, 4.2.12

### Architect's Project Representative

4.2.10

### Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

### Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

### Architect's Representations

9.4.2, 9.5.1, 9.10.1

### Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

### Asbestos

10.3.1

### Attorneys' Fees

3.18, 9.6.8, 9.10.2, 10.3.3

### Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

**5.2**

### Basic Definitions

**1.1**

#### Bidding Requirements

1.1.1

#### Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

#### Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

### Building Information Models Use and Reliance

**1.8**

#### Building Permit

3.7.1

### Capitalization

**1.3**

#### Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

### Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

#### Certificates of Inspection, Testing or Approval

13.4.4

|  |  |
|--|--|
| Certificates of Insurance  | <b>CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS</b>  |
| 9.10.2   | 1.1.4, 6   |
| <b>Change Orders</b>   | <b>Construction Change Directive, Definition of</b>  |
| 1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2 | 7.3.1  |
| <b>Change Orders, Definition of</b>  | <b>Construction Change Directives</b>  |
| <b>7.2.1</b>   | 1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1   |
| <b>CHANGES IN THE WORK</b>   | <b>Construction Schedules, Contractor's</b>  |
| 2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5   | 3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  |
| <b>Claims, Definition of</b>   | <b>Contingent Assignment of Subcontracts</b>   |
| <b>15.1.1</b>  | 5.4, 14.2.2.2  |
| Claims, Notice of  | <b>Continuing Contract Performance</b>   |
| 1.6.2, 15.1.3  | 15.1.4   |
| <b>CLAIMS AND DISPUTES</b>   | <b>Contract, Definition of</b>   |
| 3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4  | 1.1.2  |
| Claims and Timely Assertion of Claims  | <b>CONTRACT, TERMINATION OR SUSPENSION OF THE</b>  |
| 15.4.1   | 5.4.1.1, 5.4.2, 11.5, 14   |
| <b>Claims for Additional Cost</b>  | Contract Administration  |
| 3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5  | 3.1.3, 4, 9.4, 9.5   |
| <b>Claims for Additional Time</b>  | Contract Award and Execution, Conditions Relating to   |
| 3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6   | 3.7.1, 3.10, 5.2, 6.1  |
| <b>Concealed or Unknown Conditions, Claims for</b>   | Contract Documents, Copies Furnished and Use of  |
| <b>3.7.4</b>   | 1.5.2, 2.3.6, 5.3  |
| Claims for Damages   | <b>Contract Documents, Definition of</b>   |
| 3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7   | 1.1.1  |
| <b>Cleaning Up</b>   | <b>Contract Sum</b>  |
| <b>3.15, 6.3</b>   | 2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5   |
| Commencement of the Work, Conditions Relating to   | <b>Contract Sum, Definition of</b>   |
| 2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5   | 9.1  |
| <b>Commencement of the Work, Definition of</b>   | <b>Contract Time</b>   |
| <b>8.1.2</b>   | 1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5 |
| <b>Communications</b>  | <b>Contract Time, Definition of</b>  |
| <b>3.9.1, 4.2.4</b>  | 8.1.1  |
| Completion, Conditions Relating to   | <b>CONTRACTOR</b>  |
| 3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2  | 3  |
| <b>COMPLETION, PAYMENTS AND</b>  | Contractor, Definition of  |
| <b>9</b>   | <b>3.1, 6.1.2</b>  |
| Completion, Substantial  | <b>Contractor's Construction and Submittal Schedules</b>   |
| 3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2  | <b>3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2</b>  |
| Compliance with Laws   | Contractor's Employees   |
| 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3                             | 2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1  |
| Concealed or Unknown Conditions  | <b>Contractor's Liability Insurance</b>  |
| 3.7.4, 4.2.8, 8.3.1, 10.3  | 11.1   |
| Conditions of the Contract   | Contractor's Relationship with Separate Contractors and Owner's Forces   |
| 1.1.1, 6.1.1, 6.1.4  | 3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4   |
| Consent, Written   |  |
| 3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2   |  |
| <b>Consolidation or Joinder</b>  |  |
| <b>15.4.4</b>  |  |

Contractor's Relationship with Subcontractors 1.2.2, 2.2.4, 3.3.2, 3.18, 3.18, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4  
Contractor's Relationship with the Architect 1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1  
Contractor's Representations 3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2  
Contractor's Responsibility for Those Performing the Work 3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8  
Contractor's Review of Contract Documents 3.2  
Contractor's Right to Stop the Work 2.2.2, 9.7  
Contractor's Right to Terminate the Contract 14.1  
Contractor's Submittals 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3  
Contractor's Superintendent 3.9, 10.2.6  
Contractor's Supervision and Construction Procedures 1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4  
Coordination and Correlation 1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1  
Copies Furnished of Drawings and Specifications 1.5, 2.3.6, 3.11  
Copyrights 1.5, **3.17**  
Correction of Work 2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1  
**Correlation and Intent of the Contract Documents**  
**1.2**  
**Cost**, Definition of **7.3.4**  
Costs 2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14  
**Cutting and Patching**  
**3.14**, 6.2.5  
Damage to Construction of Owner or Separate Contractors 3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4  
Damage to the Work 3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4  
Damages, Claims for 3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7  
Damages for Delay 6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

**Date of Commencement of the Work**, Definition of **8.1.2**  
**Date of Substantial Completion**, Definition of **8.1.3**  
**Day**, Definition of **8.1.4**  
Decisions of the Architect 3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2  
**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3  
Defective or Nonconforming Work, Acceptance, Rejection and Correction of 2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1  
Definitions 1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1  
**Delays and Extensions of Time**  
**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5  
**Digital Data Use and Transmission**  
**1.7**  
Disputes 6.3, 7.3.9, 15.1, 15.2  
**Documents and Samples at the Site**  
**3.11**  
**Drawings**, Definition of **1.1.5**  
Drawings and Specifications, Use and Ownership of 3.11  
Effective Date of Insurance 8.2.2  
**Emergencies**  
**10.4**, 14.1.1.2, **15.1.5**  
Employees, Contractor's 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1  
Equipment, Labor, or Materials 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
Execution and Progress of the Work 1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4  
Extensions of Time 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**  
**Failure of Payment**  
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2  
Faulty Work  
(See Defective or Nonconforming Work)  
**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3  
Financial Arrangements, Owner's 2.2.1, 13.2.2, 14.1.1.4

## GENERAL PROVISIONS

1

### Governing Law

13.1

Guarantees (See Warranty)

### Hazardous Materials and Substances

10.2.4, 10.3

Identification of Subcontractors and Suppliers

5.2.1

### Indemnification

3.18, 9.6.8, 9.10.2, 10.2.5, 10.3.6

### Information and Services Required of the Owner

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

### Initial Decision

15.2

### Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

### Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

### Instruments of Service, Definition of

1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, 11

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

### Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 14.4.2

### Insurance, Owner's Liability

11.2

### Insurance, Property

10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

## INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

## Interest

13.5

### Interpretation

1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

### Labor and Materials, Equipment

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

### Materials, Hazardous

10.2.4, 10.3

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

### Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1, 15.4.1.1

### Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

## MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

### Mutual Responsibility

6.2

### Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of 2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

### **Notice**

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2, 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance 11.1.4, 11.2.3

### **Notice of Claims**

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's 3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

### **OWNER**

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

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

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications

### **and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

### **Partial Occupancy or Use**

9.6.6, 9.9

### **Patching, Cutting and**

3.14, 6.2.5

Patents

3.17

### **Payment, Applications for**

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

### **Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

### **Payment, Failure of**

9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3

### **Payment Bond, Performance Bond and**

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

### **Payments, Progress**

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

### **PAYMENTS AND COMPLETION**

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

### **Performance Bond and Payment Bond**

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

### **Permits, Fees, Notices and Compliance with Laws**

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

### **PERSONS AND PROPERTY, PROTECTION**

OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

### **Product Data and Samples, Shop Drawings**

3.11, 3.12, 4.2.7

### **Progress and Completion**

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4

### **Progress Payments**

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of

1.1.4

Project Representatives

4.2.10

### **Property Insurance**

10.2.5, 11.2

### **Proposal Requirements**

1.1.1

### **PROTECTION OF PERSONS AND PROPERTY**

10

|  |   |
|--|---|
| Regulations and Laws   | Site Visits, Architect's  |
| 1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4                                 | 3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4  |
| Rejection of Work  | Special Inspections and Testing   |
| 4.2.6, 12.2.1  | 4.2.6, 12.2.1, 13.4   |
| Releases and Waivers of Liens  | <b>Specifications</b> , Definition of   |
| 9.3.1, 9.10.2  | <b>1.1.6</b>  |
| Representations  | <b>Specifications</b>   |
| 3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1   | 1.1.1, <b>1.1.6</b> , 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14   |
| Representatives  | Statute of Limitations  |
| 2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1   | 15.1.2, 15.4.1.1  |
| Responsibility for Those Performing the Work   | Stopping the Work   |
| 3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10   | 2.2.2, 2.4, 9.7, 10.3, 14.1   |
| Retainage  | Stored Materials  |
| 9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3   | 6.2.1, 9.3.2, 10.2.1.2, 10.2.4  |
| <b>Review of Contract Documents and Field Conditions by Contractor</b>   | <b>Subcontractor</b> , Definition of  |
| <b>3.2</b> , 3.12.7, 6.1.3   | <b>5.1.1</b>  |
| Review of Contractor's Submittals by Owner and Architect   | <b>SUBCONTRACTORS</b>   |
| 3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2  | <b>5</b>  |
| Review of Shop Drawings, Product Data and Samples by Contractor  | Subcontractors, Work by   |
| 3.12   | 1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7  |
| <b>Rights and Remedies</b>   | <b>Subcontractual Relations</b>   |
| 1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, <b>13.3</b> , 14, 15.4 | <b>5.3</b> , 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1  |
| <b>Royalties, Patents and Copyrights</b>   | Submittals  |
| <b>3.17</b>  | 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3                                |
| <b>Safety of Persons and Property</b>  | Submittal Schedule  |
| <b>10.2</b> , 10.4   | 3.10.2, 3.12.5, 4.2.7   |
| <b>Safety Precautions and Programs</b>   | <b>Subrogation, Waivers of</b>  |
| 3.3.1, 4.2.2, 4.2.7, 5.3, <b>10.1</b> , 10.2, 10.4   | 6.1.1, 11.3   |
| <b>Samples</b> , Definition of   | <b>Substances, Hazardous</b>  |
| <b>3.12.3</b>  | <b>10.3</b>   |
| <b>Samples, Shop Drawings, Product Data and Samples</b>  | <b>Substantial Completion</b>   |
| 3.11, <b>3.12</b> , 4.2.7  | 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, <b>9.8</b> , 9.9.1, 9.10.3, 12.2, 15.1.2                                       |
| <b>Samples at the Site, Documents and</b>  | <b>Substantial Completion</b> , Definition of   |
| <b>3.11</b>  | <b>9.8.1</b>  |
| <b>Schedule of Values</b>  | Substitution of Subcontractors  |
| <b>9.2</b> , 9.3.1   | 5.2.3, 5.2.4  |
| Schedules, Construction  | Substitution of Architect   |
| 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  | 2.3.3   |
| Separate Contracts and Contractors   | Substitutions of Materials  |
| 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2  | 3.4.2, 3.5, 7.3.8   |
| <b>Separate Contractors</b> , Definition of  | <b>Sub-subcontractor</b> , Definition of  |
| <b>6.1.1</b>   | <b>5.1.2</b>  |
| <b>Shop Drawings</b> , Definition of   | Subsurface Conditions   |
| <b>3.12.1</b>  | 3.7.4   |
| <b>Shop Drawings, Product Data and Samples</b>   | <b>Successors and Assigns</b>   |
| 3.11, <b>3.12</b> , 4.2.7  | <b>13.2</b>   |
| <b>Site, Use of</b>  | <b>Superintendent</b>   |
| <b>3.13</b> , 6.1.1, 6.2.1   | <b>3.9</b> , 10.2.6   |
| Site Inspections   | <b>Supervision and Construction Procedures</b>  |
| 3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4  | 1.2.2, <b>3.3</b> , 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4 |

Surety  
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7  
Surety, Consent of  
9.8.5, 9.10.2, 9.10.3  
Surveys  
1.1.7, 2.3.4

### **Suspension by the Owner for Convenience**

**14.3**  
Suspension of the Work  
3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract  
5.4.1.1, 14

### **Taxes**

3.6, 3.8.2.1, 7.3.4.4

### **Termination by the Contractor**

**14.1**, 15.1.7

### **Termination by the Owner for Cause**

5.4.1.1, **14.2**, 15.1.7

### **Termination by the Owner for Convenience**

**14.4**

Termination of the Architect

2.3.3

Termination of the Contractor Employment  
14.2.2

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

**14**

### **Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

### **TIME**

**8**

### **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

### **Time Limits**

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

### **Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

### **Title to Work**

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

**12**

### **Uncovering of Work**

**12.1**

Unforeseen Conditions, Concealed or Unknown  
3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

### **Use of Site**

**3.13**, 6.1.1, 6.2.1

### **Values, Schedule of**

**9.2**, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

### **Waivers of Subrogation**

6.1.1, **11.3**

### **Warranty**

**3.5**, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,

15.1.2

Weather Delays

8.3, 15.1.6.2

### **Work, Definition of**

**1.1.3**

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, **4.1.2**, 9.3.2, 9.10.3,

13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The “Contract Documents” or “Contract” 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. The Contract Documents also include the advertisement, invitation to bid, or request for proposals, Instructions to Bidders, sample forms, other solicitation information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor’s bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the “Contract”). 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. As a material consideration for the making of the Contract Documents, modification to this Contract shall not be construed against the maker of said modifications. 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, materialman, or supplier, (3) between the Owner and the Architect or the Architect’s consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties.

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2.

#### § 1.1.9 Site

The term Site refers to that portion of the property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

### § 1.1.10 Punch List

The term Punch List means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment, or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within sixty (60) days of Substantial Completion, subject to the availability of special order parts and materials.

### § 1.1.11 Furniture, Fixtures, and Equipment

“FF&E” means furniture, fixtures, and equipment purchased to be used in the Project. The Contractor shall be responsible for the acquisition, storage, installation, and protection of the FF&E, if any, required for the Project until the date of Final Completion. Thereafter, the FF&E shall be subject to all warranties, guarantees, and maintenance bonds provided in this Contract. The installation of FF&E shall not be considered or construed as evidence of beneficial use of the improvements by the Owner or evidence of Substantial Completion under any circumstances.

## § 1.2 Correlation and Intent of the Contract Documents

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

Contractor warrants that it has reviewed the Contract Documents: (i) for compliance with all Legal Requirements for which it is responsible; (ii) to establish construction means, methods, techniques, sequences or procedures; (iii) to confirm safety precautions and programs in connection with the Work; and (iv) to ascertain that it can obtain all permits or other approvals from Governmental Authorities required to perform the Work. On the basis of the Contract Documents and the Work indicated, described or implied in or from the Contract Documents, Contractor shall provide all items required for the proper execution and completion of the Work. The enumeration of particular items of Work in one portion of the Contract Documents shall not be construed to exclude other items reasonably necessary or implied therefrom.

Generally, the Specifications describe work which cannot be readily indicated on the Drawings and indicate types, qualities and locations for the Installation of the various materials and equipment required for the Work. It is not intended that the Specifications will mention every item of Work which can be adequately shown on the Drawings nor is it intended that the Drawings show all items of Work described or required by the Specifications even if they are of such nature that they could have been shown thereon. All materials or labor for Work which is shown on the Drawings or is reasonably inferable therefrom as being part of the Work and necessary to produce a finished job shall be provided by Contractor whether or not such material or labor are expressly covered in the Drawings and Specifications.

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

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

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

**§ 1.2.4** In case of discrepancy between two or more drawings (Architectural, Structural, Mechanical, etc.) or drawings and specifications, the Architect shall be the sole judge as to which takes precedence, but in any case it shall be assumed that bids are based on the most expensive procedure shown.

**§ 1.2.5** Dimensions found in error should be submitted to the Architect for resolution before proceeding with the Work.

### § 1.3 Capitalization

Terms capitalized in the Contract Documents include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents specifically identified in the Contract.

### § 1.4 Interpretation

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

In the event of a conflict among the various provisions of the Contract Documents, the terms shall be interpreted in the following order of priority:

- .1 Modifications to the Agreement (including any Guaranteed Maximum Price Amendment, if applicable)
- .2 Contractor's Qualifications and Assumptions
- .3 The Contract
- .4 Special Conditions
- .5 Other General Conditions
- .6 Specifications
- .7 Drawings
- .8 Bid Documents not otherwise incorporated as an Exhibit to the Contract

Specifications shall control over Drawings, and details in drawings shall control over large-scale drawings.

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

**§ 1.5.1** The Instruments of Service are the Owner's exclusive property. The Owner owns all copyrights in and to the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, materialmen, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, materialmen, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, materialmen, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of the Work.

### § 1.6 Notice

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, (on the date actually received in the office of the representative), by overnight courier, or by email. The date of any notice is deemed to be the earlier of the date of personal delivery, delivery by overnight courier, or the date of delivery by email. An email received after normal business hours shall be deemed to have been received on the next business day.

**§ 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, email, or by courier providing proof of delivery. An email received after normal business hours shall be deemed to have been received on the next business day.

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building

Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### **§1.9 Property of Political Subdivision**

**It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas. This Section 1.9 serves as notice that liens filed against the Project or any other property of the Owner are unlawful under Texas Property Code Ch. 53, or any other law, and the filing of a lien shall be an act with the intent to defraud under Civil Practice and Remedies Code Ch. 12.**

## **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 a representative with respect to the Project. Such representative shall not have authority to make final decisions on behalf of the Owner concerning Change Orders, changing the Guaranteed Maximum Price, extending the date of Substantial or Final Completion, or other items requiring City Council approval; however, the Owner or such authorized representative, shall render decisions in a timely manner in order to avoid unreasonable delay in the service or Work of the Contractor.

Notwithstanding the foregoing, the Parties acknowledge that Owner is a home-rule municipality, and that some decisions or approvals relating to the Contract may be required by law or policy to be submitted to its governing body, the City Council (the "Council"), for a decision by majority vote. In addition, the Parties acknowledge that the Council is required by law to comply with the requirements of the Texas Open Meetings Act in providing notice to the public of the date, time, location and subject matter of its meetings which, unavoidably, can prevent a decision with the immediacy of an owner not constrained by such obligations. For these reasons, any representation in the Contract indicating that an authorized representative of Owner has unilateral authority to make decisions or grant approvals or authorizations on behalf of Owner with respect to the Contract is subject to those restrictions, and it shall not be considered a breach of the Contract or an unreasonable delay when a decision of the Council must first be obtained on matters relating to the Contract.

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits waived by the Owner, it shall be the obligation and of the Contractor to secure and pay for all 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 State of Texas. 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 surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. Owner does not guarantee the accuracy of the survey as describing the site of the Project and Contractor should determine the sufficiency of same before beginning the work. The Owner does not guarantee the utility lines to be in the exact locations as shown on plans and surveys. Contractor

shall verify with the utilities the location of utility lines. Any water, gas or sewer line, telephone, telegraph or electric wire, or cable broken or cut which had been previously identified and known by the Contractor or any of his workmen or subcontractors, shall be replaced by the Contractor at his own expense, or by the responsible subcontractor at its own expense, and will not be paid for by the Owner. Repairs shall be made immediately and no other work shall be done until breaks or damages have been repaired and service restored. Any delay caused by the cut or break of a previously identified line shall be solely attributed to the Contractor.

**§ 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. Absent such written request, any Claim based upon lack of such information or service shall be waived.

**§ 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. The Contractor may purchase additional copies at the cost of reproduction, plus postage and handling, if any.

#### **§ 2.4 Owner's Right to Stop the Work**

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

#### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a five-day period after receipt of notice from the Owner, or such shorter time as may be reasonable under the circumstance, 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. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor, the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner, or the Owner may retain amounts due to the Owner, or withhold or nullify a Certificate of Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

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

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

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

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

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

- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
- .4 that the execution of the Contract and its performance thereof are within its duly authorized powers.

### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions, and assumes responsibility for differing Site conditions, under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.2** Because the Contract Documents are complementary, Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor must make frequent inspections during the progress of the Work to confirm that the Work previously performed by the Contractor is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the Work and that portion of the Work previously performed by the Contractor or by others are in proper condition to receive subsequent Work.

**§ 3.2.4** If the Contractor believes that any portion of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors, the Contractor must promptly notify the Owner and the Architect of the non-compliance and request direction before proceeding with the affected Work.

**§ 3.2.5** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed, including differing Site conditions before performing the Work.

**§ 3.2.6** The Contract Documents shall be read and construed in compliance with Texas Business & Commerce Code Ch. 59, as amended, and the 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 the Contractor, or that reasonably should have been discovered by the Contractor using ordinary diligence, before or during construction. The Contractor shall be liable for the consequences of defects that result from the Contractor's failure to disclose as authorized by Texas Business & Commerce Code Ch. 59.

**§ 3.2.7** 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, the

Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

### **§ 3.3 Supervision and Construction Procedures**

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

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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

**§ 3.3.4** The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and sub-contractors.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol notice and testing requirements required by law or Owner. Any person not complying with all such requirements shall be immediately removed from the Site.

**§ 3.4.4** Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor and upon any subcontractor under him to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the Contract. No claims for additional compensation shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein. Pursuant to Texas Gov't Code Ch. 2258, the Contractor shall forfeit, as a penalty to Owner, sixty dollars (\$60.00) for each laborer, workman, or mechanic employed for each calendar day, or portion thereof, in which such laborer, workman, or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Contractor or any subcontractor employed on the project.

To ensure compliance with the inspection of books, records, and audit provisions required in this Contract, the Owner may elect to apply, to the greatest extent possible, Davis Bacon and Related Act provisions to this Contract. If the Owner elects to apply Davis Bacon and Related Act provisions to this Contract, Contractor shall complete and submit

to the Owner certified weekly payroll records on Form WH-347 or a similar form acceptable to the Owner to satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to Davis Bacon and Related Acts.

**§ 3.4.5** The Owner reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor's Subcontractors, and of Sub-Subcontractors.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

**§ 3.5.3** Except where otherwise stipulated in the Contract Documents, and in addition to the maintenance bond required by this Contract, the Contractor shall, as per its Contract, warranty all materials and workmanship furnished under this Contract for a period of one (1) year after the date of Substantial Completion and shall repair and make good, without expense to the Owner, any and all defects in his work which may develop within that time. The Owner may require additional special warranties in connection with the approval of "or>equals" or substitutions, allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12. The warranty provisions in this Contract shall be considered an additional obligation of the Contractor and are not a limitation on the City's rights, remedies, or obligations under Texas Civil Practice and Remedies Code Ch. 16, or any other law.

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

### **§ 3.6 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.

**§ 3.6.1** The Owner enjoys tax exempt status as a municipal corporation, and qualifies for exemption from state and local use taxes pursuant to the provisions of Section 151.309 of the Texas Tax Code. This Project is eligible for exemption from the State Sales Tax on materials incorporated in the Project, provided that the Contractor fulfills the requirements of State Tax Laws. For the purpose of establishing exemption, it is understood and agreed that the Contractor will be required to segregate materials and labor costs at the time a Contract is awarded, and will accept a Tax Exemption Certificate from the Owner. The Contractor shall pay any taxes otherwise assessed because of the Contractor's failure to comply with the requirements of State Law to qualify for that tax exemption. The Contractor will pass on all savings for the tax-exempt status to the Owner. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

**§ 3.6.2** The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, which shall not include unabsorbed home office overhead, etc. to allow the Owner to verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the Owner.

**§ 3.6.3** The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable time frame after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

.1 The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.

.2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the Owner.

### **§ 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 written notice to the Owner and the Architect before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

### **§ 3.8 Allowances**

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

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

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

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

**§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent must provide his or her email address and cell phone number to Owner and Architect and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency. The superintendent must be fluent in all languages necessary to effectively communicate with Contractor's staff assigned to the Project, and with all Subcontractors, in order to supervise and direct the Work and assist emergency responders.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, within ten (10) days after the effective date of the Contract, shall submit for the Owner's and Architect's approval a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work; (4) indication of critical path; and (5) Owner decision-making dates as applicable. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis ("Current Construction Schedule"), if not more frequently at the Contractor's discretion, to be submitted in writing to the Owner with each Application for Payment. Each Current Construction Schedule update shall include a narrative including:

1. A description of the status of the schedule;
2. A discussion of current and anticipated delays;
3. A discussion of progress of critical path activities;
4. A discussion of the critical path for the remainder of the project; and
5. A listing and discussion of logic changes and duration changes.

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

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules approved by the Owner and Architect.

**§ 3.11 Documents and Samples at the Site**

The Contractor shall maintain, at the Project Site, the Current Construction Schedule and 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, specifications, addenda, 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. The Contractor shall display a Current Construction Schedule at the Site for reference and reliance by the Owner and Architect.

### § 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Contractor must provide the Owner and Architect with copies of all submittals made to regulatory agencies.

§ 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. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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

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

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

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

**§ 3.12.11** The Architect's review of the Contractor's submittals will be limited to examination of an initial submittal and one (1) resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Architect for evaluation of additional submittals.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the Site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords the Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. The Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work, or the

building, in the event of partial occupancy. The presence of the Owner, the Architect or their representatives does not constitute acceptance or approval of the Work.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay and be liable for all royalties and license fees related to Contractor's use, manner, and method of construction, and shall provide for the use of any design, device, materials or process covered by letter patent or copyright by suitable legal agreement with the patentee or owner. The Contractor warrants the accuracy, adequacy, sufficiency, or suitability of plans, specifications, or other design documents provided to the Contractor by the Contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier. 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or patent, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 3.18 Indemnification**

TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, AND ITS AGENTS AND EMPLOYEES (THE "INDEMNIFIED PARTIES"), IN THEIR OFFICIAL AND REPRESENTATIVE CAPACITIES, 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 ONE OF THE INDEMNIFIED PARTIES. SUCH OBLIGATIONS REFERENCED HEREIN SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. THIS PROVISIONS SHALL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THE AGREEMENT.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

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

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect.

### **§ 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, except as provided in Section 3.3.1.

**§ 4.2.2.1** The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.4 Communications**

The Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Contractor shall promptly notify the Owner of the substance of any direct communications between the Architect and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of the Project representatives shall be set forth in the agreement between Owner and Architect.

**§ 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 Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. The Architect shall be the sole interpreter of the design intent with respect to such matters, but the Architect's authority with respect thereto shall not contravene any other rights of the Owner ascribed to the Owner by other provisions of the Contract.

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has no privity of contract with the Owner, but has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall update this list throughout the Project and keep Owner and the Architect advised of any new Subcontractors employed, and no change of Subcontractors shall be made without the notification and approval of the change by the Owner and Architect.

**§ 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 met all criteria set forth in the Contract Documents and was qualified to perform the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect.

Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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

**§ 5.3.2** In the event of any termination of the Contract in accordance with Article 14, Owner shall not be liable to any subcontractor. Contractor shall be responsible for any claim of a subcontractor for Work executed under the Contract.

#### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work may be assigned by the Contractor to the Owner, provided that assignment is effective only after unnecessary delay by the Contractor, abandonment of the Work by the Contractor, or 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 in writing. Except as authorized by the Owner in writing, the Contractor shall not assign by Power of Attorney, pass through agreement, or otherwise, or sublet this Contract, without the written consent of the Owner. This section expressly prohibits the assignment or pass through of claims, rights, or causes of action between the Contractor and any subcontractors, materialmen, or suppliers, or any other third-party performing Work under the Contract against the Owner.

**§ 5.4.2** Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable. Owner shall only be responsible for compensating subcontractors for Work performed or material furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

## § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## § 6.3 Owner's Right to Clean Up

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

# 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, and only to the extent allowed by Texas Local Gov't Code Sec. 252.048.

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

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

## § 7.2 Change Orders

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

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

§ 7.2.2 **Change Proposals.** The Contractor must submit change proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must

include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes and site-specific overhead, but shall not include unabsorbed home office overhead, and general conditions) in an amount reasonably agreed upon by the parties. Change proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in the change proposal in accordance with Section 7.3 without accepting the change proposal in its entirety. The requirements of this paragraph are subject to Article 2.

**§ 7.2.3** If the Owner determines that a change proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

### **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect (after having been approved in writing 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:

- .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 and the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead, which shall not include unabsorbed home office overhead, and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, an amount determined by the Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, and permit fees, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead, which shall not include unabsorbed home office overhead, and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

**§ 7.3.11** Contractor shall have no obligation to proceed on any Construction Change Directive when the total amount of outstanding and unresolved Construction Change Directives and other Change Orders exceeds  $\frac{1}{2}$  of 1% of the GMP. Changes Orders that are being resolved in good faith shall not count towards the cap stated herein. Contractor shall not be liable for damages associated with the election not to proceed.

#### **§ 7.4 Minor Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and the Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect and 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 Final Completion of the Work.

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

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

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

#### **§ 8.2 Progress and Completion**

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

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

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the Contract Time.

**§ 8.2.4** If the Contractor's progress is not maintained in accordance with the approved Construction Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner. Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule and at no additional cost to the Owner.

**§ 8.2.5** The Owner reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the Owner requires an acceleration of the Construction Schedule and no adjustment is made in the Contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a claim as provided in Article 15 or the same will be deemed to be conclusively waived.

### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, acts of terrorism, any form of cyber-attack, adverse weather conditions documented in accordance with Sections 8.3.6 and 15.1.6.2, a pandemic, or any other causes beyond the Contractor's control; (4) by delay authorized by the Owner; (5) by occurrences beyond the Contractor's control and without the fault or negligence of the Contractor; or (6) by other causes that the Contractor asserts, and the Architect determines, justify additional costs and delay, then the Contract Sum shall be increased for a reasonable amount as the Owner and Architect may determine and the Contract Time shall be extended for such reasonable time Owner and Architect may determine.

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

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**§ 8.3.4** The Contractor must provide written notice of any actual or prospective delay promptly, and in no event later than ten (10) days after the occurrence of the event giving rise to such delay. The notice must be given to the Owner and Architect within the specified time. In the case of a continuing delay, the Contractor must provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice must contain all of the specific information required in Section 8.3.5. The Contractor's failure to provide the written notice containing the information specified in Section 8.3.5 within the ten (10) days prescribed above will be conclusively deemed a waiver of any claim for delay arising from such occurrence.

**§ 8.3.5** The Contractor's notice must identify those portions of the Construction Schedule affected by the delay.

**§ 8.3.6** In order for the Contractor to be entitled to an extension of the Contract Time for unusually severe weather, the following conditions must be satisfied:

- .1 The weather experienced at the Site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month;
- .2 The unusually severe weather must delay Work which at the time of the unusual severe weather was a critical path activity as shown on the most recently approved Construction Schedule and which prevents the Contractor from achieving Final Completion before expiration of the Contract Time. The delay must be beyond the control and without the fault or negligence of the Contractor. For example, the impacted critical activity must not have occurred during unusually severe weather due to previous unexcused delays; and
- .3 The Contractor must have provided written notice of the weather-related delay complying with Sections 8.3.4 and 8.3.5 above.

**§ 8.3.7** Upon receipt of a notice from the Contractor of the occurrence of a delay complying with Sections 8.3.4 and 8.3.5, the Owner will review the most recently approved Construction Schedule to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Construction Schedule. The Owner may require the Contractor to submit a more detailed Construction Schedule than previously required in order to permit the Owner to evaluate the delay. Based on such review, the Contractor must, if required by the Owner, submit for the Owner's approval a revised Construction Schedule which minimizes the adverse effects of the delay.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. 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 unconditional waivers of liens from Subcontractors and suppliers, 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2 Stored Materials.** 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 in writing 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. Partial or complete payment for materials and equipment stored off site shall not be construed as relieving the Contractor of its responsibility for the care and protection of such materials and equipment used. Contractor shall be responsible for any and all damage to such materials and equipment occurring prior to the incorporation of such materials and equipment into the Work on the Project site, and Owner shall have the right, in addition to all other remedies available to Owner under the Contract, to reject any such materials and equipment damaged prior to the incorporation thereof into the Work on the Project site. Materials and equipment stored off site requiring protection from weather, heat, cold or moisture shall be suitably protected by Contractor as required by the material manufacturer. The materials and

equipment shall be labeled as the property of the Owner and shall be accessible to the Owner for inspection at all times and shall be segregated from other materials and equipment at the storage facility.

**§ 9.3.2.1** The Owner shall only consider payment for the storage of materials that are unique and fabricated specifically for the Project. In no event shall the Owner be obligated to pay for the storage of typical building materials (for example, drywall, conduit, paint, masonry).

**§ 9.3.2.2** Contractor shall also comply with the following specific requirements related to stored material:

- .1 The aggregate cost of material stored off site shall not exceed the aggregate amount which has been approved in writing by Owner under this Section 9.3.2 above;
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory inform and substance to the Owner and the Owner's construction lender, if any, including, without limitation, recorded financing statements, UCC filings and UCC searches;
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof;
- .4 The Contractor shall provide an observation report confirming that a Contractor has viewed and confirmed material, quantities and conditions at the stored location and that representatives of the Owner shall have the right to make inspections of the storage areas at any time; and
- .5 Such materials shall be (a) protected from diversion, destruction, theft and damage to the satisfaction of the Owner (b) specifically marked for use on the Project, and (c) segregated from other materials at the storage facility.

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

**§ 9.3.4 Retainage.** "Retainage" means the percentage of the payment withheld in this Contract by the Owner to secure performance of the Contract. The Owner may withhold Retainage in the amount of five percent (5%) of the total Contract Price, and the rate of Retainage may not exceed five percent (5%) for any item in a bid schedule or schedule of values for the Project, including materials and equipment delivered on site to be installed. The percentage of retainage held on Subcontracts by the Contractor shall not be greater than the percentage withheld from the Contractor by the Owner in accordance with Texas Gov't Code Ch. 2252.

Until the conditions set forth for Final Payment have been satisfied by the Contractor, the amount of each monthly Application for Payment must include the value of each line item as indicated on the approved Schedule of Values, to the extent completed, less Retainage of five percent (5%). Retainage will not be released to the Contractor before Substantial Completion, but may be withheld by the Owner until Final Completion. If no bona fide dispute exists and no liquidated damages or other amounts are owed to the Owner, then Retainage will be released to the Contractor with Final Payment after all of the following conditions relating to Final Payment have been satisfied: (A) the Contractor has fully performed the Contract; (B) the Contractor has completed all Punch List items to the satisfaction of the Owner and the Architect; (C) the Contractor has delivered to the Owner all Project close-out documents in duplicate, including (1) all maintenance and operating manuals; (2) marked sets of as-built drawings; (3) all guarantees and warranties required under the Contract Documents; (4) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; (5) an electronic (PDF) bookmarked single file containing the information required in C (1-4) above, that is indexed and searchable; and (D) the applicable governmental authorities have issued to the Owner the final use and certificate of occupancy for the Project.

## **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in

Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### **§ 9.5 Decisions to Withhold Certification**

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to the Surety to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

**§ 9.5.5** Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Owner may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding such payment.

### **§ 9.6 Progress Payments**

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

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

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor the information required by Texas Gov't Code Sec. 2253.026.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

**§ 9.6.7** Payments received by the Contractor for Work properly performed by Subcontractors or materials properly provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed the Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

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

## **§ 9.7 Failure of Payment**

If the Owner does not pay the Contractor within sixty (60) days after the Contractor submits an Application for Payment to , the Architect and no bona fide dispute exists, the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received and file a claim in accordance with Article 15 of this Contract.

**§9.7.1** If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to the Owner, or the Owner incurs any costs and expense to cure any default of the Contractor or to correct defective Work, pursuant to the Contract, the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

.1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to the Contractor from the Owner, or

.2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents, as determined by the Owner in the Owner's sole discretion, such that only final punch-list items or minor work remains, and the Contractor can achieve Final Completion within the time period approved in the Certificate of Substantial Completion, or sixty (60) days, whichever is less.

**§ 9.8.2** When the Contractor considers that the Work is substantially complete and that items remaining to be completed or corrected can be accomplished within no more than sixty (60) days, subject to the availability of special order parts and materials, the Contractor must give written notice to the Owner and the Architect and request an inspection of the Work as provided in Section 9.8.4. The Contractor's notice and request for an inspection must be accompanied by a comprehensive Punch List describing all items to be completed or corrected before Final Completion and the submittals required by Section 9.8.3. The Contractor must proceed promptly to complete and correct items on the list. Failure to include an item on such Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** In addition to the Punch List, the Contractor must submit all of the following with its request for a determination of Substantial Completion:

- .1 a use and occupancy permit;
- .2 final test reports as required by the Contract and certificates of inspection and approval required for use and occupancy;
- .3 Fire Marshal's report;
- .4 approvals from, and transfer documents for, all utilities; and
- .5 schedule to complete the Punch List and value of Work not yet complete.

**§ 9.8.4** Upon receipt of the Punch List, the Architect will make an inspection to determine whether the Work and whether remaining items can be completed or corrected within sixty (60) days subject to the availability of special order parts and materials. If the Architect's inspection discloses any item, whether or not included on the Punch List, which is not sufficiently complete in the opinion of the Owner, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4.1** The Architect will perform no more than two (2) inspections to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

**§ 9.8.5** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the Punch 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.

**§ 9.8.6** 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.

**§ 9.8.6.1** The application for payment to release Retainage will not be approved by the Architect until the completed and corrected closeout documents are provided to the Architect by the Contractor. Closeout documents shall be delivered to the Architect under conditions and times set forth in the Contract Documents and specifications.

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

**§ 9.8.8** At the time of Substantial Completion, in addition to removing rubbish and leaving the building clean, the Contractor must replace any broken or damaged materials, remove stains, spots, marks and dirt from decorated Work, clean all fixtures, vacuum all carpets and wet mop all other floors, replace HVAC filters, clean HVAC coils, and comply with such additional requirements, if any, which may be specified in the Contract Documents.

## § 9.9 Partial Occupancy or Use

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by the Owner. 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, or reduction in liquidated damages, if appropriate, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

## § 9.10 Final Completion and Final Payment

**§ 9.10.1** "Final Completion" means total (100%) completion of the Work in accordance with the Contract, and as finally determined in writing by the Owner in the Owner's sole discretion. When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner and the Architect and request a final inspection of the Work as provided in Section 9.10.2. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the submittals required by Section 9.10.2.

**§ 9.10.1.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.1.2** The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete. The Architect will perform no more than one (1) inspection to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect all of the following:

- .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 submitted on AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or such other form as may be prescribed by the Owner;
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force and effect during the one-year correction period following Final Completion;
- .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 unconditional releases or waiver of liens on behalf of the Contractor and a similar unconditional releases or waivers on behalf of each Subcontractor, materialman, and supplier, accompanied by AIA Document

G706A, Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;

- .5 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties; and notice to surety of final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;
- .6 a certified building location survey and as-built site plan in the form and number required by the Contract Documents;
- .7 all Project close-out documents in duplicate, including (1) all maintenance and operating manuals; and (2) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; and
- .8 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 the Contractor is unable to secure from any Subcontractor, materialman, or supplier an unconditional release or waiver or other final payment and closeout documents required under the Contract, the Contractor must furnish a bond satisfactory to the Owner to indemnify, defend, and hold the Owner and any co-obligees harmless under the bond against any lien or claim from such Subcontractor, materialman, or supplier.**

**§ 9.10.2.1** Final Completion of the Work shall be further conditioned upon satisfaction of the following minimum criteria:

- .1 All Work shown and described in the Contract Documents is complete, including all punch list items;
- .2 Record as-built drawings and documentation has been submitted and approved by the Owner;
- .3 Operations and maintenance manuals for all products and equipment, as required, have been submitted and approved by the Owner;
- .4 Equipment or product testing required by the Contract Documents or by regulatory agencies has been completed, submitted and approved (and recorded in O&M Manuals);
- .5 All required Owner training has been completed and documented;
- .6 All regulatory agency certifications have been submitted or received by the Owner; and
- .7 All areas have been cleaned pursuant to the terms herein.

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

**§ 9.10.4** The making of final payment shall not constitute a waiver of any Claims by the Owner.

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

## **§ 9.11 Time and Liquidated Damages**

**The Contract Time is of the essence and will be strictly enforced. Liquidated damages will be assessed against the Contractor for failure to achieve Substantial Completion by the date established by the parties for Substantial Completion of the Work. The Contractor and surety agree that the liquidated damages provisions in this Contract are reasonable, facially valid, are not a penalty, and do not otherwise operate as a penalty.**

**For each and every calendar day that any Work shall remain incomplete after the expiration of the date**

established by the parties for Substantial Completion of the Work as specified in the Contract Documents, including any time extension authorized in writing by the Owner, the sum of \$1,000.00 per calendar day may be deducted from the moneys due to the Contractor, or may be charged against the Contractor, not as a penalty, but as liquidated damages. The Contractor agrees that for purposes of Texas Gov't Code Ch. 2252, a bona fide dispute exists if liquidated damages are assessed under this Contract and the Owner may withhold Retainage to satisfy liquidated damages owed to the Owner hereunder.

The sum of money thus deducted or charged as liquidated damages is not to be considered as a penalty, but shall be deemed, taken, and treated as reasonable liquidated damages, representing a reasonable estimate of damages, or a reasonable forecast of just compensation, because the harm caused by the breach is incapable or extremely difficult of estimation due to the public nature of the work and the likely loss to be sustained by the Owner and the general public, estimated at or before the time of executing this Contract.

Further, the parties acknowledge the Owner's paramount purposes and duty to protect the "public fisc" and the general health, safety, and welfare of the public, and the parties agree that any alleged disparity between actual and liquidated damages shall be construed as bridgeable and acceptable as a matter of law and public policy and shall be calculated and construed in favor of the Owner.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

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

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18. This obligation is in addition to, and not in limitation of, the Contractor's obligations for indemnification under the Contract and the Contractor's responsibility to repair and or replace that portion of the Work and any materials and equipment to be incorporated therein which are damaged as a result of deliberate acts or criminal mischief as specified in Section 10.2.9.

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

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

**§ 10.2.8 Injury or Damage to Person or Property**

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

**§ 10.2.9** The Contractor is responsible for taking all reasonable and necessary precautions to secure and protect the Site, the Work, materials and equipment to be incorporated therein, and any tools or equipment of the Contractor necessary or beneficial to the performance of the Work from damage due to vandalism, theft, or other criminal mischief. The Contractor must repair and/or replace that portion of the work and any materials or equipment to be incorporated therein and any tools or equipment of the Contractor necessary or beneficial to performance of the Work which are damaged or stolen due to vandalism, theft or any other criminal mischief at its expense whether or not covered by insurance. No extension of the Contract Time or increase in the Contract Sum will be granted to the Contractor as a consequence of any delay, impacts or inefficiencies resulting from any act of vandalism, theft or other criminal mischief whether or not caused or contributed to by the Contractor's negligence.

**§ 10.3 Hazardous Materials and Substances**

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

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

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall release and hold harmless the Contractor, Subcontractors, 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 the same.

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

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

**§ 10.3.6 THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD THE OWNER HARMLESS FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.1, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE IN WHOLE TO THE OWNER'S FAULT OR NEGLIGENCE.**

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. The Contractor must promptly, but in all events within twenty-four (24) hours of the emergency, report such action in writing to the Owner and Architect. If the Contractor incurs additional costs on account of or is delayed by such emergency, the Contractor may request a change in the Contract Sum or Contract Time to account for such additional costs or delay in accord with Articles 7, 8 and 15. The Contractor must file any such request within ten (10) days of the emergency or it is deemed waived. Any adjustment in the Contract Sum or Contract Time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** Prior to the commencement of work under this Contract, Contractor shall obtain and shall continue to maintain at no cost to the Owner, in full force and effect during the term of this Contract, insurance policies with companies licensed to do business in the State of Texas and rated not less than "A" in the current Best Key Rating Guide, which shall include commercial general liability, automobile liability and worker's compensation coverage, in accordance with any Owner ordinance or directive. The minimum limits for this coverage shall be \$1,000,000.00 per occurrence / \$2,000,000 aggregate for general liability, \$1,000,000 combined single limit for automobile liability and Texas statutory limits for workers' compensation, unless modified in accordance with any ordinance or directive. Contractor shall also maintain cyber liability (or equivalent) insurance providing limits of no less than \$1,000,000 per occurrence (inclusive of any amounts provided by an umbrella or excess policy). The Contractor shall maintain excess insurance of at least \$6 million/claim above the primary policy limits provided in this Article 11, including builders risk coverage, and shall maintain the required levels of insurance for at least three years following the date of Final Completion. Coverage shall be sufficiently broad to respond to the duties and obligations as undertaken by the Contractor. Insurance obtained by Contractor shall be primary and noncontributory, and Owner shall be named as an additional insured under the general liability and automobile policies. The Owner shall be given at least thirty (30) days prior notice of any material change in coverage or of cancellation of such policies, and Contractor shall provide the Owner with a copy of any such notice of material change in coverage or cancellation of any such policies, within three (3) business days of its receipt of such a notice. For purposes of this section, a material change in coverage includes, but is not limited to, a reduction in coverage below the amounts required under this agreement. Contractor shall provide a waiver of subrogation in favor of the Owner on all coverages where available and represents that it has taken all actions necessary under the policy or policies for the Owner to have the status of additional insured and to effectuate any required waiver of subrogation. Contractor shall furnish the Owner with original copies of the policies or certificates evidencing such coverage prior to commencement of any work under this Contract.

**§ 11.1.1.1** In addition to any other requirement of this Article, Contractor shall provide Owner with the certifications relating to workers' compensation coverage in accordance with Section 406.096 of the Texas Labor Code, for itself and for each of its subcontractors on the Project. Specifically, Contractor shall certify to Owner in writing that the Contractor provides workers' compensation insurance coverage for each employee of the Contractor on the Project, and shall provide the same certification from each of its subcontractors relating to coverage of subcontractor's employees on the Project.

**§ 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 and Texas Gov't Code Ch. 2253. The Contractor shall purchase

and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the State of Texas.

**§ 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, as required by Texas Gov't Code Ch. 2253.

**§ 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. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner as additional insured for claims caused in whole or in part by the Contractor's negligent act or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

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

**§ 11.1.6** The Contractors' failure to comply with any of these provision is a breach of contract by the Contractor which entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

**§ 11.1.7** Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, or volunteers.

## **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner is a Texas home-rule municipality and is insured in accordance with Texas law.

**§ 11.2.2 – 11.3.2** [Intentionally Deleted]

## **§ 11.4 Contractor's Bonds**

**§ 11.4.1** With the execution and delivery of the Contract, the Contractor shall furnish and file with the Owner, the surety bonds specified in this Section. Without exception, the Owner's bond forms must be used, and exclusive venue for any lawsuit in connection with the bonds shall be Tarrant County. The surety bonds shall be in accordance with the provisions of Chapter 2253, Government Code, Vernon's Texas Codes Annotated. These bonds shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract Sum with or without notice to the surety, but in no event shall a change which reduces the Contract Sum reduce the penal amount of such bonds.

**§ 11.4.2** The Contractor shall provide a good and sufficient performance bond in an amount not less than one hundred (100%) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with the Contract Documents, including any extensions, for the protection of the Owner. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of two years from the date of completion and acceptance of the improvement by the Owner or such lesser or greater period as may be designated in the Contract Documents.

**§11.4.2.1** A Maintenance Bond shall be provided by the Contractor in an amount equal to one hundred percent of the total Contract Price. The Maintenance Bond shall be for a period of one (1) year from and after the date of Final Completion. The Contractor shall perform all necessary repairs, reconstruction, and renewal of any part of the Work covered by the Maintenance Bond and furnish the labor and materials to make good and to repair any defective condition growing out of, or on account of, the breakage or failure of any material or substance of improper function of the Work. The Maintenance Bond includes the complete restoration of the Work to a use acceptable to the Owner, in the Owner's sole discretion.

**§11.4.3** The Contractor shall provide a good and sufficient payment bond in an amount not less than one hundred (100%) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and proper protection of all claimants supplying labor and material in the execution of the Work provided for in this Contract and for the use of each claimant.

**§11.4.4** No sureties shall be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation against the Owner. All bonds shall be made on forms furnished by the Owner, and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the Owner. Each bond shall be executed by the Contractor and surety. Each surety shall designate an agent resident in the Owner's jurisdictional area acceptable to the Owner to whom any requisite notices may be delivered and on whom service of process may be obtained in matters arising out of the suretyship.

**§11.4.5** If at any time the Owner determines that the Contractor's surety has experienced financial losses such that the Owner's ability to enforce the bond obligations is substantially at risk, the Contractor shall within thirty (30) days after notice from the Owner to do so, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bonds shall be paid by the Contractor without recourse to the Owner. No further progress payments under the contract shall be deemed due or payable until the substitute or additional bonds shall have been furnished and accepted by the Owner; however, in such event, final payment shall be due and payable as provided in this Contract whether or not such additional bonds are obtained, to the extent that the project is complete and the Owner is not exposed to liability for payment bond claims.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

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

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

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

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

#### § 12.2.2 After Substantial Completion

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

discovery of the nonconforming or defective condition and give the Contractor an opportunity to make the correction. If the Contractor fails to correct any nonconforming or defective 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. The warranty provided in this section is a guarantee by the Contractor that is made in addition to the Maintenance Bond, and the warranty shall not limit the Owner's rights or remedies under the Maintenance Bond.

**§ 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** Upon request by the Owner or prior to the expiration of one year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

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

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

**§ 12.2.6** If the Contractor fails to correct defective or nonconforming Work within a reasonable time, the Owner may correct it in accordance with the Contract Documents. If the Contractor does not proceed with the correction of such defective or nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

### **§ 12.3 Acceptance of Nonconforming Work**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law rules. The provisions and obligations of this Contract are performable in Tarrant County, Texas, such that exclusive venue for any action arising out of this Contract shall be in Tarrant County, Texas.

### **§ 13.2 Successors and Assigns**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their agents, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. No party to the Contract shall assign the Contract 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.

### **§ 13.3 Rights and Remedies**

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

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

### **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor must schedule all tests, inspections or specific approvals required by law or applicable ordinance, regulation, or the Contract Documents so as to avoid any delay in the Work. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

**§ 13.4.7** In addition to the tests required by this Section 13.4, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

### **§ 13.5 Interest**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is overdue, at the rate provided by Section 2251.025, Texas Government Code.

### **§ 13.6 Equal Opportunity**

**§ 13.6.1** The Contractor shall maintain policies of employment as follows:

**§ 13.6.1.1** The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to

ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies.

**§ 13.6.1.2** The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

### **§ 13.7 DOCUMENT RETENTION AND AUDIT PROVISIONS**

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that this Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. Upon request by the Owner, the Contractor shall promptly provide to the Owner any Contracting Information related to the Contract that is in the custody or possession of the Contractor; and on completion of the contract, provide at no cost to the Owner all Contracting Information related to the Contract that is in the custody or possession of the Contractor.

Contractor shall keep, maintain, and account for all "Contracting Information" as that term is defined in Texas Government Code Ch. 552, including, but not limited to all communications, books, documents, accounting records, materials, equipment, and labor related to the Work, and must keep such full and detailed records as may be necessary for proper financial management pursuant to the Contract for a period of seven (7) years after final payment, or until any pending litigation or claims are resolved, whichever is later. Furthermore, the Owner has the right to examine the Contractor's and its Subcontractors' and suppliers' records directly or indirectly pertaining or relating to the Work or the Contract and the Contractor must grant the Owner access to and an opportunity to copy such records at all reasonable times during the Contract period and for seven (7) years after final payment, or until any pending litigation or claims are resolved, whichever is later.

The Owner may conduct an audit or investigation of any entity receiving funds from the Owner directly under this Contract, or indirectly through the Contractor or a subcontractor, materialman, or supplier. Acceptance of funds directly under this Contract, or indirectly through the Contractor or a subcontractor, materialman, or supplier under this Contract acts as acceptance of the authority of the Owner to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the Owner with access to any information the Owner considers relevant to the investigation or audit without delay.

### **§ 13.8 Compliance with Texas Accessibility Standards and ADA.**

The Contractor shall construct the Work in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336).

### **§ 13.9 Additional Verifications.**

To the extent required by Texas law, the Contractor verifies that: (1) It does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined in Texas Government Code § 2274.001, and that it will not during the term of the Contract discriminate against a firearm entity or firearm trade association; (2) It does not "boycott Israel" as that term is defined in Texas Government Code § 808.001 and 2271.001, and it will not boycott Israel during the term of the Contract; (3) It does not "boycott energy companies," as those terms are defined in Texas Government Code §§ 809.001 and 2276.001, and it will not boycott energy companies during the term of the Contract; (4) It does not engage in scrutinized business operations with Sudan, Iran, or designated foreign terrorist organization as defined in Texas Government Code, Chapter 2270; and (5) It is not owned by or the majority of its stock or other ownership interest is held or controlled by i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country as defined by Texas Government Code § 2275.0101; or ii) 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; nor is it headquartered in China, Iran, North Korea, Russia, or a designated country.

### **§ 13.10 No Waiver of Immunity or Defense.**

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

as specifically authorized by law.

To the extent, if any, that this Contract imposes an obligation on the Owner to make a payment or other expenditure of any sort, such payment or expenditure shall be payable solely from current revenues that are immediately available for such purposes, and no debt is or is intended to be created by reason of this Contract. No ad valorem tax revenue or other revenues of the Owner shall in any manner be pledged or be deemed to have been pledged to the payment of any amounts under this Contract nor shall any other Party have the right to demand payment of any amounts under this Contract be paid from funds raised or to be raised from ad valorem taxation from Owner. The obligations under this Contract shall never be construed to be a debt or pecuniary obligation of the Owner of such kind as to require the Owner to levy and collect ad valorem taxes to discharge its obligations and no obligation of the Owner to make a payment or other expenditure under this Contract shall be payable through funds raised by taxation. The Owner has not created and is not required to create any sort of sinking fund to secure the obligations of payment or other expenditure under this Contract. To the extent not otherwise covered in this Contract, the Owner retains its governmental and sovereign immunities and its limitations of liability. The parties agree that the Owner is entering into this Contract in its governmental capacity pursuant to its governmental functions and the subject and nature of this Contract are governmental rather than proprietary. The procedures and limitations of Chapter 271, Texas Local Government Code apply to this Contract.

#### **§ 13.11 Counterparts.**

This Contract may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

#### **§ 13.12 Non-collusion.**

Contractor represents and warrants that Contractor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the Work to be provided to the Owner under this Contract. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the Owner under this Contract) for any of the services performed by Contractor under or related to this Contract. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the Owner and, at the sole option of the Owner, the Owner may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under this Contract.

#### **§ 13.13 Severability.**

If any term or provision of this Contract is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Contract shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Contract a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable. Provided, however, that if the illegality, invalidity or unenforceability of any term or terms renders the basic purposes of this Contract illegal, invalid or unenforceable or otherwise materially and adversely affects the utility or financial parameters of this Contract, then either party, upon written notice to the other, terminate this Contract and the parties agree to enter into good faith negotiations to replace this Contract with a contract as similar to the terms and conditions of this Contract as legally permissible.

#### **§ 13.14 Third-Party Beneficiaries.**

There are no third-party beneficiaries to this Contract and no third-party beneficiaries are intended by implication or otherwise.

#### **§ 13.15 Interpretation.**

The terms and conditions of any exculpatory or indemnity provisions in the Contract shall be construed in favor of the party being protected and shall survive the termination and completion of the Contract. The judicial doctrine that provides that documents or exculpatory provisions are to be construed against the drafter or provider of such documents or provisions does not apply to this Contract, as each party has had a reasonable opportunity to obtain and consult with their own legal counsel regarding this Contract.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, through the date of termination, subject to Texas Local Gov't Code Ch. 271.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 Termination by the Owner for Cause

#### § 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the law prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .7 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor seven days' notice, terminate employment of the Contractor and may:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished and the costs for completion have been determined by the Owner.

**§ 14.2.4** If the unpaid balance of the Contract Sum, less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner, such excess may be paid to the Contractor, surety, or any replacement, completion, or take-over contractor if the Contractor refuses or fails to complete the Work within the Contract Time, as determined by the Owner. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 14.2.5** In completing the Work following termination, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such replacement, completion, or take-over work and related services on the basis of sole source procurement and negotiated compensation without any duty to mitigate damages or costs to the surety or the Contractor, because time is of the essence and such replacement, completion, or take-over work and related services are immediately necessary to preserve or protect the public health or safety of the City's residents under Texas law.

### **§ 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 may be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### **§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract, or any part or portion thereof, 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 and, if required by the Owner, participate in an inspection of the Work with the Owner and the Architect/Engineer to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of the Work any stored materials and equipment; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In the case of such termination for the Owner's convenience, the Contractor shall only be entitled to receive payment for work properly executed through the date of termination.

**§ 14.4.4** Owner shall be entitled to delete or terminate any portion of the Contract bid as an alternate component, at any time at the Owner's convenience and without cause. In the event of such termination, the Contractor shall only be entitled to receive payment for Work executed on the alternate component, if any, through the date of termination, subject to the limitations of Texas Local Gov't Code Ch. 271.

The Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or punitive) arising from termination of the Contract, including any claims in quantum meruit and specific performance. No other cost, damages or expenses may be claimed or paid to the Contractor or considered as part of

the Claim, the same being hereby conclusively and irrevocably waived by the Contractor. Any such Claim must be delivered to the Owner within thirty (30) days of the termination of the Contract and must contain a written statement setting forth the specific reasons and supporting calculations and documentation as to the amounts the Contractor claims to be entitled to under this Subsection as a result of the termination of the Contract. This paragraph and Section 14.4 are subject to the limitations of Texas Local Gov't Code Ch. 271.

**§ 14.4.5** The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to records retention (audit), insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

#### **§ 15.1.1 Definition**

A Claim is a written 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, or withhold payment or Retainage, 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 time period permitted by applicable law.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Notice of circumstances that could give rise to a Claim must be given to the other party as soon as possible, to enable that party to take action as appropriate to lessen the impact of the potential Claim. The party recognizing a potential Claim shall also explore all options and generate suggestions of how to avoid or overcome the impact of the circumstances. Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to pay undisputed amounts in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.6 Claims for Additional Time**

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

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the critical path of scheduled construction. Notwithstanding anything to the contrary in the Contract Documents, claims for additional time due to adverse weather conditions shall be made within seven (7) days of the date of the delaying adverse weather condition. The Contractor warrants and represents that the Project Schedule shall contain allowances for delay caused by adverse weather conditions under normal seasonal conditions and no claim for increased time will be made or recognized as a result of such normal adverse weather conditions.

**§ 15.1.6.3** Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

**§ 15.1.6.4** Extension of time for completion of the work on account of weather or other circumstances beyond the Contractor's control will be subject to submission of verifiable data. Request for extension of time shall be submitted in writing with each Request for Payment. If the Contractor fails to submit a timely request, time extension will not be approved for the pay period.

**§ 15.1.6.5** No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of the Contractor or the Contractor's Subcontractors or under the Contractor's control. Claims for extension of time may only be considered because of rain delays, or hindrances or delays which are the fault of the Owner and/or under the Owner's control, but only to the extent that Final Completion of the Project is adjusted beyond the original Final Completion date. City Council approval may be required for any extension of time. No damages shall be paid for Contractor caused delays. The Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

**§ 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:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3 and 10.4, shall be referred to the Initial Decision Maker for initial decision. The Owner will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. 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 (10) 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 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 appeal to the Owner's City Manager, or the City Manager's designee, whose decision shall be final.

**§ 15.2.6** Either party may file appeal to the City Manager, or the City Manager's designee, of an initial decision within 30 days from the date of receipt of an 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.

### **§ 15.3 Dispute Resolution**

**§ 15.3.1** Any claims, disputes, or other matters in controversy arising out of or related to the Contract may be subject to litigation in accordance with Texas law, and nothing in this Agreement shall be construed as a condition precedent to litigation.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**OWNER:**

---

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CONTRACTOR:**

---

By: \_\_\_\_\_

Title: \_\_\_\_\_

# COST PROPOSAL FORM

## COST PROPOSAL FORM (to be inserted as Exhibit G to the CMAR Agreement)

### Preconstruction Phase Services

For all Preconstruction Phase Services until acceptance of the GMP Price Proposal. (Lump Sum Amount)

|   |            |                   |                   |
|---|------------|-------------------|-------------------|
| Preconstruction Services .....                                    | Total Cost | \$ <u>121,700</u> |                   |
| Preconstruction Services by month:<br>8 months @ \$ <u>15,212</u> | per month  | = Total Cost      | \$ <u>121,700</u> |
| Cost to extend the Preconstruction Phase Services:                |            | \$ <u>7,500</u>   | per month         |

### Construction Phase Services

|   |                      |
|---|----------------------|
| Bid Trades.....                                       | \$ <u>49,651,200</u> |
| Subcontractor Default Insurance (SDI) (as applicable) | \$ <u>481,617</u>    |
| CMAR Contingency.....                                 | \$ <u>840,000</u>    |
| General Conditions (not to exceed).....               | \$ <u>674,025</u>    |
| Staffing (not to exceed) .....                        | \$ <u>1,758,437</u>  |
| CMAR Insurance.....                                   | \$ <u>560,000</u>    |
| CMAR Fee .....  | \$ <u>1,662,721</u>  |
| Payment & Performance Bond.....                       | \$ <u>372,000</u>    |
| Target Budget.....                                    | \$ 56,000,000        |

### Key Personnel & Staffing

|                                |                             |                     |
|--------------------------------|-----------------------------|---------------------|
| Total number of Staffing hours | Preconstruction Phase ..... | <u>1014</u> hours   |
|                                | Construction Phase .....    | <u>23,430</u> hours |

Submit an itemized breakdown of the Staffing separately.

Itemized staffing breakdown provided in Section 5 | Key Personnel & Staffing.