

Office of the City Manager

City of Richland Hills, Texas

Memorandum

To: Honorable Mayor Bill Agan and members of the Richland Hills City Council
From: Eric Strong, City Manager
Date: October 20, 2015
Subject: Contract for Construction Manager at Risk Services

City Council Action Requested:

Consider approval of contract with Byrne Construction Services for Construction Manager at Risk Services

Background Information:

At the last council meeting, the City Council authorized staff to negotiate with Byrne Construction Services for Construction Manager at Risk Services. With the help of our attorney, we have gone through contract negotiations with them and come to an agreement on contract terms.

The attached contract will allow us to formally use Byrne as the Contractor for the proposed Activities Center Project. If the bond is not approved, the contract will terminate in two weeks. If it is approved, having a signed agreement in place will allow us to move forward without losing any time.

Staff Contacts:

Eric Strong, City Manager
817-616-3806
estrong@richlandhills.com

Attachments: Contract

 **AIA**® Document A133™ – 2009

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 Twentieth day of October in the year Two Thousand and Fifteen
(In words, indicate day, month and year.)

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

City of Richland Hills
3200 Diana Drive
Richland Hills, TX

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

Thos. S. Byrne, LTD.
2601 Scott Avenue, Suite 300
Fort Worth, Texas 76103

for the following Project:
(Name and address or location)

Richland Hills Activities Center
City of Richland Hills, TX
As further described in Exhibit "A" – Scope of the Work

The Architect:
(Name, legal status and address)

Barker Rinker Seacat Architecture, P.C.
3457 Ringsby Court
Unit 200
Denver, CO 80216

The Owner's Designated Representative:
(Name, address and other information)

Eric Strong
3200 Diana Drive
Richland Hills, TX
(817) 626-3807
strong@richlandhills.com

The Construction Manager's Designated Representative:
(Name, address and other information)

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

AIA Document A201™–2007, 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.

Martin Lehman
2601 Scott Avenue, Suite 300
Fort Worth, Texas 76103
(817) 335-3394
mlehman@tsbyrne.com

The Architect's Designated Representative:
(Name, address and other information)

Stephen Berlin
3457 Ringsby Court, Unit 200
Denver, CO 80216
(303) 455-1366
stephenberlin@brsarch.com

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in Exhibit "Z" – Schedule of Exhibits, this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in ~~the Exhibit "Y"~~ — Guaranteed Maximum Price Amendment—Amendment, and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. 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.

§ 1.1.1 If, and to the extent of, any inconsistency, ambiguity, discrepancy or error in the Contract Documents (referred to collectively in this Section 1.1.1 as "discrepancy"), the Construction Manager shall immediately seek clarification from the Architect and notify the Owner that clarification has been requested. In the event that the Architect fails to clarify such discrepancy, within a reasonable time under the circumstances, the Construction Manager shall proceed with the Work and give precedence to the Contract Documents in the following descending order of priority:

- .1 Modifications issued after execution of the Owner-Construction Manager Agreement, including all exhibits not specifically referenced in Section 1.1;
- .2 the Owner-Construction Manager Agreement;
- .3 Addenda issued prior to the execution of the Owner-Construction Manager Agreement, with the Addenda bearing the latest date taking precedence;
- .4 the General Conditions of the Contract for Construction; and

.5 the Drawings and Specifications.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall also be as set forth in A201–2007, which document is incorporated herein by reference. The term "Construction Manager" in this A133 Agreement shall mean "Construction Manager at Risk", or "CMaR". The term "Contractor" as used in A201–2007 shall ~~mean the Construction Manager~~ also mean the "Construction Manager at Risk", or "CMaR".

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. 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.

§ 2.1 Preconstruction Phase

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

§ 2.1.1.1 The Construction Manager, after consulting with the Owner and Architect, shall update the preliminary proposed Construction Management Plan for the Work for the Architect's further review and Owner's approval. In preparing the Construction Management Plan, the Construction Manager shall consider, without limitation, the Owner's safety, schedule, cost, quality, and design goals and requirements for the Construction Manager's Work and the Owner's Project, each in terms of the other. The Construction Manager shall then develop and consider various alternatives for the sequencing and management of the Work, and shall recommend to the Architect and Owner those alternatives that are best suited to the goals of both the Work and the Project. The Construction Management Plan must include, at a minimum and without limitation, these separate deliverables:

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

As part of this Construction Management Plan, the Construction Manager shall prepare and submit to the Architect for review, and subsequently for the Owner's written approval, a Control Estimate either with the proposed Construction Management Plan prior to the execution of this Agreement, or if specifically agreed otherwise in writing by the Owner within twenty-one (21) days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Construction Manager's Fee. The Control Estimate shall be used to monitor the

conformance of the Design Documents with the Owner's Budget during the Preconstruction Phase and the actual costs and the timely performance of the Work during the Construction Phase. The Construction Manager shall update the Control Estimate not later than twenty-one (21) days after release of Drawings and Specifications identified by Owner, either directly or through the Architect, as prepared for Construction Manager's pricing (a "Pricing Submittal") during the Preconstruction Phase and again not later than each Application for Payment to reflect Changes in the Work during the Construction Phase.

§ 2.1.1.2 The Control Estimate must include:

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

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

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

§ 2.1.1.5 The Construction Manager shall develop and implement a detailed system of cost control (the "Cost Management Plan") that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The Cost Management Plan shall detail the processes used to compare the Control Estimate with the Pricing Sets released during the Preconstruction Phase, and during the Construction Phase, the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, through the Construction Manager, in writing, no later than twenty-one (21) days after the release date of any Pricing Set during the Preconstruction Phase and again not later than the Construction Manager's first Application for Payment, and shall thereafter be revised and submitted with each Application for Payment.

§ 2.1.2 Consultation

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. The Construction Manager shall advise the Owner and the Architect ~~on~~on, without limitation, proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect ~~on~~on, among other aspects of the Work and the Project, constructability; availability of materials and labor; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction; and factors related to construction cost including, but not

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limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 ~~When Project requirements in Section 3.1.1 have been sufficiently identified, the~~ The Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The ~~Project schedule~~ Construction Manager's Project Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated ~~Project schedule~~ Construction Manager's Project Schedule must include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. As design proceeds, the Construction Manager's Project Schedule shall be updated by the Construction Manager to indicate, in increasing detail and without limitation, proposed sequences and durations of the Preconstruction Phase activities and the activities necessary to complete the Work during the Construction Phase; milestone dates for receipt and approval of pertinent information by the Owner, governmental agencies and other stakeholders; Owner's submittal dates of information agreed to be required by the Construction Manager and Architect; dates for Construction Manager's submittal and the Architect's and Owner's review and subsequent Owner's approval of the initial Control Estimate and subsequent updates; submittal, review by the Architect and Owner, and Owner's subsequent approval of the Construction Management Plan; preparation and processing of shop drawings and samples; delivery of materials or equipment requiring long-lead-time procurement; Owner's occupancy requirements showing portions of both the Work and the Project having occupancy priority; and proposed dates of Substantial Completion and Final Payment. If the Construction Manager's Project Schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations for acceleration, concurrency of activities, and other alternatives to the Owner and Architect to maintain the most recently approved target dates for the Work.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates ~~Conceptual Cost Estimates~~

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

§ 2.1.5.2 ~~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, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed, or appear likely to exceed the latest approved ~~Project budget~~ Control Estimate and make recommendations for corrective action.~~

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop ~~bidders' interest in the Project.~~ Subcontractor and supplier interest in the Work and shall furnish to the Owner and Architect for their information and approval a list of possible Subcontractors

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and suppliers that are pre-qualified by Owner to possibly furnish materials, services or equipment, from whom competitive proposals will be requested for each principal portion of the Work. The Construction Manager will promptly reply in writing to the Architect or Owner if they object to any such Subcontractors or suppliers, or if there are additional Subcontractors or suppliers they wish the Construction Manager to consider. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of any proposed Subcontractor or supplier; nor shall it waive the right of the Owner, or Architect later to object to or reject any proposed Subcontractor or supplier. Approval by the Owner or Architect of all or a portion of such list or their request for the Construction Manager to consider additional Subcontractors or suppliers shall not relieve the Construction Manager of its obligation to prequalify all Subcontractors and suppliers later solicited for bids, or any other responsibility for the performance of the Construction Manager or any Subcontractor or supplier under this Agreement.

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

§ 2.1.7.1 Selection by Competitive Bid:

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

.1 Work performed by Construction Manager's Forces. If the Construction Manager wishes to perform Work with the Construction Manager's own forces, or through a Related Party as defined in Section 6.10, the Construction Manager must:

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

.2 The Construction Manager shall use unusual and utmost efforts to solicit interest from all the potential qualified Subcontractor bidders for such Work; vigorously publicize to them the Construction Manager's obligation to provide its bid to the Owner in advance; and deliver all Subcontractor bids for such Work to the Architect and Owner within four (4) hours of their receipt by Construction Manager.

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

.4 In the event the Construction Manager cannot, using its utmost efforts, secure the required three (3) or more Subcontractors willing to provide responsive bids for any scope of the Work, the Owner and Architect shall work with the Construction Manager to solicit these responsive bids. In the event that the Construction Manager working in conjunction with the Owner and Architect is still unsuccessful in securing three (3) responsive bids for a scope of the Work, the Owner shall waive the requirement for three (3) competitive bids, where allowed by law, but solely for the category of Work in question.

§ 2.1.7.2 Pre-Qualifying Bidders

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The Construction Manager shall develop lists of possible Subcontractor and other necessary bidders and pre-qualify bidders.

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

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

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

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

§ 2.1.7.3 Delivery of Bid Documents

The Construction Manager shall expedite the delivery of bid documents to the bidders. The Construction Manager shall obtain documents from the Architect and arrange for electronic distribution with electronic confirmation of receipt; or in the case of hard copy distribution, printing, binding, wrapping and delivery to the bidders. The Construction Manager will determine the vendor(s) to be used for printing, and costs of hard copy printing, binding, and distribution shall be billed directly to the Owner as directed by the Construction Manager. The Construction Manager shall maintain a record of bidders receiving documents.

§ 2.1.7.4 Pre-Bid Conference

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

§ 2.1.7.5 Information to Bidders

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

§ 2.1.7.6 Addenda

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

§ 2.1.7.7 Bid Openings

§ 2.1.7.7.1 The Construction Manager shall receive, open, and evaluate the bids with the Owner and Architect in attendance, at their option. Whether or not they attend, the Owner, Construction Manager and Architect will promptly be provided with copies of all Subcontractor and supplier bids received, initialed by hand or electronically by the Construction Manager to confirm each as an accurate and timely submitted copy.

§ 2.1.7.7.2 The apparent lowest responsible bidders for all major components of Work, and others as mutually agreed by the Owner and Construction Manager, will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the Construction Manager, in addition to bid price, may consider the

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following factors: past performance on similar projects; qualifications and experience of personnel assigned to the Safety and Logistics Plan, the Quality Management, Commissioning and Turnover Plan, and other components of the Work; approach or understanding of the Work to be performed; performance schedule to complete the Work; or other criteria agreed upon with the Owner and Construction Manager in advance and in writing.

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

§ 2.1.7.7.4 The Construction Manager will resolve any Subcontractor or supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of Work.

§ 2.1.7.8 Analyzing Bids and Award Recommendation

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

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

§ 2.1.7.9 Construction Contracts

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

- .1 All Work shall be performed under written subcontracts or by other appropriate written agreements with the Construction Manager.
- .2 Such subcontracts and agreements shall contain the same obligations for the Subcontractor to the Construction Manager for their portions of the work as the Construction Manager has to the Owner for the Work under this Agreement.
- .3 Subcontracts and other agreements shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. 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 authorities. However, if the Construction Manager recognizes, or a Construction Manager of similar size and experience would have recognized that portions of the Drawings and Specifications are at variance therewith, 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. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to review by the Architect and approval of the Owner and the Owner's other professional consultants.

§ 2.1.9 Notices and 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~~ quasi-governmental authorities for inclusion in the Contract Documents.

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

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

§ 2.1.11 Design Recommendation

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

§ 2.1.12 Owner Design Reviews

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

§ 2.1.13 Approvals by Regulatory Agencies

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

§ 2.1.14 Public Relations

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

§ 2.1.15 Revisions to Construction Manager's Construction Schedule

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

§ 2.1.16 Monitoring the Construction Manager's Construction Schedule

While performing the services in this Agreement, the Construction Manager shall monitor compliance by the Architect with the Construction Manager's Construction Schedule, and issue weekly updates as necessary.

§ 2.1.17 Bidding and Award Schedule

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

§ 2.1.18 Impacts to the Construction Budget and Schedule

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

§ 2.1.19 Preconstruction Cost and Schedule Control

In accordance with Cost Management Plan and Section 2.1.1.1, the Construction Manager shall prepare a formal update to the Control Estimate for each Pricing Submittal released by the Architect. Each new Control Estimate submittal shall be accompanied by a report to the Owner and Architect identifying specific variances from the previous Construction Manager's Control Estimate and impacts to the Construction Manager's Construction Schedule. The Construction Manager shall clearly identify the specific changes by line item in the proposed Control Estimate and proposed Construction Manager's Construction Schedule, and also clearly identify the specific changes in scope and quality from the previous Pricing Submittal not reasonably inferable therefrom causing such proposed changes in cost and time. In the event no additional scope or quality changes have been made in the new Pricing Submittal that were not reasonably inferable from earlier submittals, the Construction Manager will identify the other cause(s) of such proposed changes in the Control Estimate and Construction Manager's Construction Schedule, and provide supporting detail acceptable to the Architect and Owner sufficient to easily validate such changes. The Construction Manager shall coordinate and expedite the activities of the Owner and Architect when changes to the design are required to remain within the Control Estimate and meet the Construction Manager's Construction Schedule.

§ 2.1.20 Sustainability and Environmentally Responsible Design

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

§ 2.1.21 Value Studies

Using the information obtained during the work sessions described above and other meetings, and such energy models and other data on systems and materials as may be provided by the Architect, the Construction Manager shall prepare Value Studies as defined by either SAVE International (www.value-eng.org), or by using such other method for value analysis as mutually agreed by the Owner, Construction Manager and Architect to be most efficient and effective for comparing the viable alternatives for major components of the Work. The results of these studies shall be in report form, contain Value Engineering Proposals, and be distributed to the Owner and Architect for their review and use.

§ 2.1.22 Value Engineering

Each Value Engineering Proposal submitted by the Construction Manager must include, without limitation, the following: (1) a detailed description of the difference between the requirements of the current design and the proposed changes and comparative advantages and disadvantages of each; (2) itemization of aspects of the current design affected by the enactment of the proposal; (3) the impact of the proposal upon both Control Estimate and the Construction Manager's Construction Schedule; (4) a list of the projects to the extent known, where the proposal was previously used in similar circumstances, and the results of that experience; (5) any other information reasonably necessary to fully evaluate the proposal; and (6) the date by which the Owner must accept the proposal in order for the Construction Manager's cost and time estimates to remain valid.

§ 2.1.23 Cash Flow Report

The Construction Manager shall integrate the Control Estimate and the Construction Manager's Construction Schedule using the WBS, and periodically prepare, update, and distribute a Cash Flow Report that results from such integration. The frequency of issuance of such Cash Flow Reports shall be acceptable to the Owner and Architect.

§ 2.1.24 Preconstruction Phase Change Report

The Construction Manager shall prepare and distribute Preconstruction Phase Change Reports weekly that shall list all Owner-approved Change Orders; all pending Change Order Requests; all pending Proposal Requests as of the date of the report; and shall state the actual effect of such Change Orders, including the potential effect of such pending Change Order Requests and pending Proposal Requests on the Control Estimate and the Construction Manager's Construction Schedule.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall ~~prepare~~ propose conversion of the most recently approved Control Estimate to a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.1.1 Alternatively, during the Preconstruction Phase, but not later than sixty (60) days prior to the date the Work is scheduled to begin being advertised for bids, the Owner, at its sole option, may request the Contractor to establish a Guaranteed Maximum Price for the Work. The Guaranteed Maximum Price shall be documented by the Contractor as defined in Section 2.2.3 and, once established the Guaranteed Maximum Price shall be subject to modification only as defined in this Agreement.

§ 2.2.1.2 The Guaranteed Maximum Price shall be submitted by the Construction Manager in response to Section 2.2.1.1 above to the Owner and Architect not more than thirty (30) days after receipt by the Contractor of the Owner's request for the Guaranteed Maximum Price. The Owner shall, subject to the Construction Manager's review, accept such proposed Guaranteed Maximum Price within fifteen (15) days of the date of receipt unless such time is mutually agreed to be extended. If the Owner does not accept the proposed Guaranteed Maximum Price within the time period herein provided, such price shall be presumed to be rejected by the Owner.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which ~~shall~~ must 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 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .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, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion and Construction Manager's Project Schedule upon which the proposed Guaranteed Maximum Price is based; ~~and~~
- .5 A date by which the Owner must accept the Guaranteed Maximum ~~Price~~ Price;
- .6 Documentation and detail supporting the Cost of the Work (e.g. detailed quantities, unit costs, quotations, Subcontractors proposals, etc.);
- .7 A separate listing of any previously agreed upon Allowances and their basis; and
- .8 A detailed listing of the further information required from the Owner and Architect and their required issuance dates upon which the date of Substantial Completion is based.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the ~~Work~~ Work, but not included in a Change Order.

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

§ 2.2.6 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 Exhibit "Y" 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.

§ 2.2.6.1 In the event the Owner does not accept the Contractor's Guaranteed Maximum Price proposal and elects not to go forward with either the Contractor, the Work or both, the Contractor shall be reimbursed in accordance with the requirements for termination for convenience as defined in this Agreement.

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

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

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time Exhibit "Y", the Guaranteed Maximum Price Amendment is executed.

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

- .1 Appropriate judgments and inferences in connection with the requirements of such documents;
- .2 Such site visits and investigations of existing and observable conditions necessary to allow therefore;
- .3 All inquires of the Architect and Owner necessary to clarify the documents; and
- .4 Appropriate judgments and inferences in connection with the requirements of such documents to calculate and firmly establish both the proposed Contract Sum shown in the proposed Guaranteed Maximum Price and the proposed Contract Time represented in the updated and proposed Contractor's Construction Schedule.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work ~~shall mean~~ means the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase ~~shall commence~~ commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

~~§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the~~

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~~Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~Not Used.

~~§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~Not Used

~~§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.~~Not Used

~~§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.~~Not Used

§ 2.3.2.5 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 to the Owner and Architect.

§ 2.3.2.6 Upon the execution of Exhibit "Y", the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a ~~construction schedule for the Work and~~ detailed submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The complete log shall be made readily available to the Owner and Architect.

~~§ 2.3.2.8 The~~In conformance with the Construction Management Plan, the Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. tracking the status and potential cost and time impacts of pending Proposal Requests, Change Order Requests, and cost and time impact of Change Orders, and Construction Change Directives. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.6 The Construction Manager shall provide and maintain a management team on the site to provide, without limitation, sufficient contract administration to meet its obligations under this Agreement, and shall establish and

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implement coordination and communication procedures among the Owner, Construction Manager, Architect and Subcontractors, all in accordance with the Construction Management Plan and its Information Management Plan.

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

§ 2.8 Project Personnel

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

.2 Such key members of the Construction Manager's staff shall not be changed without the written consent of the Owner, unless such person becomes unable to perform any required duties due to death, disability, or termination of employment with the Construction Manager. If a key member is no longer capable of performing in the capacity described in Exhibit "D" – Key Personnel, the Owner and Construction Manager shall agree on a mutually acceptable substitute.

.3 During the performance of the Work, the Construction Manager shall keep a competent superintendent at the Project site, who is fully authorized to act on behalf of the Construction Manager. Notice from the Owner or the Architect to such superintendent, in connection with defective work, instructions for performance of the Work, or any and all other issues shall be considered notice of such issues to the Construction Manager.

§ 2.9 Project Site Meetings

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

§ 2.10 Observation, Coordination of Other Independent Consultants

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

§ 2.11 Review and Incorporation of Time Extension Requests

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

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§ 2.12 Contractor's Project Schedule

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

§ 2.13 Subcontractor's Construction Schedule

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

§ 2.14 Construction Schedule Report

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

§ 2.15 Recovery Schedules

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

§ 2.16 Schedule of Values (Each Contract)

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

§ 2.17 Allocation of Costs to Subcontractor's Construction Schedule

The Subcontractor's Construction Schedule shall have the total contract price allocated among the Subcontractor's scheduled activities so that each of the Subcontractors activities shall be given its approximate cost and the sum of the costs of the activities shall equal the total contract price. The Construction Manager shall review the contract price allocations, first with the Subcontractors and verify they are made in accordance with the WBS and the requirements of the Contract Documents. After such verification, the allocations shall be included in the Construction Manager's cash flow report and Construction Manager's Project Schedule, and submitted to the Construction Manager for review and approval.

§ 2.18 Cost Records

In instances where a Construction Change Directive is issued, the Construction Manager shall, in addition to the requirements of Section 2.26, require each affected Subcontractor to keep separate records of the cost of payroll, materials and equipment expended on such Work, and the keep separate records of the amount of payments to Sub-subcontractors incurred by the Subcontractor in performing the Work.

§ 2.19 Progress Payments (Construction Manager)

In consultation with the Owner and Architect, the Construction Manager shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Construction Manager shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner, through the Architect, a Progress Payment Report. Each Progress Payment Report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be an Application for Payment that shall be prepared in accordance to the Contract Documents, signed by the Construction Manager and delivered to the Owner through

the Architect. The Construction Manager acknowledges it is holding payments due to Subcontractors in trust, and shall make payments to all Subcontractors, suppliers and vendors as specified in the Contract Documents, and in all cases within ten (10) days following receipt of payment for such Work from the Owner. Receipt by the Construction Manager of payment from the Owner is a condition precedent to payment to a Subcontractor. In addition, the Construction Manager shall keep the Work and the site on which work is performed free and clear of all liens and claims from its Subcontractors, Sub-subcontractors, suppliers, and vendors as further described in A201 – 2007, General Conditions. All receipts for payment to the Subcontractors, Sub-subcontractors, suppliers, and vendors shall be signed and include a statement of lien waiver showing that the Subcontractors, Sub-subcontractors, suppliers, and vendors have been paid in full for performance of that portion of the Work.

§ 2.20 Cash Flow Reports

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

§ 2.21 Progress Payment Reports (Each Subcontract)

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

§ 2.22 Construction Manager's Safety Program Report

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

§ 2.23 Quality Review

The Construction Manager shall establish and implement a Quality Management, Commissioning and Turnover Plan to, among other things, monitor the quality of the Work. One of the purposes of the program shall be to guard the Owner against defects and deficiency in the Work of the Subcontractor(s). The Construction Manager shall reject work and transmit to the Subcontractor a notice of nonconforming Work when it is the opinion of the Construction Manager that the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the Construction Manager is not authorized as part of this service to change, evoke, enlarge, relax, alter, or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

§ 2.24 Record Documents

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

§ 2.25 Operation and Maintenance Materials

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

§ 2.26 Organize and Index Operations and Maintenance Materials

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

§ 2.27 Occupancy Permit

The Construction Manager shall assist the Owner in obtaining Occupancy Permits, both a Temporary and a Final, by, without limitation, coordinating the appropriate governmental officials during inspections of the Work; preparing and

submitting documentation to governmental agencies; coordinating final testing and distributing results of such testing; and other activities necessary to obtain such Occupancy Permits.

§ 2.28 Occupancy Plan

In accordance with the Contract Documents, the Construction Manager shall assist the Construction Manager in the preparation and implementation of a detailed Occupancy Plan for the Owner and the Project.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written ~~program-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.

§ 3.1.2 Prior to the execution of Exhibit "Y", the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 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~~ Owner, but shall carefully scrutinize such information for consistency with other information about the Work and exercise proper precautions relating to the safe performance of the Work.

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

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The 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 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.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to 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.

§ 3.1.4.4 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~~

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~~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 when (1) such services are reasonably required by the scope of the Work; (2) are scheduled by the Construction Manager in the approved Construction Manager's Project Schedule; (3) and requested by the Construction Manager in writing reasonably in advance of the date required by the Construction Manager to allow the Owner to begin procurement of the requested consultant(s), and such consultant(s) to complete the requested services in the normal course of the consultant(s)' business.~~

§ 3.2 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 A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, insurance, accounting, or auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.~~

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties, and responsibilities as ~~described in AIA Document B133™ 2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition normally and customarily provided on projects of similar size and quality.~~ The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Twenty Thousand One Hundred Fifty dollars (\$20,150)

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within seven (7) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

~~§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.~~

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable ~~upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~
(Insert rate of monthly or annual interest agreed upon.)

~~—%—~~ within thirty (30) days of the Construction Manager's approvable invoice. Amounts unpaid shall bear interest at the legal rate allowed by Texas Government Code Ch. 2251.

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee.

§ 5.1.1 The Construction Manager’s Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

As limited by the Guaranteed Maximum Price set forth in Section 4.4.7, the Construction Manager shall receive a basic fee (the "Construction Manager’s Fee") equal to **two point seven five percent (2.75%)** of the Cost of Work, until acceptance of the final update to the Guaranteed Maximum Price, when it will be converted to and fixed as a lump sum.

§ 4.4.2.1 For changes in the Work, the rate of the Construction Manager’s Fee shall be adjusted as specified in A201 2007, General Conditions, with the exception of the first **One Hundred Thousand Dollars (\$100,000)** in Change Orders, which shall include Zero percent (0%) Fee.

§ 4.4.2.2 The General Construction Manager’s Fee includes without limitation, all required off-site corporate management personnel; contract and trade contract negotiations; administration; accounting; information technology and related labor costs; off-site corporate office equipment, infrastructure and staff; and other corporate office requirements the Construction Manager may need for its operations or to complete the Work.

§ 4.4.2.3 The Construction Manager’s Fee shall not be subject to reduction for decreases in the Cost of the Work for accepted Value Engineering Proposals, or deductive changes in the Work. If, however, an individual reduction in the scope of the Work is substantial and exceeds **One Hundred Thousand Dollars (\$ 100,000)** in value, the Construction Manager’s Base Fee shall be reduced by a sum equal to **2.75%** of the amount in excess of **One Hundred Thousand Dollars (\$ 100,000)**.

§ 5.1.2 The method of adjustment of the Construction Manager’s Fee for changes in the Work:

Shall be as defined in the Contract Documents.

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

Shall be as defined by the Contract Documents.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent (—%)~~ of the standard rate paid at the place of the Project; the rates shown in Exhibit "G" – Rental Rates, and as further specified in A201 – 2007, General Conditions.

§ 5.1.5 Unit prices, ~~if any~~ are per Exhibit "I" – Unit Costs:

Such unit prices shall be considered complete and include:

- .1 all materials, equipment, labor, delivery, installation, supervision, overhead, profit , and fee; and
- .2 any other costs or expenses in connection with, or incidental to the Construction Manager’s and Subcontractor’s onsite and offsite performance of that portion of the Work to which such unit prices apply;

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
See Exhibit I – Unit Costs		

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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in Exhibit "Y", the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. *(Insert specific provisions if the Construction Manager is to participate in any savings.)*

To be incorporated by Change Order as Exhibit Y- Guaranteed Maximum Price Amendment, as described in this Agreement

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

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Exhibit "Y", the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section ~~7.3.3.3~~7.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

~~**§ 5.3.5** If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

§ 5.4 Change Order Control

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

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

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

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

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

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

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

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at ~~rates-competitive prices~~ not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

~~§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.~~

§ 6.2 Labor Costs

~~§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops for labor in the direct employ of Construction Manager in the performance of the Work at the rates set forth in Exhibit "F" - Customary and Usual Labor Rates.~~

~~§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval. (If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)Charges for Construction Manager's personnel, when stationed at the field office and engaged exclusively in the performance of~~

the Work, or other personnel as Construction Manager and Owner may mutually agree, as provided and set forth in Exhibit "F" - Customary and Usual Labor Rates.

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, 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.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, ~~insurance,~~ insurance (unless defined otherwise herein), contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, but not merit bonuses or profit-sharing provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. Charges for such costs shall not exceed the Construction Manager's actual cost and, as a result, when computing amounts chargeable for such costs Construction Manager shall give proper consideration to what portion of such charges are solely attributable to the Work and the effect of any annual or other periodic limitations on any such charges.

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

§ 6.3 Subcontract Costs

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

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually ~~installed to allow for reasonable waste and~~ installed, but required to provide allowance for waste and for spoilage. Unused excess materials, if any, shall ~~become the Owner's property~~ be properly stored at the site, or in accordance with the Owner's instructions, handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. ~~Any amounts realized~~ Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work. Construction Manager shall use its best efforts and judgment to avoid purchasing excess materials without the prior approval of the Owner.

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

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

~~§ 6.5.2 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager owned equipment and quantities of equipment shall be subject to the Owner's prior approval of all necessary machinery and equipment, exclusive of hand tools, not used at the site of the Work, whether rented from the Construction Manager or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof. Such rental charges shall not exceed the amount set forth in Exhibit "G" – Rental Rates, attached hereto and made part hereof. In the absence of any appropriate rental amount set forth in Exhibit "G" – Rental Rates, rental charges shall be consistent with those generally prevailing in the location of the Project. The Construction Manager shall obtain bids for all machinery and equipment to be rented from no less than two (2) responsible suppliers other than the Construction Manager itself, or an Affiliate as defined herein. The Owner shall, with the advice of the Construction Manager and Construction Manager, determine which bid is to be accepted. In no event shall the Construction Manager be entitled to reimbursement for any cumulative total of rental charges in connection with any single piece of machinery or equipment in excess of sixty percent (60%) of its fair market value as of the date that such machinery or equipment is first put into service in connection with the Work. The Construction Manager shall pay any excess rental charges. Construction Manager shall disclose to the Owner and Construction Manager if any rental arrangements include a lease to purchase component as a result of which rental payments chargeable to Owner as costs are applied, in whole or in part, to Construction Manager's acquisition of such rented equipment, in which event the rental rate otherwise provided for shall be reduced by fifty percent (50%).~~

~~§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal site.~~

~~§ 6.5.4 Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable Reproductions costs, facsimile transmissions and other electronic communications and data connections at the site, and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable and documented petty cash expenses of the site office.~~

~~§ 6.5.5 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. Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval, when stored and maintained in compliance with the Contract Documents.~~

~~§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.~~

§ 6.6 Miscellaneous Costs

~~§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents. That portion of insurance and bond premiums that can be directly attributed to this Contract. Self insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval and required by this Contract, provided, however, that such costs shall not be included in the Cost of the Work for purposes of calculating the Construction Manager's fee. Expenses shall be substantiated by documentation in form of substance satisfactory to Owner.~~

~~§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that which are related to the Work and for which the Construction Manager is liable.~~

~~§ 6.6.3 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.~~

~~§ 6.6.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3 nonconforming Work other than that which payment is permitted under the Contract Documents.~~

~~§ 6.6.5 Royalties and license fees paid for the use of a particular design, process, product or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the~~

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~~Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are Documents and provided such royalties, fees, and costs are not excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work Documents.~~

~~§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~

~~§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

~~§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~§ 6.6.9 Subject to the Owner's prior approval, expenses Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work written personnel policy for actual and verifiable relocation and temporary living expenses of personnel required for the Work, in case it is necessary to relocate such personnel from locations further than one hundred (100) miles from the site, when approved by the Owner in advance and in writing, and not in excess of the line item amount shown for this purpose in the General Conditions portion of A201 - 2007, General Conditions.~~

~~§ 6.6.10 That portion of the reasonable expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work, when in compliance with Section 6.2.2.~~

§ 6.7 Other Costs and Emergencies

~~§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.~~

~~§ 6.7.2 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 Section 10.4 of AIA Document A201-2007 to the extent not (1) caused by the Construction Manager, a subcontractor, or anyone for whom either is responsible, or (2) capable of being prevented through timely notice of an unsafe condition to the Owner.~~

~~§ 6.7.3 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 negligence or failure to fulfill a specific responsibility of the Construction Manager resulted from causes other than the fault, negligence, or neglect of Construction Manager or its subcontractors, vendors or suppliers, in whole or in part, or failure of Construction Manager or its subcontractors, vendors or suppliers to comply with all of the requirements of the Contract Documents or the failure of the Construction Manager's personnel to adequately supervise the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recovered recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others. Subcontractors or suppliers.~~

~~§ 6.7.4 The costs described in Sections 6.1 through 6.7 losses included in Section 6.7.3, may include settlements made with the prior written consent and approval of Owner. No such losses and expenses shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8 of the Work for the purpose of determining Construction Manager's Fee unless such loss requires substantial reconstruction and Construction Manager is placed in charge thereof. In such event, Construction Manager shall be paid for profit and overhead in an amount calculated by the percentage identified in the Contract Documents, for Changes to the Work of the cost of any such reconstruction, provided such substantial reconstruction is not: (i) required due to the fault or negligence of the Construction Manager or failure of Construction Manager to comply with~~

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all of the requirements of the Contract Documents, or (ii) incidental reconstruction, which for purposes of this Section 6.7.4 is hereby deemed to mean any reconstruction involving a cost of less than One Thousand Dollars (\$ 1,000).

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

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

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

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

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

§ 6.7.7 The cost of travel more than 100 miles from the site by; and commercial lodging, rental housing and meals for the Construction Manager's supervisory personnel properly and reasonably incurred in the performance of the Work is "Travel and Subsistence". Travel and Subsistence shall not exceed the total of the line items shown for this purpose in the General Conditions section of Exhibit "C" – Construction Manager's Soft Cost and Fee.

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

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

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

§ 6.7.9 The Construction Manager's Contingency portion of Exhibit "C" – Construction Manager's Soft Costs & Fee is a lump sum provided within the Guaranteed Maximum Price for the Construction Manager's use during the Preconstruction Phase in protecting the Guaranteed Maximum Price from estimating errors and the market conditions at the time of Subcontractor bidding. As it is not provided for the Construction Manager's unlimited access and use

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during the Construction Phase, it shall be reduced to the lump sum obtained by using the percentage shown for this purpose at the Construction Phase in Exhibit "C" Construction Manager's Soft Costs and Fee, or if no percentage is shown therein, to zero (0) at Notice to Proceed with the Work.

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

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

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Rental costs of machinery and equipment, except as specifically provided herein;
- .6 Except as provided in Section 6.7.3 of this Agreement, costs due to the fault or negligence or of failure of 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 to fulfill a specific responsibility of the Contract;
- ~~.6~~ .7 Costs incurred in the performance of Preconstruction Phase Services (unless specifically stated in Exhibit "C" – Construction Manager's Soft costs and Fee);
- .8 Any cost not specifically and expressly described in Sections 6.1 to 6.7; and
- ~~.7~~ .9 Costs, other than costs included in Change Orders approved in writing by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- ~~.8~~ Costs for services incurred during the Preconstruction Phase exceeded.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 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 them 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 secured. The Construction Manager shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work from any source including but not limited to its Subcontractors, vendors, or other suppliers of goods, insurance or other services without providing the Owner with at least thirty (30) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds if and when necessary to obtain such discount, rebate or refund on behalf of the Owner in accordance with the requirements of this Section 6.9.1.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean and elsewhere in this Agreement, the term "Related Party" shall mean any party or entity related to or affiliated with the Construction Manager or in which the Construction Manager has direct or indirect ownership or control, including without limitation: (1) a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; (2) any

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entity in which any stockholder in, or ~~management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or officer, director, partner or employee of, the Construction Manager or any entity owned by the Construction Manager has any direct or indirect interest in;~~ (3) any party or entity with an excess of ten percent (10%) interest in the Construction Manager in the aggregate; or (4) any person or entity which has the right to control the business or affairs of the Construction Manager. The term "~~related party~~" "Related Party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If after the Construction Manager having followed the stipulations in **this Agreement**, any of the costs to be reimbursed are contemplated to arise from a transaction between the Construction Manager and a ~~related party, Related Party outside of the bidding process so described,~~ the Construction Manager shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the ~~related party~~ Related Party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the ~~related party, Related Party,~~ as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a ~~related party~~ Related Party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the ~~Owner, Owner and the Construction Manager, and be in accordance with the Construction Management Plan.~~ The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to ~~audit~~ audit, inspect and copy, without limitation the Construction Manager's records and accounts, including complete documentation supporting actual, direct and "bare" labor costs, job – cost coded labor reports, accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these ~~records~~ records, for a period of ~~three~~ five (5) years after final payment, or for such longer period as may be required by law. All records shall be maintained in accordance with generally accepted accounting procedures consistently applied. Subcontractors retained by the Construction Manager on a cost-plus basis shall have the same obligation to retain records and permit audits, inspections and copying as required of the Construction Manager under this Agreement.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

N/A

§ 7.1.3 Provided that an approvable Application for Payment is received by the Architect not later than the twenty-fifth (25th) day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the — month. ~~If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than (—) days after the Architect receives the Application for Payment.~~ thirtieth (30th) day of the following month.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 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 cash disbursements 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, less that portion of those

Init.

payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 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 the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 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 for which the Construction Manager has made or intends to make actual 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.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of ten percent (10 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or 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.

§ 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, 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.

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

N/A

§ 7.2.2 The Owner’s auditors will review and report in writing on the Construction Manager’s final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner’s auditors report to be substantiated by the Construction Manager’s final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner’s auditors, 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 Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 7.2.3 If the Owner’s auditors report the Cost of the Work as substantiated by the Construction Manager’s final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. ~~Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.~~

§ 7.2.4 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager 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 the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

~~(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)~~If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the Owner must each be in an amount equal to the construction budget, as specified in the request for proposals or qualifications. The Construction Manager shall deliver the bonds not later than the 10th day after the date the Construction Manager executes this Agreement unless the Construction Manager furnishes a bid bond or other financial security acceptable to the Owner to ensure that the Construction Manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

Init.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

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

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, ~~unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker services.~~

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/A

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of Exhibit "Y", 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 Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services 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 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of Exhibit "Y", 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 10.1.2:

- .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 5.1 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.~~
services; and

Init.

- 4 Subtract the difference between the Construction Manager's expected cost to complete the remaining unperformed Work plus its anticipated fee on that remaining unperformed Work from the actual cost incurred by the Owner to complete the Construction Manager's Work plus any fee paid for the completion of the remaining Work.

~~The~~ In the event of termination of this Agreement pursuant to Section 10.1.1, the Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse ~~or indemnify~~ the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. ~~If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.~~ Nothing in this Article 10 or in the Contract Documents shall be construed to constitute or authorize a pass through or assignment of the Construction Manager's rights or remedies, at law or in equity, to any Subcontractor, Supplier, or any other related party. For all purposes, unless and until the owner accepts assignment of subcontracts, purchase orders, or rental agreements in writing, no privity of contract exists between the Owner and any Subcontractors or Suppliers.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of Exhibit "Y", the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 ~~above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.~~ above.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

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§ 11.3 Governing Law

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases. The Agreement shall be governed by the laws of the state of Texas. Venue on any dispute arising out of this Agreement shall be in Tarrant County, Texas, which is the place where the Project is located and where performance is primarily to occur.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this ~~Agreement~~ Agreement, or any rights or remedies created by this Agreement, without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

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

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

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

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

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

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

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

§ 11.5.7 Any notice required or permitted by this Agreement shall be forwarded as provided in Section 13.3 of A201-2007, as amended, or at such other address as has been previously furnished and agreed to in writing.

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

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

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

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

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

§ 11.5.13 Notwithstanding anything to the contrary in the Contract Documents, the Contract and all of its terms and conditions are subject to approval or modification by the Owner's lender or financial institution (the "Lender"), if any. The Construction Manager acknowledges that the Owner is financing the Work with a Lender, or by bonds, notes, certificates of obligation, and other obligations authorized to be issued by the Owner and will use its best efforts to comply with the requirements of such Lender, including, without limitation, making the site of the Work available at reasonable times for inspection by such Lender; curing defaults existing under the Contract Documents; and executing a consent to assignment of the Contract Documents in the form required by such Lender and any other documents such Lender may reasonably request.

§ 11.5.14 If required by the Owner or the Lender, if any, all payments to the Construction Manager shall be made through a construction escrow (hereinafter referred to as the "Escrow") established with the escrow trustee or such other entity as may be identified in Exhibit "M" – Escrow and Financing Conditions, (hereinafter referred to as the "Escrowee") mutually acceptable to the Owner, the Lender and the Construction Manager. The Lender, if any, may also impose other reasonable conditions consistent with the standards of the industry for construction financing. The Construction Manager hereby agrees to execute an escrow agreement that shall be consistent with the requirements of the Contract Documents, except as the standard procedures of the Escrowee may otherwise require; structured to provide that the Escrowee may disburse funds directly to Subcontractors or to the Construction Manager and Subcontractors payable jointly, if so directed by the Owner; and otherwise reasonably satisfactory to the Owner, the Architect, and the Construction Manager (the "the Escrow and Financing Conditions"). All parties thereto shall use their best efforts to cooperate with the Escrowee. After full execution, the Escrow and Financing Conditions shall be attached hereto and made part hereof as Exhibit "M" – Escrow and Financing Conditions.

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

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

§ 11.5.17 Financial obligations of the Owners payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

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

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

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

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 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.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, as amended;
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

Exhibit "A" – Scope of Work

Exhibit "B" – Construction Manager's Project Schedule

Exhibit "C" – Construction Manager's Soft Costs and Fee

Exhibit "D" – Key Personnel

Exhibit "E" – Confidentiality of the Project

Exhibit "F" – Customary and Usual Labor Rates

Exhibit "G" – Rental Rates

Exhibit "H" – Alternates with Costs and Expiration Dates

Exhibit "I" – Unit Costs

Exhibit "J" – Allowances

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- Exhibit "K" – Schedule of Values
- Exhibit "L" – Control Estimate # 01
- Exhibit "M" – Escrow and Financing Conditions
- Exhibit "N" – Disputed Work Schedule
- Exhibit "X" – Construction Manager's Insurance Certificate(s)
- Exhibit "Y" – Guaranteed Maximum Price Amendment
- Exhibit "Z" – Schedule of Exhibits

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

OWNER *(Signature)*

Eric Strong City Manager
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Martin Lehman, President, T.S. Byrne Management, Inc., General Partner
(Printed name and title)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chris Squadra, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 11:31:53 on 10/14/2015 under Order No. 4903104065_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

Exhibit “A”

Scope of Work

See attached list of Documents provided for 100% Schematic Design Cost Estimate.

Contract Documents List

Richland Hills Activity Center

100% SD Estimate

Date: September 30, 2015

Drawings		
Sheet Number	Issue Date	Drawing Title
G-1	08/17/15	Table of Contents
G-2	08/17/15	Project Summary & Participants
G-3	08/17/15	Project Schedule
G-4	08/17/15	Project Schedule
G-5	08/17/15	Owner Decision Matrix - SD Phase
G-6	08/17/15	Owner Decision Matrix - DD Phase
G-7	08/17/15	Owner Decision Matrix - CD Phase
G-8	08/17/15	Building Program
G-9	08/17/15	Add Alternates
G-10	08/17/15	Add Alternates
C.N1	08/17/15	Civil Engineering Narrative
C.N2	08/17/15	Civil Engineering Narrative
C0.1	08/17/15	Site Plan
C1.1	08/17/15	Demolition Plan
C2.1	08/17/15	Dimensional Control Plan - Phase 1
C2.2	08/17/15	Dimensional Control Plan
C3.1	08/17/15	Grading Plan
C4.3	08/17/15	Storm Sewer Plan
C5.1	08/17/15	Site Utility Plan
C6.1	08/17/15	Paving Plan
L1	08/17/15	Landscape Narrative
L2	08/17/15	Illustrative Site Plan - Overall
L3	08/17/15	Illustrative Site Plan - Phase 1
L4	08/17/15	Illustrative Site Plan - Phase 1 Base & Phase 1 Enhanced
L5	08/17/15	Landscape Plant Schedule
L6	08/17/15	Schematic Landscape Plan - Overall
L7	08/17/15	Schematic Landscape Plan - Phase 1
A-0.1	08/17/15	First Floor Code Plan
A-0.2	08/17/15	Code Analysis
A-1	08/17/15	Site Plan Phase 1 and 2
A-2	08/17/15	Roof Plan
A-2.1	08/17/15	Roof Plan Add Alternates
A-3	08/17/15	First Floor Plan
A-3.1	08/17/15	First Floor Plan - Add Alternates
A-4	08/17/15	First Floor Wall Types
A-5	08/17/15	First Floor Isometric
A-6	08/17/15	First Floor RCP
A-6.1	08/17/15	First Floor RCP Add Alternates
A-7	08/17/15	Exterior Elevations
A-7.1	08/17/15	Exterior Elevations Add Alternates
A-8	08/17/15	Exterior Elevations
A-8.1	08/17/15	Exterior Elevations Add Alternates
A-9	08/17/15	Building Sections

Contract Documents List

Richland Hills Activity Center

100% SD Estimate

Date: September 30, 2015

A-10	08/17/15	Building Sections
A-11	08/17/15	Perspectives
A-12	08/17/15	Room Character
A-13	08/17/15	Room Character
A-14	08/17/15	Room Character
A-15	08/17/15	Room Character
I-1	08/17/15	Interior Floor Finish Plan
I-2	08/17/15	Interiors Narrative
I-3	08/17/15	Interiors Narrative
I-4	08/17/15	Interiors Narrative
I-5	08/17/15	Interiors Narrative
I-6	08/17/15	Interiors Narrative
S1.01	08/17/15	Structural Narrative
S1.02	08/17/15	Structural Narrative
S1.10	08/14/15	First Floor Framing Plan
S1.20	08/14/15	Roof Framing Plan
MN-1	08/17/15	Mechanical Narrative
MN-2	08/17/15	Mechanical Narrative
MN-3	08/17/15	Mechanical Narrative
M-1	08/17/15	Mechanical Floor Plan
M-2	08/17/15	Mechanical Roof Plan
PN-1	08/17/15	Plumbing Narrative
PN-2	08/17/15	Plumbing Narrative
FN-1	08/17/15	Fire Protection and Fire Alarm Systems Narrative
EN-1	08/17/15	Electrical Narrative
EN-2	08/17/15	Electrical Narrative
EN-3	08/17/15	Electrical Narrative
E-1	08/17/15	Electrical Floor Plan
E-2	08/17/15	Electrical Riser Diagram
QF101	08/17/15	Food Service Equipment Layout Plan
QF102	08/17/15	Food Service Narrative
AC-1	08/17/15	Acoustics and Noise Control - SD Narrative
AC-2	08/17/15	Acoustics and Noise Control - SD Narrative
AV.1	08/17/15	Audio-Visual Opinion of Probable Cost
AV.2	08/17/15	Audio-Visual Narrative
AV.3	08/17/15	Audio-Visual Narrative
AV.4	08/17/15	Audio-Visual Narrative
AV.5	08/17/15	Audio-Visual Narrative
AV.6	08/17/15	Lower Level Plan

Addenda

Addendum	No. of Pages	Original Date	Specification Section Title
1	29	09/18/15	Addendum #01
2	806	09/25/15	Addendum #02

Exhibit “B” - Construction Manager’s Project Schedule

See attached Project Schedule dated 10/12/2015.

Description	Days	Start	Finish	2015				2016								2017							
				SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR
Preconstruction																							
Design Development Phase	45	08SEP15 A	03DEC15	Design Development Phase																			
CMAR Selected	0		07OCT15 *	◆ CMAR Selected																			
Issue 50% DD Docs	0		15OCT15 *	◆ Issue 50% DD Docs																			
50% DD Estimate	11	16OCT15	30OCT15	■ 50% DD Estimate																			
Issue 100% DD Docs	0		12NOV15 *	◆ Issue 100% DD Docs																			
Owner Review of DD Docs	10	13NOV15	30NOV15	■ Owner Review of DD Docs																			
100% DD Estimate	15	13NOV15	07DEC15	■ 100% DD Estimate																			
DD Owner Comments NTP for CD Docs	1	01DEC15	01DEC15	I DD Owner Comments NTP for CD Docs																			
Construction Document Phase	60	07DEC15	01MAR16	■ Construction Document Phase																			
Issue 50% CD Docs	0		21JAN16	◆ Issue 50% CD Docs																			
50% CD Estimate	15	22JAN16	11FEB16	■ 50% CD Estimate																			
GMP Budget	5	12FEB16	18FEB16	■ GMP Budget																			
Issue GMP for Approval	0		18FEB16	◆ Issue GMP for Approval																			
Public Advertisement	15	23FEB16	14MAR16	■ Public Advertisement																			
GMP Approval by Owner Staff	0		24FEB16	◆ GMP Approval by Owner Staff																			
Permit Submission / Owner Review	10	25FEB16	09MAR16	■ Permit Submission / Owner Review																			
100% CD Docs Issued	0	01MAR16		◆ 100% CD Docs Issued																			
Final Review of Docs & Bid Packages	5	01MAR16	07MAR16	■ Final Review of Docs & Bid Packages																			
GMP Approval by City Council	0		01MAR16	◆ GMP Approval by City Council																			
100% CD Docs & Bid Packages Out to Bid	15	08MAR16	28MAR16	■ 100% CD Docs & Bid Packages Out to Bid																			
Construction Issue Plans and Specs	1	10MAR16	10MAR16	I Construction Issue Plans and Specs																			
Permit Comments/Response	5	14MAR16	18MAR16	■ Permit Comments/Response																			
Pre-Bid Subcontractor Mtg.	1	15MAR16	15MAR16	I Pre-Bid Subcontractor Mtg.																			
Permit Resubmittal	15	21MAR16	08APR16	■ Permit Resubmittal																			
Bid Day	0		29MAR16	◆ Bid Day																			
Bid Review and Evaluation	5	30MAR16	05APR16	■ Bid Review and Evaluation																			
Notice to Proceed	0	06APR16		◆ Notice to Proceed																			
Building Permit Issued	0		08APR16	◆ Building Permit Issued																			

- Early bar
- Progress bar
- Critical bar
- Summary bar
- ◆ Start milestone point
- ◆ Finish milestone point

**Richland Hills Activities Center
Construction Manager's Project Schedule
Byrne Construction Services**



Run date	13OCT15
Data date	30SEP15
Page number	1A
Page count	4A
Project name	RHAC
Number/Version	CON
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Description	Days	Start	Finish	2015				2016								2017							
				SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR
Construction																							
Procurement (Major Equip. / Materials)																							
Steel - Shop Drawings/Approval/Fabrication	60	06APR16	29JUN16	■ Steel - Shop Drawings/Approval/Fabrication																			
MEP Equipment - Submit/Approve/Fabricate	75	06APR16	21JUL16	■ MEP Equipment - Submit/Approve/Fabricate																			
Mobilization																							
Locate Existing Utilities	5	06APR16	12APR16	■ Locate Existing Utilities																			
Licensed Site Survey	5	06APR16	12APR16	■ Licensed Site Survey																			
Tree Survey / Protection	5	06APR16	12APR16	■ Tree Survey / Protection																			
Terminate Existing Utilities	10	06APR16	19APR16	■ Terminate Existing Utilities																			
Subcontracts / LOI's	30	06APR16	17MAY16	■ Subcontracts / LOI's																			
Clear/Demo for SWPPP	2	13APR16	14APR16	■ Clear/Demo for SWPPP																			
Install Construction Entrance / SWPPP	2	13APR16	14APR16	■ Install Construction Entrance / SWPPP																			
Office Trailers	5	15APR16	21APR16	■ Office Trailers																			
Sitework																							
Site Demolition / Haul Off	10	11APR16	22APR16	■ Site Demolition / Haul Off																			
Layout/Control for Earthwork	3	13APR16	15APR16	■ Layout/Control for Earthwork																			
Tree Removal	5	13APR16	19APR16	■ Tree Removal																			
Clear and Grub Site	3	20APR16	22APR16	■ Clear and Grub Site																			
Earthwork Cut and Fill	15	25APR16	13MAY16	■ Earthwork Cut and Fill																			
Site Utilities	20	02MAY16	27MAY16	■ Site Utilities																			
Site Paving	20	23MAY16	20JUN16	■ Site Paving																			
Canopies	30	05AUG16	16SEP16	■ Canopies																			
Sidewalks / Hardscape	18	26OCT16	18NOV16	■ Sidewalks / Hardscape																			
Irrigation	25	21NOV16	28DEC16	■ Irrigation																			
Landscaping	30	22DEC16	03FEB17	■ Landscaping																			
Structure																							
Cased Piers	17	16MAY16	08JUN16	■ Cased Piers																			
Grade Beams	25	23MAY16	27JUN16	■ Grade Beams																			
U.G. MEP	24	31MAY16	01JUL16	■ U.G. MEP																			
Carton Forms F/R/P Slab	20	09JUN16	07JUL16	■ Carton Forms F/R/P Slab																			
Steel Erection / Metal Deck	25	30JUN16	04AUG16	■ Steel Erection / Metal Deck																			

- Early bar
- Progress bar
- Critical bar
- Summary bar
- ◆ Start milestone point
- ◆ Finish milestone point

Richland Hills Activities Center
Construction Manager's Project Schedule
Byrne Construction Services



Run date	13OCT15
Data date	30SEP15
Page number	2A
Page count	4A
Project name	RHAC
Number/Version	CON
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Description	Days	Start	Finish	2015				2016								2017											
				SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN		
Exterior Facade				<ul style="list-style-type: none"> Ext. Framing/Sheathing Weather Barrier / Rigid Insulation Stone / Brick Masonry Clean Masonry Aluminum Frame Systems Metal Panel System Metal Coping Ext. Dry In 																							
Roofing				<ul style="list-style-type: none"> TPO Roofing Set RTU's Connect RTU's Set Skylights RTU Start-Up Conditioned Air 																							
Interior Finishes				<ul style="list-style-type: none"> Wall Layout OH MEP Duct/Piping/Conduit Frame Walls / Ceilings Wall MEP Rough-In Folding Partition Supports Wall / Ceiling Inspections Sheetrock Walls / Ceilings Ceramic Mosaic Tile Tape/Bed/Prime Walls / Ceilings Install Athletic Equipment Ceiling Grid Install Athletic Flooring Interior Glazing Millwork 																							

- Early bar
- Progress bar
- Critical bar
- Summary bar
- Start milestone point
- Finish milestone point

Richland Hills Activities Center
Construction Manager's Project Schedule
Byrne Construction Services



Run date	13OCT15
Data date	30SEP15
Page number	3A
Page count	4A
Project name	RHAC
Number/Version	CON
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Exhibit “C”
Construction Manager’s
Soft Costs and Fee

**The City of Richland Hills Activity Center
Fee & Cost Proposal Summary**

Updated on 14 SEP 2015

Item #	Description	Total Cost
1.000 CMAR's Fee Summary		
1.A	Construction Team's Preconstruction Fee	20,150
1.B	Construction Team's Construction Fee	264,000
1.000	CMAR's Total Fee Proposal	284,150
2.000 CMAR's Cost Proposal Summary		
2.A	Insurance	167,192
2.B	Onsite Staff	317,640
2.C	Onsite Reimbursable Expenses	91,456
2.000	CMAR's Total Cost Proposal	576,288
CMAR's FEE + COST PROPOSAL		860,438

**The City of Richland Hills Activity Center
CMAR's Fee Proposal Detail**

Updated on 14 SEP 2015

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
1.000 CMAR's Fee					
1.A CMAR's Preconstruction Fee					
1.A.1	Construction Cost Estimating & Value Analysis\VE	1	LS	12375	12375
1.A.2	Scheduling, Phasing & Logistics Planning	1	LS	2375	2375
1.A.3	Constructability Reviews	1	LS	3000	3000
1.A.4	Subcontractor Procurement & Scope Validation	0	LS	0	0
1.A.5	Meetings, Conference Calls\Video & Travel Time	1	LS	2400	2400
1.A.6	Other Preconstruction Services	0	LS	0	0
1.A	CMAR's Preconstruction Fee- Subtotal				20150
1.B CMAR's Construction Fee					
1.B.1	Home Office Overhead	1	LS	24000	24000
1.B.2	Home Office Profit	1	LS	240000	240000
1.B.3	Other Construction Fees	0	LS		0
1.B	CMAR's Construction Fee- Subtotal				264000
1.A + 1.B	CMAR's Total Fee				284150
Percentage of Cost Proposed for CMAR's Fee on Change Orders				5.0%	

**The City of Richland Hills Activity Center
Cost Proposal Detail**

Updated on 14 SEP 2015

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.000 CMAR's Proposal of Costs to Be Reimbursed (Not to Exceed Topset)					
2.A Insurance					
2.001	Performance & Payment Bonds	1	LS	78400	78,400
2.002	Builder's Risk Insurance	1	LS	8440	8,440
2.003	General Liability Insurance	1	LS	24576	24,576
2.004	Professional Liability Insurance	1	LS	14400	14,400
2.005	Pollution Liability Insurance		LS	Included	Included
2.006	Excess\Umbrella Liability Insurance	1	LS	41376	41,376
2.007	Other Insurance Requirements	N/A	LS	N/A	N/A
Note: All bonds & insurance should assume a CMAR's total contract amount of \$ 9,600,000.					
2.A	CMAR's Estimated Cost of Insurance - Subtotal				167,192
Percentage of Cost Proposed for CMAR's Insurance on Change Orders				0.89%	
2.B CMAR's Onsite Staff					
2.008	Project Manager	12	MO	11251	135,012
2.009	Project Superintendent	12	MO	10659	127,908
2.010	Assistant Superintendent	N/A	MO	N/A	N/A
2.011	Mechanical/Electrical Coordinator	N/A	MO	N/A	N/A
2.012	Working Foreman	N/A	MO	N/A	N/A
2.013	Project Engineer	N/A	MO	N/A	N/A
2.014	Office Engineer (Rate at left is for 50% of time)	12	MO	3375	40,500
2.015	Field Engineer	N/A	MO	N/A	N/A
2.016	Field Estimator	N/A	MO	N/A	N/A
2.017	General Laborer	N/A	MO	N/A	N/A
2.018	Timekeeper	N/A	MO	N/A	N/A
2.019	Field Office Manager (Rate at left is for 25% of time)	12	MO	1185	14,220
2.020	Warehouse Manager	N/A	MO	N/A	N/A

**The City of Richland Hills Activity Center
Cost Proposal Detail**

Updated on 14 SEP 2015

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.021	Field Secretary	N/A	MO	N/A	N/A
2.022	Other On-site Contractor Staff	N/A	LS	N/A	N/A
2.B	CMAR's Estimated Cost of Onsite Staff - Subtotal				317,640
2.C	CMAR's Onsite Reimbursable Expenses				
	Mobilization				
2.023	Field Engineering Equipment		LS	N/A	N/A
2.024	Site Survey		LS	By Sub	By Sub
2.025	Layout Within Site		LS	By Sub	By Sub
2.026	Office Trailer	11	MO	838.36	9,222
2.027	Office Supplies & Equipment	11	MO	578	6,358
2.028	Storage Trailer		MO	By Sub	By Sub
2.029	Warehouse		MO	N/A	N/A
2.030	Set Up Onsite Office	1	LS	2100	2,100
2.031	Set Up Onsite Storage\Laydown Areas		LS	N/A	N/A
2.032	Set Up Onsite Parking Area(s)		LS	N/A	N/A
2.033	Temporary Roadways		LS	N/A	N/A
2.034	Temporary Fencing		LF	By Sub	By Sub
2.035	Temporary Toilets	11	MO	500	5,500
2.036	Project Sign	1	EA	1500	1,500
	Safety				
2.037	Safety Equipment	1	LS	1375	1,375
2.038	First Aid Supplies	11	MO	32	352
2.039	Fire Protection		LS	N/A	N/A
2.040	Fire Extinguishers	9	EA	50	450
2.041	Fall Protection		LS	By Sub	By Sub
2.042	Third Party Safety Inspections		MO	By City	By City

**The City of Richland Hills Activity Center
Cost Proposal Detail**

Updated on 14 SEP 2015

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.043	Temporary Walkways		LS	N/A	N/A
2.044	Barricades		LS	By Sub	By Sub
2.045	Traffic Control		LS	By Sub	By Sub
2.046	Security\Watchman Services		MO	N/A	N/A
Utilities					
2.047	Install Temporary Electric Service at Site Office		LS	By Sub	By Sub
2.048	Install Temporary Teledata Service at Site Office		LS	N/A	N/A
2.049	Install Temporary Water & Sewer Service at Site		LS	N/A	N/A
2.050	Install Temporary Gas Service at Site		LS	N/A	N/A
2.051	Ongoing Electric Charges for the Site Office	11	MO	150	1,650
2.052	Ongoing Teledata Charges for the Site Office	11	MO	150	1,650
2.053	Ongoing Water & Sanitary District Charges	11	MO	150	1,650
2.054	Ongoing Gas Utility Charges (exluding Temp Heat)	11	MO	50	550
Ongoing Expenses					
2.055	Jobsite Cell Phone(s) for Site Staff	12	MO	496	5,952
2.056	Project Schedule Setup & Maintenance	1	LS	3200	3,200
2.057	BIM Model Setup & Maintenance	1	LS	15012	15,012
2.058	Project Extranet Setup & Maintenance		LS	N/A	N/A
2.059	Project Photo Documentation	11	WK	110	1,210
2.060	Video\Webcam Documentation		MO	N/A	N/A
2.061	Employee Parking		MO	N/A	N/A
2.062	Home Office Travel Costs		LS	N/A	N/A
2.063	Moving & Subsistence		LS	N/A	N/A
2.064	Additional Plans & Specs during Construction	1	LS	1439	1,439
2.065	Shipping, Couriers, & Postage	11	MO	25	275

**The City of Richland Hills Activity Center
Cost Proposal Detail**

Updated on 14 SEP 2015

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.066	Project-specific Delivery & Hauling to\from Site		LS	N/A	N/A
2.067	Temporary Radios		LS	N/A	N/A
2.068	Temporary Wiring & Lights		MO	N/A	N/A
2.069	Water, Ice & Cups	11	MO	25	275
2.070	Ladders & Stairs		LS	N/A	N/A
2.071	Erosion Control		LS	By Sub	By Sub
2.072	Shoring		LS	By Sub	By Sub
2.073	Weekly Clean-up		WK	By Sub	By Sub
2.074	Final Clean-up		LS	By Sub	By Sub
2.075	Dumpster Rental		MO	Included Below	Included
2.076	Dumpster Pulls	29	EA	400	11,600
2.077	Temporary Generator		MO	N/A	N/A
2.078	Misc. Power Equipment		LS	N/A	N/A
2.079	Equipment Repairs & Maintenance		LS	N/A	N/A
2.080	Temporary Partitions		SF	N/A	N/A
2.081	Pick-Up Rental	12	MO	955	11,460
2.082	Automobile Rental		MO	N/A	N/A
2.083	Pick-Up Fuel & Maintenance	12	MO	517	6,204
2.084	Automobile Fuel & Maintenance		MO	N/A	N/A
2.085	Water Truck		MO	By Sub	By Sub
Hoisting & Material Management					
2.086	Forklift Rental		LS	By Sub	By Sub
2.087	Tower Crane Rental/Mobilization/Demobilization		LS	N/A	N/A
2.088	Hydro-Crane Rental		WK	By Sub	By Sub
2.089	Other Crane Costs		LS	By Sub	By Sub

**The City of Richland Hills Activity Center
Cost Proposal Detail**

Updated on 14 SEP 2015

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.090	Material Hoist		WK	N/A	N/A
2.091	Personnel Hoist		LS	N/A	N/A
2.092	Erect Hoists		LS	N/A	N/A
2.093	Hoist Landings		LS	N/A	N/A
2.094	Temporary Hoist Operation		MO	N/A	N/A
2.095	Hoisting for Subs		LS	By Sub	By Sub
2.096	Scaffolding		LS	By Sub	By Sub
2.097	Other Hoisting & Materials Management Costs		LS	N/A	N/A
Temporary Protection of the Work					
2.098	Temporary Site Protection not w/Erosion Control		LS	N/A	N/A
2.099	Temporary Building Protection		WK	By Sub	By Sub
2.100	Temporary Building Heat not w/Gas Charges		WK	By Sub	By Sub
2.101	Dewatering System & Other Water Removal		LS	By Sub	By Sub
2.102	Snow Removal		LS	N/A	N/A
2.103	Other Protection of Work Items		WK	N/A	N/A
Testing					
2.104	Soil Testing		LS	By City	By Owner
2.105	Concrete Testing		LS	By City	By Owner
2.106	Masonry Testing		LS	By City	By Owner
2.107	Weld Testing		LS	By City	By Owner
2.108	Other Materials Testing		LS	By City	By Owner
Permits & Fees					
2.109	Building Permit		LS	By City	By Owner
2.110	Plan Check Fee		LS	By City	By Owner
2.111	Water Tap Fees		LS	By City	By Owner

**The City of Richland Hills Activity Center
Cost Proposal Detail**

Updated on 14 SEP 2015

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
2.112	Sewer Tap Fees		LS	By City	By Owner
2.113	Sanitary Tap Fees		LS	By City	By Owner
2.114	Elevator Permit & Inspections		LS	N/A	N/A
2.115	Mechanical & Electrical Permits & Inspections		LS	By City	By City
2.116	Health Department Permits & Inspections		LS	By City	By City
2.117	Other Government Fees\Permits Required for FCO		LS	By City	By City
Other CMAR Onsite Reimbursable Costs					
2.118	Other CMAR's Onsite Costs Needed for the Work	1	LS	2472	2,472
2.C	CMAR's Estimated Onsite Reimbursable Expenses - Subtotal				91,456
2.000	CMAR's Total Proposed Costs to Be Reimbursed				576,288

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

PRE-CONSTRUCTION SERVICES	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
ARCHITECTURAL SELECTION						X
STRUCTURAL, MECHANICAL, ELECTRICAL AND OTHER DESIGN CONSULTANTS						X
SPECIAL CONSULTANT SELECTION						X
SURVEYOR SELECTION						X
SITE SELECTION RECOMMENDATIONS						X
REVIEW DESIGN CONCEPTS						X
DEVELOP BID PACKAGES AND PROCUREMENT STRATEGY	X					
SITE USE RECOMMENDATIONS						X
MATERIAL SELECTION RECOMMENDATIONS						X
BUILDINGS SYSTEMS RECOMMENDATIONS						X
BUILDING EQUIPMENT RECOMMENDATIONS (MOVEABLE)						X
BUILDING EQUIPMENT RECOMMENDATIONS (FIXED)						X
CONSTRUCTION FEASIBILITY RECOMMENDATIONS	X					
PROJECT MASTER SCHEDULING	X					
LIFE CYCLE COST ANALYSIS	X					
INFORMAL AND FORMAL VALUE ENGINEERING	X					
ENERGY USE ANALYSIS AND RECOMMENDATIONS						X
INITIAL PROJECT PRO FORMA AND FEASIBILITY REVIEW/APPROVAL						X
SUBCONTRACTORS' LABOR AVAILABILITY REVIEW	X					
MATERIAL, EQUIPMENT AND SUBCONTRACTOR AVAILABILITY	X					

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

PROJECT BUDGETING AND COST CONTROL	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
TOTAL PROJECT COST BUDGET						X
CONSTRUCTION COST BUDGET	X					
CONSTRUCTION COST BUDGET ESTIMATES	X					
PRELIMINARY COST MODEL	X					
CONCEPTUAL DESIGN ESTIMATE						X
50% SCHEMATIC DESIGN ESTIMATE						X
100% SCHEMATIC DESIGN ESTIMATE	X					
50% DESIGN DEVELOPMENT ESTIMATE	X					
100% DESIGN DEVELOPMENT ESTIMATE	X					
50% CONSTRUCTION DOCS ESTIMATE	X					
BID PACKAGE/SUBCONTRACT ESTIMATES	X					
CASH FLOW PROJECTIONS						X
FUNDING MODEL & REVENUE PHASING						X
MATERIAL QUANTITY SURVEYS	X					
TRADE, VENDOR & SUB ESTIMATES	X					
CHANGE ORDER ESTIMATES			X			
COST ACCOUNTING SET-UP			X			
REPORTING METHODS SET-UP			X			
PAYMENT PROCEDURES SET-UP			X			
CHANGE ORDER PROCEDURES SET-UP			X			
PROJECT COST MONITORING			X			

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

SUB-CONTRACTING SELECTION, PURCHASING & SCOPE MANAGMNT	PRE- CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
SET SUB PRE-QUALIFICATION CRITERIA	X					
RECOMMEND SUBCONTRACTOR PREQUAL & SELECTION METHODS	X					
RECOMMEND SUBCONTRACTOR BIDDING & AWARD METHODS	X					
DEVELOP SUBCONTRACTOR INTEREST	X					
PREPARE BIDDING SCHEDULES	X					
ISSUE PLANS, SPECS & BIDDING DOCS	X					
CONDUCT PRE-BID CONFERENCE	X					
RECEIVE BIDS	X					
ANALYZE BIDS	X					
RECOMMEND AWARD	X					
VERIFY UNIT COSTS	X					
NEGOTIATE UNION RATES & LABOR COSTS (AS REQUIRED)		X				
CONDUCT PRE-AWARD CONFERENCE			X			
PREPARE CONTRACTS	X					
SUPPLIER AND SUBCONTRACTOR REVIEW	X					
ORIGINATE RFI'S AFTER SCREENING			X			
VALIDATE & PREPARE CHANGE ORDERS			X			
VERIFY CORRECTNESS OF QUANTITIES AND PRICES OF CHANGE ORDERS			X			
COORDINATE OWNER-SUPPLIED FIXED EQUIPMENT			X			

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

CONTRACT DOCUMENTS COORDINATION	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
DRAWING, SPEC & DOCUMENT REVIEW & COORDINATION RECOMMENDATIONS	X					
CONSTRUCTIBILITY REVIEW AND RECOMMENDATIONS	X					
SUBCONTRACTOR WORK PACKAGE SCOPE COORDINATION	X					
RESPONSIBILITY FOR: SAFETY PRECAUTIONS			X			
SAFETY PROGRAMS			X			
TEMPORARY FACILITIES			X			
COMMON USE EQUIPMENT			X			
COMMON USE SERVICES			X			
REVIEW FOR: JURISDICTIONAL OVERLAP	X					
INCLUSION OF ALL WORK	X					
CONSTRUCTION PHASING SCOPE & SCHEDULE COORDINATION	X					
IDENTIFY LONG LEAD ITEMS	X					
OBTAIN APPROVALS OF AGENCIES HAVING JURISDICTION (AHJ)						X
ASSIST IN OBTAINING PERMITS & APPROVALS (AS NEEDED)	X		X			

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

CONSTRUCTION PHASE STAFF	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
PROJECT MANAGER (AS NEEDED)			X		PM MAY ALSO BE WITH FEE	
PROJECT SUPERINTENDENT			X		STAFFING DESCRIPTIONS SHOWN HERE, & THOSE SHOWN IN THE CONTRACTOR'S STAFFING PLAN AND/OR FEE & COST PROPOSAL MAY VARY FROM WHAT IS SHOWN HERE. PROJECT COST ALLOCATIONS, HOWEVER, WILL BE CONSISTENT WITH THIS MATRIX.	
ASSISTANT PROJECT SUPERINTENDENT (IF REQUIRED)			X			
MECHANICAL COORDINATOR (IF REQUIRED)			X			
ELECTRICAL COORDINATOR (IF REQUIRED)			X			
OFFICE ENGINEER (AS REQUIRED)			X			
FIELD ENGINEER AND SURVEY CREW: SITE/BUILDING LAYOUT (IF REQUIRED)			X			
FIELD ENGINEER AND SURVEY CREW: LINE AND GRADE (IF REQUIRED)			X			
RODMAN AND ASSISTANT (IF REQUIRED)			X			
TIME KEEPER/CHECKER (IF REQUIRED)			X			
SCHEDULING ENGINEER (IF REQUIRED)			X			
PROJECT COORDINATOR (IF REQUIRED)			X			
COST ENGINEER (IF REQUIRED)			X			
ADMIN ASSISTANT SITE SECRETARY (IF REQUIRED)			X			
SAFETY ENGINEER (IF REQUIRED)						

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

TRAVEL AND LODGING	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
STAFF TRAVEL COST		X				
STAFF TRANSPORTATION		X				
PROJECT STAFF MOVING EXPENSES		X				
PROJECT STAFF SUBSISTENCE COSTS		X				
TEMPORARY FACILITIES						
SAFETY EQUIPMENT AND FIRST AID SUPPLIES			X			
HANDRAILS AND TOE BOARDS			X			
OPENING PROTECTION			X			
FIRE EXTINGUISHERS			X			
WATCHMAN SERVICE (IF NEEDED)			X			
OFFICE OR TRAILER RENTAL			X			
WATER, ICE AND CUPS			X			
TEMPORARY STAIRS			X			
PROJECT SIGNS			X			
BULLETIN BOARDS			X			
CONSTRUCTION FENCING			X			
BARRICADES AND COVERED WALKWAYS (AS NEEDED)			X			
SAFETY NETS (AS NEEDED)			X			
ARCHITECT'S/ENGINEER'S/OWNER'S TEMPORARY ONSITE OFFICE						X
TEMPORARY TOILETS			X			

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

ON-SITE UTILITIES AND SERVICES	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
TEMPORARY TELEPHONE INSTALLATION AND EXPENSE			X			
TEMPORARY POWER SERVICE & DISTRIBUTION ON SITE			X			
PERMANENT POWER SERVICE			X			POWER TO ONE POINT
TEMPORARY WATER AND HEATING SERVICE			X		INCLUDING ALL TEMPORARY HEAT FOR SUBS	
HEATING ENERGY CHARGES			X			
TEMPORARY WIRING			X			
LIGHT BULBS FOR TEMP LIGHTING			X			
DAILY CLEAN-UP			X			
WEEKLY TRASH-REMOVAL			X			
FINAL CLEAN-UP			X			
DUMP PERMITS AND FEES			X			
DEBRIS HAULING/REMOVAL			X			
FLAGMAN/TRAFFIC CONTROL (AS NEEDED)				X		
FUELS FOR INITIAL TANK FILLING				X		
TEMPORARY ROADS				X		
TEMPORARY ROADWAY MAINTENANCE				X		
DUST CONTROLS				X		
TEMPORARY EROSION CONTROL				X		
TEMP. WATER /SEWER EXPENSE & WATER EXPENSES - SITE GRADING & COMPACTION				X		
TWO-WAY RADIO EQUIPMENT & CELL PHONES (AS NEEDED)			X			
TRASH CHUTE AND HOPPERS (AS NEEDED)			X			

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

ON-SITE EQUIPMENT	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
AUTOMOBILE AND FUEL (AS NEEDED)			X			
PICK-UP TRUCK AND FUEL (AS NEEDED)			X			
FLATBED TRUCK AND FUEL (AS NEEDED)			X			
WATER TRUCK (AS NEEDED)				X		
AIR COMPRESSOR AND FUEL (AS NEEDED)				X		
DEWATERING EQUIPMENT AND FUEL (AS NEEDED)				X		
TEMPORARY GENERATOR AND FUEL (AS NEEDED)			X			
DEBRIS REMOVAL/HAULING EQUIPMENT (AS NEEDED)			X			
TIRES AND MAINTENANCE COST (AS NEEDED)			X			
FORKLIFT OPERATOR			X			
MATERIAL HOIST OPERATOR (AS REQ'D)			X			
PERSONNEL HOIST OPERATOR (AS REQ'D)			X			
FIXED CRANE OPERATOR				X		
TRAVEL CRANE OPERATOR				X		

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

TEMPORARY PROJECT PROTECTION	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
REMOVE SNOW AND ICE (AS NEEDED)			X			
TEMPORARY ENCLOSURES (AS NEEDED)			X			
TEMP BUILDING PIPING (AS NEEDED)			X			
FUEL COST FOR HEATING (AS NEEDED)			X			
POWER COST FOR HEATING (AS NEEDED)			X			
TEMP FURNACE RENTAL (AS NEEDED)			X			
TEMP HEATER RENTAL (AS NEEDED)			X			
TEMP BOILER RENTAL (AS NEEDED)			X			
OPERATOR - TEMPORARY SYSTEMS (AS NEEDED)			X			
OPERATION FIRE WATCH (AS NEEDED)			X			
CLEANING COST (AS NEEDED)			X			
MAINTENANCE COST (AS NEEDED)			X			
EXTENDED WARRANTY COST IN ADDTION TO STD ONE YR WARRANTY (IF REQUIRED)				X		
FILTER CHANGE (AS NEEDED)				X		
TEMPORARY OFFICE HEATING (AS NEEDED)			X			
TEMP WEATHER PROECTION & HEATING FOR ALL SUBCONTRACTORS (AS MAY BE REQ'D)			X			

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

REPRODUCTION/PRINTING AND IT/DATA PROCESSING COSTS	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER
COST ESTIMATING DOCUMENTS	X					
SYSTEMS STUDY DOCUMENTS	X					
BID PACKAGE SETS						X
BIDDING INSTRUCTIONS	X					
CONSTRUCTION DOCUMENTS ORIGINAL						X
POSTAGE AND EXPRESS COSTS (CONTRACTOR-ISSUED PLANS)			X			
AS-BUILT SUB-DOCUMENTS				X		
AS-BUILT DOCUMENTS			X			
ACCOUNTING FORMS		X				
FIELD REPORTING FORMS			X			
SUBCONTRACT AGREEMENT FORMS	X					
SCHEDULE REPORT FORMS			X			
ESTIMATING FORMS	X					
COST REPORTING FORMS	X					
VALUE ANALYSIS STUDIES						X
IT INFRASTRUTURE & DATA PROCESSING	X	X				
REFERENCE MATERIALS			X			
SHOP DRAWING PRINTING			X			
ON-SITE FAX, SCANNER AND COPIER			X			
LAPTOPS, IT & DATA PROCESSING (ON-SITE)			X			
MAINTENANCE MANUALS (FROM SUBS) AND OPERATIONS MANUALS (FROM SUBS)				X		

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

QUALITY CONTROL AND TRAINING	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
GC'S FIELD QC INSPECTOR (AS NEEDED)			X			
GC'S FIELD QC OFFICE (AS NEEDED)			X			
GC'S QC INSPECTORS' TRANSPORTATION (AS NEEDED)			X			
GC'S QC INSPECTORS' EQUIP (AS NEEDED)			X			
SPECIAL INSPECTION CONSULTANTS						X
SPECIAL TESTING CONSULTANTS						X
CONCRETE SUBSTRUCTURE-OBSERVATIONS						X
CONCRETE TESTING						X
MASONRY TESTING						X
COMPACTION TESTING						X
WELDING TESTING						X
PIER INSPECTION/TESTING						X
SOILS INVESTIGATION						X
SPECIAL TESTING SERVICES (EXCEPT AS NOTED)						X
PROJECT PHOTOGRAPHS			X			
WARRANTY INSPECTIONS		X				
AIR AND WATER BALANCING				X		
ON-SITE TRAINING OF OWNER'S FACILITY STAFF & OPERATORS (BY GC)			X			
ON-SITE TRAINING OF OWNER'S FACILITY STAFF & OPERATORS (SUBCONTRACTORS)				X		
COLLATE & PRESENT OPERATION/MAINTENANCE MANUALS			X			
PREPARE SUBCONTRACTOR'S OPERATION/MAINTENANCE MANUALS				X		

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

STORAGE, PARKING, PERMITS AND SPECIAL FEES	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
STORAGE YARD RENTAL			X			
PARKING LOT RENTALS AND SHUTTLE EXPENSES (AS NEEDED)			X			
FIELD OFFICE STAFF PARKING FEES			X			
SIGN PERMITS			X			
STREET/CURB PERMIT				X		
BUILDING PERMITS						X
PLAN CHECK FEES						X
WATER SYSTEM DEVELOPMENT FEE						X
SEWER USE & DRAINAGE PERMIT/DEV. FEE						X
PLUMBING & ELECTRICAL PERMITS				X		
ELEVATOR PERMIT FEE				X		
STORM CONNECTION FEE						X
GAS AND POWER SERVICE CHARGE (PERMANENT)						X
GAS AND POWER SERVICE CHARGE (TEMPORARY)			X			
STEAM SERVICE CHARGE (IF ANY)						X
CHILLER WATER SERVICE CHARGE (IF ANY)						X
SPECIAL TAP FEES						X
CONTRACTORS LICENSES		X				
CONSTRUCTION EQUIPMENT LICENSES		X				
CONSTRUCTION EQUIPMENT PERMITS				X		

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

INSURANCE AND BONDS	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
BUILDERS RISK INSURANCE			X			
GENERAL LIABILITY, INCLUDING AUTOMOBILE			X			
PROFESSIONAL LIABILITY			X			
PRODUCT LIABILITY			X			
EXCESS LIABILITY COVERAGE			X			
WORKERS COMPENSATION (FIELD OFFICE STAFF)			X			
FICA INSURANCE (FIELD OFFICE STAFF)			X			
FEDERAL UNEMPLOYMENT (FIELD OFFICE STAFF)			X			
STATE UNEMPLOYMENT (FIELD OFFICE STAFF)			X			
CONTRACTOR'S PAYMENT BOND (IF REQUIRED)			X			
CONTRACTOR'S PERFORMANCE BOND (IF REQUIRED)			X			
STATE/LOCAL BONDS				X		
* SUBCONTRACTOR BONDS				X		

* ONLY AS MUTUALLY AGREED UPON IN ADVANCE IN WRITING BETWEEN THE OWNER AND THE CONTRACTOR.

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

OTHER COSTS	PRE-CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
CONSTRUCTION EQUIPMENT				X		
CONSTRUCTION SERVICES LABOR (GC)			X			
CONSTRUCTION SERVICES LABOR (SUBS)				X		
CONSTRUCTION MATERIALS				X		
COST OF DESIGN AND ENGINEERING						X
A/E FAST TRACK COST EXTRAS						X
PRELIMINARY SOILS INVESTIGATION						X
TITLE/DEVELOPMENT COST						X
BUILDING OPERATION AFTER MOVE-IN						X
BUILDING MAINTENANCE AFTER MOVE-IN						X
MOVING COORDINATION						X
MOVING COSTS						X
COSTS OF EMERGENCY WORK				X		
GC'S GENERAL & HOME OFFICE OVERHEAD		X				
GC'S PROFIT MARGIN		X				
GMP FINANCIAL RESPONSIBILITIES		X				
INSPECTIONS REQUIRED BY AHJ						X

The City of Richland Hills Activity Center
 Attachment 3 - GENERAL CONDITIONS RESPONSIBILITY MATRIX

PHASE: OFF-SITE SERVICES	PRE- CONST SERVICES FEE	CONST SERVICES FEE	GC REIMB GEN COND COST	DIRECT COST OF SUB'S WORK	COMMENTS	REQUIRED OF OWNER AND/OR DESIGN TEAM
CORPORATE EXECUTIVES (AS REQUIRED)	X	X				
PRINCIPAL IN CHARGE (AS REQUIRED)	X	X				
PROJECT EXECUTIVE (AS REQUIRED)	X	X				
LEGAL - BASIC SERVICES (AS REQUIRED)	X	X				
ACCOUNTING (AS REQUIRED)	X	X				
PURCHASING (AS REQUIRED)	X					
SAFETY OFFICER (AS REQUIRED)		X				
EEO OFFICER (AS REQUIRED)	X	X				
SECRETARIAL AND CLERK-TYPIST (AS REQUIRED)	X	X				
BENEFITS AND VACATIONS FOR ABOVE	X	X				

Exhibit “D”

Key Personnel

City of Richland Hills - New Activity Center
Key Personnel

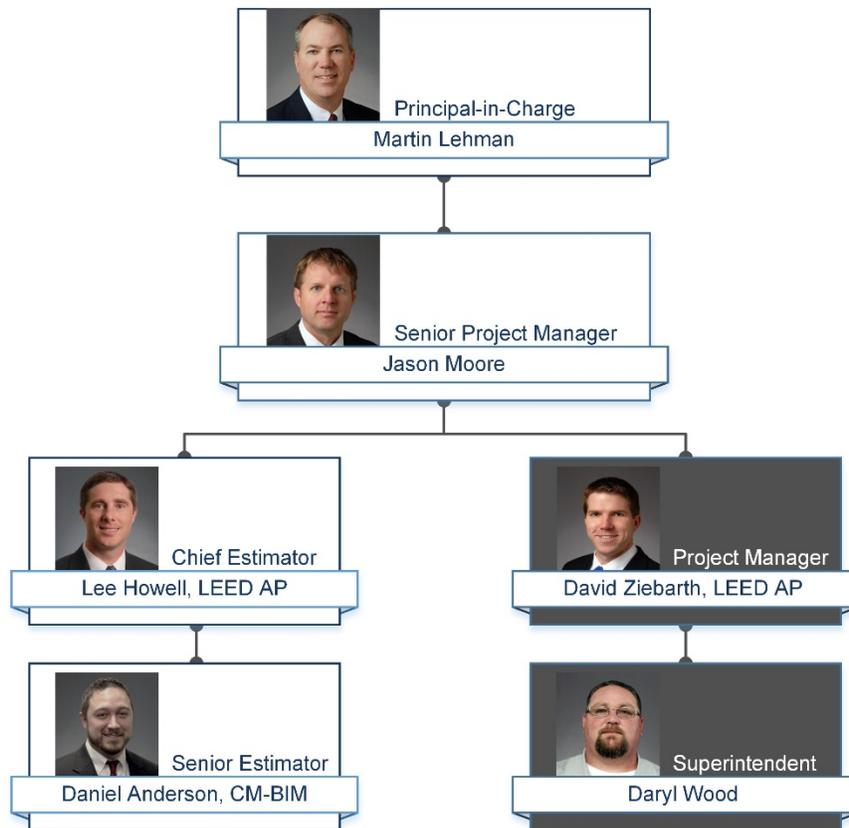


Exhibit “E” Confidentiality of the Project

Contractor will include Owner’s confidentially requirements
within Exhibit E upon receipt from Richland Hills.

Exhibit “F”

Customary and Usual Labor Rates

To be defined, approved, and included with submission of the GMP.

Exhibit “G”

Rental Rates

To be defined, approved, and included with submission of the GMP.

Exhibit “H”

Alternates with Costs and Expiration Dates

To be defined, approved, and included with submission of the GMP.

Exhibit “I”

Unit Costs

To be defined, approved, and included with submission of the GMP.

Exhibit “J”

Allowances

Allowances contained within Control Estimate # 1 include:

- 1) Plaza Fountain \$115,000
- 2) Playground Equipment \$65,000

Exhibit “K”

Schedule of Values

To be defined, approved, and included with submission of the GMP.

Exhibit “L”

Control Estimate # 1

See attached 100% SD Estimate submitted on 9/30/2015.

Control Estimate # 1

Document List

Control Estimate #1 was prepared using the Documents shown in Exhibit A- Scope of Work in this Agreement.

Control Estimate #2 and subsequent Control Estimates will contain updated Document Lists which, when approved by the Owner, will supersede Exhibit A – Scope of Work, and as well as any Document Lists in previous Control Estimates.

Exhibit Y – Guaranteed Maximum Price Amendment will also contain an updated Document List which will, when approved by the Owner, will also supersede Exhibit A – Scope of Work, as well as Document Lists in any previous Control Estimates.

Control Estimate # 1 Clarifications & Assumptions

Qualifications & Clarifications

Richland Hills Activity Center

100% SD Estimate

Date: September 30, 2015

General Conditions:	
1	A Contractor's Construction Contingency of 10% is included in this estimate, and is intended for construction use only. Owner contingency is excluded from this estimate.
2	A construction fee of 2.75% is included on the cost summary, and is based upon the total construction cost.
3	Builders Risk Insurance is included, and based upon the total cost.
4	CGL & Umbrella Insurance is included, and based upon the total cost.
5	Payment and Performance bonds for Byrne have been included on the cost summary, and are based upon the total cost.
6	The CM pre-construction services lump sum fee of \$20,000 is included in this budget.
7	The General Conditions included in this estimate are based upon approximately 11 months to substantial completion. Overall project completion is 12 months. These are also based upon the general conditions description as outlined in the RFP documents. .
8	This budget is to be reviewed as a whole; not as individual line items.
Temporary Construction Cost of Work Items:	
1	Sales tax is excluded
2	This budget is based upon electronic design document files and models being available to all subcontractors at no additional cost. BIM files will only be available to subcontractors after bidding and award of the project.
3	All costs associated with water/sewer tap fees, building permits and plan check fees, or similar, required by any governing agency to include County, City, State, or Federal entities, in addition to any and all utility entities are specifically excluded.
4	All FF&E, OFE, and furnishings are excluded from this budget, unless specifically noted in the budget detail and qualifications below.
5	All hazardous or contaminated material and soil testing, remediation, investigation, and abatement is excluded.
6	Site is assumed to be free of any contaminants, unencumbered, and ready to begin excavation work.
7	Testing Lab services for materials, mock-ups, or delegated engineering components are to be provided by the Owner, and are excluded.
8	Testing of building components for water or air intrusion is not included and is to be provided by the Owner.
9	Commissioning Agent and Services are to be provided by the Owner.
10	Design Fees or services are not included. Where required in the specifications, the Construction Manager will provide design calculations and information provided by the Trade Contractors to the Architect and Engineer for approval and acceptance of the design.
11	The CM does not warrant or guarantee functionality of the design with the Owner's requirements. The CM relies upon the designers to provide and implement the Owner's requirements into the design documents.
12	The CM will provide oversight and review of submittals for compliance with the contract documents, however, the design team shall bear the full responsibility for acceptance and approval of all submittals.
Division 2 - Existing Conditions:	
1	Asbestos or hazardous material abatement is excluded.
2	Civil quantities are based on dimensions included within drawing, rather than scale provided (scale provided appears to be incorrect).
3	Demolition of the existing building on site is included within the demolition line item.
4	Demolition of site scopes of work scheduled for removal, are included in the earthwork line item.
Division 3 - Concrete:	
1	Piers are included at a depth of 55', including penetration, as directed in structural narrative.

Qualifications & Clarifications

Richland Hills Activity Center

100% SD Estimate

Date: September 30, 2015

2	Piers are included as 30" at exterior and grade beam intersections, and 24" at interior and non-grade beam intersections.
3	Grade beams are included as 24"x30".
4	Sidewalks at site are included as 4" thick, 3000 PSI, non-colored concrete.
5	Site paving at areas assumed to be used by fire department are included as 7" thick, 3600 PSI, non-colored concrete.
6	No trash enclosure indicated on drawings, therefore no concrete scope for a trash enclosure is included.
Division 4 - Masonry:	
1	Exterior masonry is included as veneer, non-structural, masonry
2	Limestone veneer and Texas Limestone Veneer materials are included as a furnish/install allowance of \$34/sqft.
3	Unit masonry is included as a furnish/install allowance of \$18/sqft.
Division 5 - Metals:	
1	Steel column members are assumed to be HSS8x8x5/8.
2	Miscellaneous steel allowance is included at a quantity of 15% of structural steel members tonnage included in design.
3	No trash enclosure indicated on drawings, therefore no steel scope for a trash enclosure is included.
4	No pipe bollards found in documents, therefore 10 EA are included.
Division 6 - Wood, Plastics and Composites:	
1	An allowance of 1,500 bdft of miscellaneous wood blocking is included (total furnish/ install cost allowance of \$4,875).
2	Display Cases furnish/ install allowance of \$750/lnft is included.
Division 7 - Thermal and Moisture Protection:	
1	Fluid-applied air barrier is assumed behind all masonry facades.
2	Roof Hatches were not found on documents, therefore 3 EA have been assumed, included.
3	No expansion joints were found in documents, therefore 2 runs (totaling 170 LF) have been included.
4	Fireproofing of steel members is assumed to be required, and is included.
5	Spray insulation is included at 6.5" thickness, providing an R-22 thermal resistance value.
6	Metal wall panels furnish/install allowance of \$45/sqft is included.
Division 8 - Openings:	
1	All exterior door openings are included as a hollow metal frame with hollow metal door leaves.
2	All interior door openings are included as a hollow metal frame with wood door leaves.
Division 9 - Finishes:	
1	All exposed ceiling areas are included to receive field painted finish.
Division 10 - Specialties:	
1	Fire extinguisher cabinets are included at an assumed quantity of 1 per 5,000 building SF.
2	Exterior building name signage is assumed to be powered, individual lettering.
3	Room signage is included as one sign per room.
Division 11 - Equipment:	
1	All Food Service Equipment that is stationary is included, as indicated on the schedule within the QF sheets.
Division 12 - Furnishings:	
1	Entrance floor mats are included as recessed, framed mats.
Division 13 - Special Construction:	
	No Special Construction items included.

Qualifications & Clarifications

Richland Hills Activity Center

100% SD Estimate

Date: September 30, 2015

Division 14 - Conveying Equipment:	
	No Conveying Equipment items included.
Division 21 - Fire Suppression:	
1	Dry-system scope is excluded, as it is assumed that all canopies or overhangs at the exterior of the building are not large enough to require fire protection.
Division 22 - Plumbing:	
1	No scope for natural gas was found in documents, and is therefore excluded.
2	Plumbing scope of work is included as an allowance per building sqft allowance.
3	All underground plumbing scope, outside of 5' from building pad, are included in Site Utilities scope.
Division 23 - Heating, Ventilating and Air Conditioning:	
1	HVAC scope of work is included as an allowance per cubic foot of conditioned space within the building.
2	Testing and Balancing of HVAC system is included, per direction provided in RFP narrative.
Division 25 - Integrated Automation:	
	No Integrated Automation items included.
Division 26 - Electrical:	
1	Assumed that 20 EA light poles with concrete bases at site, included. Intended for sidewalk, landscaping areas and drive entrances.
2	Lighting at building exterior assumed to provide ample light around building footprint.
3	No generator equipment indicated in contract documents, therefore excluded.
4	Fire Alarm System allowance (based on building SF) is included.
5	Telephone and data scope of work allowance (based on building SF) is included.
6	Security and Access Control scope of work allowance (based on building SF) is included.
7	Audio/Video, rough-in only, scope of work allowance (based on building SF and in correlation with scope of work outlined in RFP documents) is included.
8	Lighting and Lighting Controls scopes of work allowance (based on building SF) is included.
Division 31 - Earthwork:	
1	Civil grading plan indicates the building at an elevation of 646.00, however estimate includes an assumption that this elevation is intended to be 546.00.
2	Grading plan is based on approximate, assumed new grading contours based on information provided within RFP documents.
3	Termite pre-treatment is included prior to pouring building slab.
Division 32 - Exterior Improvements:	
1	Plaza Fountain allowance is included at \$115,000 total.
2	All landscaping areas are included sod in place.
3	Bike racks were not found in documents, however 2 EA were assumed, included.
4	Paving and fencing adjacent to existing tennis courts are assumed to in acceptable condition, and no work is included at this area.
Division 33 - Utilities:	
1	Curb inlets were not found on civil drawings, therefore 15 EA were assumed (including 8" storm pipe to all locations assumed, for a total quantity of 650 LF).
2	Grease trap provisions were not found on civil drawings, but appear to be required due to kitchen equipment scope, therefore 1 EA (1,500 gallon) is included.
3	Fire Hydrant requirements were not found on civil drawings, therefore 1 EA is assumed and included.
4	No natural gas scope was indicated in documents, therefore excluded.

Control Estimate # 1

Estimated Cost of the Work

Cost Estimate Summary Sheet

Richland Hills Activity Center

100% SD Estimate

Date: September 30, 2015

Building Square Feet: 23,452

Bid Package #	Bid Package Description	100% SD Cost	Cost/SF	Notes
0000	General Requirements	\$ 443,988	\$ 18.93	
2400	Demolition	\$ 17,267	\$ 0.74	
3000	Concrete	\$ 1,704,613	\$ 72.69	
4000	Masonry	\$ 271,292	\$ 11.57	
5000	Structural Steel	\$ 673,769	\$ 28.73	
6100	Rough Carpentry	\$ 4,875	\$ 0.21	
6200	Finish Carpentry	\$ 232,534	\$ 9.92	
7152	Waterproofing	\$ 89,052	\$ 3.80	
7200	Sprayed Insulation	\$ 41,348	\$ 1.76	
7300	Roofing	\$ 325,528	\$ 13.88	
7420	Wall Panels	\$ 68,895	\$ 2.94	
7800	Fireproofing	\$ 25,797	\$ 1.10	
7900	Joint Protection	\$ 10,200	\$ 0.43	
8100	Doors, Frames and Hardware	\$ 97,050	\$ 4.14	
8400	Storefront and Glass	\$ 254,410	\$ 10.85	
9210	Drywall	\$ 398,945	\$ 17.01	
9300	Tile	\$ 144,128	\$ 6.15	
9620	Specialty Flooring	\$ 190,091	\$ 8.11	
9650	Resilient Flooring	\$ 22,425	\$ 0.96	
9900	Painting	\$ 107,566	\$ 4.59	
10000	Specialties	\$ 87,045	\$ 3.71	
10110	Visual Display	\$ 54,800	\$ 2.34	
10650	Operable Partitions	\$ 30,060	\$ 1.28	
11400	Foodservice Equipment	\$ 20,800	\$ 0.89	
11650	Athletic Equipment	\$ 74,000	\$ 3.16	
12200	Window Treatments	\$ 2,532	\$ 0.11	
12480	Entrance Floor Mats	\$ 3,640	\$ 0.16	
21000	Fire Suppresion	\$ 60,731	\$ 2.59	
22000	Plumbing	\$ 117,260	\$ 5.00	
23000	HVAC	\$ 609,712	\$ 26.00	
26000	Electrical	\$ 857,171	\$ 36.55	
31000	Earthwork	\$ 379,359	\$ 16.18	
31313	Termite Treatment	\$ 2,345	\$ 0.10	
32172	Pavement Markings	\$ 7,726	\$ 0.33	
32300	Site Improvements	\$ 187,000	\$ 7.97	
32900	Planting and Irrigation	\$ 36,867	\$ 1.57	
33000	Utilities	\$ 427,322	\$ 18.22	
			\$ -	
			\$ -	

Cost Estimate Summary Sheet

Richland Hills Activity Center

100% SD Estimate

Date: September 30, 2015

Building Square Feet: 23,452

Bid Package #	Bid Package Description		100% SD Cost	Cost/SF	Notes
	Cost of Work Subtotal		\$ 8,082,143	\$ 344.62	
	Contractor's Contingency	10.00%	\$ 808,214	\$ 34.46	
	Building Permit		Excluded		
	Construction Costs Subtotal		\$ 8,890,357	\$ 379.09	
	CGL & Umbrella Insurance	0.71%	\$ 65,952	\$ 2.81	
	Professional Liability	0.15%	\$ 14,400	\$ 0.61	
	Builder's Risk	0.09%	\$ 8,440	\$ 0.36	
	Payment & Performance Bond	0.84%	\$ 78,400	\$ 3.34	
	Construction Costs & Insurance Subtotal		\$ 9,057,549	\$ 386.22	
	Preconstruction Fee		\$ 20,150	\$ 0.86	
	Fee	2.75%	\$ 249,083	\$ 10.62	
	Project SubTotal		\$ 9,326,782	\$ 397.70	

Project name Richland Hills Act Ctr
Report format Sorted by 'Bid Pkg #'
 'Detail' summary

Item	Description	Takeoff Qty	Unit Cost	Subcontract	Total
					Amount
0000 BP-General Requirements					
----	General Conditions	1.00	Isum	83,532.80 /Isum	417,664
15	Construction Security Fence	1,629.00	lnft	9.00 /lnft	14,661
17	Construction Security Fence Gate	2.00	each	1,250.00 /each	2,500
100	Temp Cleaning	11.00	mo	300.00 /mo	3,300
134	Final Cleaning	23,452.00	sqft	0.25 /sqft	5,863
					443,988
0000 BP-General Requirements					
2400 BP-Demolition					
10	Building Demolition Complete /SF	3,837.00	sqft	4.50 /sqft	17,267
					17,267
2400 BP-Demolition					
3000 BP-Concrete Work					
18	Pier Casing 24" ADDER per LF	1,650.00	lnft	16.00 /lnft	26,400
18	Pier Casing 30" ADDER per LF	3,850.00	lnft	18.00 /lnft	69,300
125	Drilled Piers 24" Dia x 55' Depth - Non-Cased	35.00	each	4,250.00 /each	148,750
125	Drilled Piers 30" Dia x 55' Depth - Non-Cased	70.00	each	5,500.00 /each	385,000
129	Light Pole Base ASSUMED	20.00	each	750.00 /each	15,000
173	Carton Forms 12" & 1/4" Coverboard	22,329.00	sqft	2.35 /sqft	52,473
404	Grade Beam 24" x 30"	1,450.00	lnft	65.00 /lnft	94,250
456	CIP Slab-on-grade Monolithic/CY	22,329.00	sqft	18.00 /sqft	401,922
99	Suspended Pan Slab (30" pans x 24" joists)	2,796.00	sqft	28.00 /sqft	78,288
542	Monument Sign Foundations	2.00	Isum	3,000.00 /Isum	6,000
1084	Paving: 4" Concrete/SF, 3000 PSI	24,039.00	sqft	4.50 /sqft	108,176
1084	Paving: 5" Concrete/SF, 3600 PSI	10,015.00	sqft	4.75 /sqft	47,571
1084	Paving: 6" Concrete/SF, 3600 PSI	18,610.00	sqft	5.50 /sqft	102,355
1084	Paving: 7" Concrete/SF, 3600 PSI	16,741.00	sqft	8.00 /sqft	133,928
1090	ADA Insert	5.00	each	750.00 /each	3,750
1090	Install Concrete Filled Pipe Bollards ASSUMED	10.00	each	250.00 /each	2,500
114	Concrete Curb 6" Monolithic	2,316.00	lnft	12.50 /lnft	28,950
					1,704,613
3000 BP-Concrete Work					
512.200 Labor hours					
4000 BP-Masonry Work					
145	Brick: Modular 3 5/8"x2 1/4"x7 5/8"	3,914.00	sqft	18.00 /sqft	70,452
148	CMU 8x8x16 Standard	884.00	sqft	13.00 /sqft	11,492
120	CMU 8x8x16 Split 1-side	6,734.00	sqft	18.00 /sqft	121,212
166	Limestone Veneer	1,774.00	sqft	34.00 /sqft	60,316
166	Texas Limestone Veneer	230.00	sqft	34.00 /sqft	7,820
					271,292
4000 BP-Masonry Work					
5000 BP-Structural Steel					
70	W14x22 (1,102 LF)	12.22	tons	4,000.00 /tons	48,880
70	W16x31 (259 LF)	4.02	tons	4,000.00 /tons	16,060
70	W16x26 (370 LF)	4.81	tons	4,000.00 /tons	19,240
70	W21x44 (33 LF)	0.73	tons	4,000.00 /tons	2,904
70	22K7 Joist (716 LF)	3.473	tons	4,000.00 /tons	13,892
70	22K6 Joist (79 LF)	0.363	tons	4,000.00 /tons	1,452
70	22K4 Joist (159 LF)	0.64	tons	4,000.00 /tons	2,544
70	28K9 Joist (438 LF)	2.85	tons	4,000.00 /tons	11,388
70	10K1 Joist (613 LF)	1.533	tons	4,000.00 /tons	6,132
70	30K10 Joist (1,667 LF)	12.503	tons	4,000.00 /tons	50,012
70	40LH13 Joist (453 LF)	6.80	tons	4,000.00 /tons	27,180
70	HSS8x8x5/8 - 16' Height (288 LF) ASSUMED	8.51	tons	4,000.00 /tons	34,040
70	HSS8x8x5/8 - 24' Height (576 LF) ASSUMED	17.021	tons	4,000.00 /tons	68,084
70	HSS8x8x5/8 - 30' Height (660 LF) ASSUMED	19.503	tons	4,000.00 /tons	78,012
70	Metal Deck at Roof (25,731 SF)	29.59	tons	4,500.00 /tons	133,155
10	Miscellaneous Steel (15% of Structural)	14.244	tons	6,000.00 /tons	85,464
32	Mechanical Screen at Roof Level	1,674.00	sqft	45.00 /sqft	75,330

Item	Description	Takeoff Qty	Unit Cost	Subcontract	Total
					Amount
5000 BP-Structural Steel					673,769
6100 BP-Rough Carpentry					
101	Wood Blocking (Per Board Foot)	1,500.00	bdft	3.25 /bdft	4,875
6100 BP-Rough Carpentry					4,875
6200 BP-Finish Carpentry					
454	Wood Veneer Panels	1,206.00	sqft	7.25 /sqft	8,744
454	Wood Veneer Column Wrap	2,447.00	sqft	7.25 /sqft	17,741
10	Base Cabinets	165.00	lnft	350.00 /lnft	57,750
10	Upper Cabinets	78.00	lnft	200.00 /lnft	15,600
10	Solid Surface Countertops	169.00	lnft	175.00 /lnft	29,575
10	Engineered Stone Countertops	23.00	lnft	225.00 /lnft	5,175
10	Full Wardrobe Storage	48.00	lnft	400.00 /lnft	19,200
10	Display Cases	105.00	lnft	750.00 /lnft	78,750
6200 BP-Finish Carpentry					232,534
7152 BP-Waterproofing					
245	Waterproofing: Elastomeric liquid (UP turnkey)	15,853.00	sqft	2.25 /sqft	35,669
1	Fluid-Applied Air Barrier	14,179.00	sqft	2.00 /sqft	28,358
16	Building Sealant	3,628.04	lnft	1.25 /lnft	4,535
28	Site Sealant 1"	10,245.00	lnft	2.00 /lnft	20,490
7152 BP-Waterproofing					89,052
	683.00 Labor hours				
7200 BP-Insulation					
406	Blown cellulose 6½" R 22 (UP turnkey)	18,377.00	sqft	2.25 /sqft	41,348
7200 BP-Insulation					41,348
7300 BP-Membrane Roofing					
232	Roof hatch 24"x36" ASSUMED	3.00	each	550.00 /each	1,650
112	TPO Membrane Roofing	23,198.00	sqft	12.50 /sqft	289,975
136	Walk Mats ASSUMED	1,000.00	sqft	5.00 /sqft	5,000
200	Coping Cap ASSUMED	1,231.00	lnft	18.00 /lnft	22,158
163	Gutters/LF galv	1,007.00	lnft	5.00 /lnft	5,035
163	Downspout/LF (various heights) galv	342.00	lnft	5.00 /lnft	1,710
7300 BP-Membrane Roofing					325,528
	342.12 Labor hours				
7420 BP-Wall Panels					
132	Metal Wall Panels	1,531.00	sqft	-	68,895
7420 BP-Wall Panels					68,895
7800 BP-Fireproofing					
125	Fireproofing/SF (UP turnkey) ASSUMED	23,452.00	sqft	1.10 /sqft	25,797
7800 BP-Fireproofing					25,797
7900 BP-Joint Protection					
----	Roof & Exterior Expansion Joints	170.00	lnft	60.00 /lnft	10,200
7900 BP-Joint Protection					10,200
8100 BP-HM Frames, Doors, Hardware					
114	Interior HM Single Doorframe	24.00	each	225.00 /each	5,400
114	Interior HM Double Doorframe	4.00	each	450.00 /each	1,800
114	Exterior HM Single Doorframe	6.00	each	250.00 /each	1,500
114	Exterior HM Double Doorframe	6.00	each	500.00 /each	3,000

Item	Description	Takeoff Qty	Subcontract		Total	
			Unit Cost	Amount	Unit Cost	Amount
8100 BP-HM Frames, Doors, Hardware						
71	HM Door Leaf (Exterior)	18.00	each	350.00 /each		6,300
1232	WD Door Leaf (Interior)	32.00	each	400.00 /each		12,800
135	Install Doors & Hardware per Leaf	50.00	each	225.00 /each		11,250
1	Door Hardware per Leaf	50.00	each	1,100.00 /each		55,000
						97,050
8100 BP-HM Frames, Doors, Hardware						
	15.00 Labor hours					
8400 BP-Storefront & Glass						
40	Door Hardware for Alum Doors per Leaf	4.00	each	1,200.00 /each		4,800
58	Storefront Exterior	2,173.00	sqft	45.00 /sqft		97,785
280	Curtain Wall Exterior	1,127.00	sqft	75.00 /sqft		84,525
280	4'x8' Skylights	96.00	sqft	75.00 /sqft		7,200
280	12'x11" Skylights	660.00	sqft	75.00 /sqft		49,500
1	ADA Door Operator per Leaf	2.00	each	2,500.00 /each		5,000
314	Mirror Glass Non-Framed	560.00	sqft	10.00 /sqft		5,600
						254,410
8400 BP-Storefront & Glass						
	0.25 Labor hours					
9210 BP-Drywall Assemblies						
103	Drywall Exterior Partitions	18,377.00	sqft	9.30 /sqft		170,906
110	Drywall Interior Partitions	20,512.00	sqft	5.50 /sqft		112,816
110	Drywall High-Impact Interior Partitions	9,596.00	sqft	6.00 /sqft		57,576
2	Suspended Gyp Ceiling	675.00	sqft	3.00 /sqft		2,025
2	Gyp Fur Downs	1,065.00	sqft	10.25 /sqft		10,916
105	SAT Ceilings	6,623.00	sqft	6.75 /sqft		44,705
						398,945
9210 BP-Drywall Assemblies						
	68.99 Labor hours					
9300 BP-Hard Tile						
106	Porcelain Tile Flooring	2,671.00	sqft	12.50 /sqft		33,388
109	Mosaic Tile Flooring	1,195.00	sqft	20.00 /sqft		23,900
133	Porcelain Tile Wall	5,048.00	sqft	16.00 /sqft		80,768
133	Ceramic Tile Wall	26.00	sqft	10.50 /sqft		273
301	Waterproofing Membrane at Tile Floors	3,866.00	sqft	1.50 /sqft		5,799
						144,128
9300 BP-Hard Tile						
9620 BP-Specialty Flooring						
103	Gym Wood Flooring	1,337.00	sqft	15.00 /sqft		20,055
103	Sports Wood Flooring - Fitness Studio	1,456.00	sqft	15.00 /sqft		21,840
104	Rubber Track Flooring	1,980.00	sqft	25.00 /sqft		49,500
104	Floor Protection	2,000.00	sqft	4.00 /sqft		8,000
106	Rubber Athletic Flooring - Weight Room	3,801.00	sqft	12.00 /sqft		45,612
106	Rubber Athletic Flooring - Gym	3,757.00	sqft	12.00 /sqft		45,084
						190,091
9620 BP-Specialty Flooring						
9650 BP-Resilient Flooring						
20	Linoleum Flooring	836.00	sqft	3.00 /sqft		2,508
20	LVT Flooring	757.00	sqft	3.65 /sqft		2,763
75	Vinyl Base - Thick Profile	1,848.00	lnft	3.00 /lnft		5,544
205	Carpet Tile Flooring	387.00	sqyd	30.00 /sqyd		11,610
						22,425
9650 BP-Resilient Flooring						
	71.49 Labor hours					
9900 BP-Painting						
212	Paint Walls (Wall Surface Area)	33,331.00	sqft	1.10 /sqft		36,664
224	Paint Gyp Ceiling	1,740.00	sqft	1.25 /sqft		2,175
230	Paint Exposed Ceiling/ Metal Deck	14,316.00	sqft	4.00 /sqft		57,264

Item	Description	Takeoff Qty	Unit Cost	Subcontract	Total
				Unit Cost	Amount
9900 BP-Painting					
575	Paint Doorframe	40.00	each	125.00 /each	5,000
580	Paint Door (HM Only)	18.00	each	175.00 /each	3,150
90	Sealed Concrete Floor (Mech/Elect Rooms)	1,893.00	sqft	1.75 /sqft	3,313
9900 BP-Painting					107,566
	296.32 Labor hours				
10000 BP-Specialties					
120	Toilet Partitions: Solid Surface	9.00	each	1,400.00 /each	12,600
150	Urinal Partitions: Solid Surface	2.00	each	400.00 /each	800
206	Chain Link Storage Separation Partition 8'/fl Heavy Duty, Painted	55.00	lnft	50.00 /lnft	2,750
100	Robe Hook	7.00	each	15.00 /each	105
120	Baby Changing Station	1.00	each	325.00 /each	325
170	Paper Towel Disp & Waste Receptacle	7.00	each	450.00 /each	3,150
190	Soap Dispenser	14.00	each	60.00 /each	840
200	Framed Mirror	1.00	each	450.00 /each	450
560	Grab Bar 18"	8.00	each	120.00 /each	960
560	Grab Bar 36"	7.00	each	140.00 /each	980
570	Grab Bar 42"	7.00	each	160.00 /each	1,120
800	Sanitary Napkin Dispenser ASSUMED	2.00	each	300.00 /each	600
850	Sanitary Napkin Disposal	7.00	each	125.00 /each	875
1680	Shower Curtain & Rod	7.00	each	60.00 /each	420
2200	Toilet Paper Dispenser	10.00	each	150.00 /each	1,500
10	Knox Box	2.00	each	750.00 /each	1,500
114	Fire Extinguisher Cabinet - recessed 20 lb	5.00	each	310.00 /each	1,550
10	Solid Phenolic Locker (1 wide)	64.00	each	850.00 /each	54,400
40	Locker Bench Seat	2.00	each	650.00 /each	1,300
40	Bathroom Bench	1.00	each	650.00 /each	650
25	Janitor Shelf & Mop Rack ASSUMED	2.00	each	85.00 /each	170
10000 BP-Specialties					87,045
10110 BP-Visual Display					
50	Exterior Cast Lettering - Backlit / EA Letter	29.00	each	1,800.00 /each	52,200
60	Room Signage	26.00	each	100.00 /each	2,600
10110 BP-Visual Display					54,800
10650 BP-Operable Partitions					
12	Operable Partitions	668.00	sqft	45.00 /sqft	30,060
10650 BP-Operable Partitions					30,060
11400 BP-Foodservice Equipment					
1210	Undercounter Commercial Dishwasher	1.00	each	8,250.00 /each	8,250
2308	Rangehood	2.00	each	2,750.00 /each	5,500
2308	Exhaust Hood	1.00	each	3,150.00 /each	3,150
2308	6" Stainless Steel Shelf	1.00	each	350.00 /each	350
2308	Hand Wash Sink	1.00	each	600.00 /each	600
2308	Drop-in Stainless Steel Prep Sink	1.00	each	1,350.00 /each	1,350
2308	Drop-in Stainless Steel Pot Wash Sink	1.00	each	1,600.00 /each	1,600
11400 BP-Foodservice Equipment					20,800
11650 BP-Athletic Equipment					
82	Basketball, Volleyball, and Pickle Ball Court Markings	5.00	each	100.00 /each	2,500
82	Electric Operated, Ceiling Hung Folding Basketball Goal	2.00	each	4,000.00 /each	40,000
82	Wall Padding	2.00	each	150.00 /each	1,500
82	Retractable Volleyball Equipment	1.00	each	2,000.00 /each	10,000
82	Scoreboards	2.00	each	2,000.00 /each	20,000

Item	Description	Takeoff Qty		Subcontract Unit Cost	Total Amount
11650 BP-Athletic Equipment					74,000
12200 BP-Window Treatment					
20	Window Shades	211.00	sqft	12.00 /sqft	2,532
12200 BP-Window Treatment					2,532
12480 BP-Entrance Floor Mats					
---	Framed Walk-Off Mats (recessed frame)	130.00	sqft	28.00 /sqft	3,640
12480 BP-Entrance Floor Mats					3,640
21000 BP-Fire Supression					
80	Fire Pump & Equipment	1.00	Isum	10,000.00 /Isum	10,000
80	Fire Transfer Switch	1.00	Isum	5,000.00 /Isum	5,000
92	Sprinkler System - Wet /SF	23,452.00	sqft	1.95 /sqft	45,731
21000 BP-Fire Supression					60,731
22000 BP-Plumbing & Gas					
6	Plumbing per Building SF	23,452.00	sqft	5.00 /sqft	117,260
22000 BP-Plumbing & Gas					117,260
23000 BP-HVAC					
102	Test and Balancing	23,452.00	sqft	0.45 /sqft	10,553
110	HVAC per CF Conditioned Space	386,554.00	cuft	1.55 /cuft	599,159
23000 BP-HVAC					609,712
26000 BP-Electrical					
104	Power/ Building SF	23,452.00	sqft	2.35 /sqft	55,112
104	Distribution/ Building SF	23,452.00	sqft	0.60 /sqft	14,071
104	Site Electrical/ Building SF	23,452.00	sqft	1.95 /sqft	45,731
104	Lighting/ Building SF	23,452.00	sqft	25.00 /sqft	586,300
104	Lighting Controls/ Building SF	23,452.00	sqft	2.25 /sqft	52,767
104	Mechanical Power/ Building SF	23,452.00	sqft	1.50 /sqft	35,178
104	Fire Alarm/ Building SF	23,452.00	sqft	0.75 /sqft	17,589
104	Tele/Data/ Building SF	23,452.00	sqft	0.95 /sqft	22,279
104	Security & Access Control/ Building SF	23,452.00	sqft	0.50 /sqft	11,726
104	Audio/Video ROUGH IN/ Building SF	23,452.00	sqft	0.25 /sqft	5,863
104	Temporary Power/ Building SF	23,452.00	sqft	0.45 /sqft	10,553
26000 BP-Electrical					857,171
31000 BP-Earthwork					
---	Licensed Survey & Base Layout	1.00	Isum	6,500.00 /Isum	6,500
320	Dewater	1.00	Isum	550.00 /Isum	550
1	Demo Existing Concrete Paving (Bulk) w/ Haul	5,799.00	sqyd	6.00 /sqyd	34,794
1	Sawcut Paving	10,327.00	lnft	2.05 /lnft	21,170
11	Clear and Grub Site -Light Brush/A	2.86	acre	4,500.00 /acre	12,870
201	Backfill Against Curbs	2,316.00	lnft	5.60 /lnft	12,970
216	Subgrade Preparation	965.10	sqyd	6.10 /sqyd	5,887
224	Finish Grade Site	3,173.02	sqyd	5.60 /sqyd	17,769
70	Strip Top Soil for Stock Pile	11,541.40	cuyd	4.50 /cuyd	51,936
188	Excavate: Site	1,232.50	cuyd	13.50 /cuyd	16,639
204	Excavate: Building Pad	1,504.70	cuyd	11.80 /cuyd	17,755
11	Haul Spoils to Stock Pile	12,211.20	cuyd	5.10 /cuyd	62,277
28	Haul Spoils to Off Site	4,932.50	cuyd	12.00 /cuyd	59,190
20	Moisture Treated Subgrade	8,685.93	sqyd	1.55 /sqyd	13,463
20	Lime Stabilization 8" at 6%	3,181.00	sqyd	5.00 /sqyd	15,905
100	Import Select Fill	1,003.10	cuyd	26.50 /cuyd	26,582
100	Hay bales	50.00	lnft	5.00 /lnft	250
120	Silt Fence	1,629.00	lnft	1.75 /lnft	2,851

Item	Description	Takeoff Qty	Unit Cost	Subcontract	Total Amount
31000 BP-Earthwork					379,359
	4,896.66 Labor hours				
31313 Termite Treatment					
10	Termite Treatment	23,452.00	sqft	0.10 /sqft	2,345
31313 Termite Treatment					2,345
32172 Pavement Markings					
05	Parking Stall Lines	109.00	each	5.50 /each	600
07	Directional Arrow ASSUMED	3.00	each	75.00 /each	225
18	Hatching Lines: cross walk ASSUMED	250.00	sqft	0.60 /sqft	150
35	Handicap Symbol	5.00	each	85.00 /each	425
50	Wheel Stop: PC Concrete 6'	5.00	each	125.00 /each	625
62	Parking Signage ASSUMED	25.00	each	200.00 /each	5,000
----	Power Wash Prior to Markings	10,015.00	sqft	0.07 /sqft	701
32172 Pavement Markings					7,726
	41.67 Labor hours				
32300 BP-Site Improvements					
10	Bike Racks ASSUMED	2.00	each	3,500.00 /each	7,000
10	Plaza Fountain ALLOWANCE	1.00	Isum	115,000.00 /Isum	115,000
10	Playground Equipment and Fiber Mulch ALLOWANCE	1.00	Isum	65,000.00 /Isum	65,000
32300 BP-Site Improvements					187,000
32900 BP-Planting					
110	Sod In Place	26,954.00	sqft	0.25 /sqft	6,739
128	Planter Beds	8,003.00	sqft	1.00 /sqft	8,003
128	Canopy Trees	47.00	each	375.00 /each	17,625
128	Ornamental Trees	18.00	each	250.00 /each	4,500
32900 BP-Planting					36,867
33000 BP-Utilities					
11	Traffic Control	1.00	Isum	0.00	550
20	Layout for Utilites	1.00	Isum	1,000.00 /Isum	1,000
20	Engineering	1.00	Isum	1,500.00 /Isum	1,500
20	Water Line Testing & Chlorination	678.00	Inft	12.00 /Inft	8,136
20	Public Inspection Fees ASSUMED RATE	1.00	Isum	6,500.00 /Isum	6,500
----	Water Meters ASSUMED RATE	2.00	Isum	3,000.00 /Isum	6,000
14	Water Line PVC 3" w/ Trenching, etc.	324.00	Inft	115.00 /Inft	37,260
20	Fire Water Line PVC 6" w/ Trenching, etc.	354.00	Inft	161.00 /Inft	56,994
20	Fire Riser Turn-Up	1.00	each	3,200.00 /each	3,200
----	Water System Tapping Saddle & Sleeve	2.00	each	5,300.00 /each	10,600
----	Trench Safety	678.00	Inft	14.00 /Inft	9,492
10	Fire Hydrant ASSUMED	1.00	each	4,300.00 /each	4,300
167	Sanitary Sewer Testing	275.00	Inft	6.00 /Inft	1,650
112	San. Sewer PVC 6"	275.00	Inft	175.00 /Inft	48,125
212	San Sewer Connection to Existing Manhole	1.00	each	3,125.00 /each	3,125
208	Grease Trap ASSUMED	1.00	each	13,000.00 /each	13,000
----	Sanitary Sewer Cleanout	3.00	each	600.00 /each	1,800
18	Storm Drain 12"	803.00	Inft	80.00 /Inft	64,240
18	Storm Drain 18"	565.00	Inft	90.00 /Inft	50,850
18	Storm Drain Catch Basin	5.00	each	2,500.00 /each	12,500
18	Storm Drain Curb Inlet ASSUMED	15.00	each	2,300.00 /each	34,500
18	Storm Drain 8" ASSUMED	650.00	Inft	80.00 /Inft	52,000

Item	Description	Takeoff Qty	Subcontract Unit Cost	Total Amount
	33000 BP-Utilities			<hr/> 427,322
	922.783 Labor hours			

Control Estimate # 1 Schedule

Control Estimate #1 assumed the activity durations shown in Exhibit B- Construction Manager's Project Schedule, which is appropriate for the scope in Control Estimate # 1, but does not have the level of detail subsequent Control Estimates will require.

Control Estimate #2 and subsequent Control Estimates will contain updated Construction Manager's Project Schedules which, when approved by the Owner, will supersede Exhibit B- Construction Manager's Project Schedule, and as well as any schedules shown in previous Control Estimates.

Exhibit Y – Guaranteed Maximum Price Amendment will also contain an updated Construction Manager's Project Schedule which will, when approved by the Owner, will also supersede Exhibit B- Construction Manager's Project Schedule, as well as the schedules shown in all previous Control Estimates.

Control Estimate # 1 Contingencies

Contingencies

Byrne recommends the following contingencies be carried.

Preconstruction Contingency Fund

- 100% Schematic Design Phase – 9% contingency
- 50% Design Development Phase – 5-7% contingency
- 100% Design Development Phase – 3-5% contingency
- 50% CD Phase – 1-3% contingency

Construction Contingency Fund – 1% contingency

Preconstruction Contingency Fund shall fall within the range shown, as mutually agreed by the Owner and Contractor, and will depend on the level of detail shown in the drawings and specifications at each phase.

The Construction Contingency Fund will not exceed the 1% shown.

Exhibit “M”

Escrow and Financing

Conditions

To Be Provided by Owner if Required by Owner's Lender.

Exhibit “N”

Disputed Work Schedule

To Be Provided by Owner in the Event the Contractor & Owner cannot Agree on the Scope of the Work included in the Contract Sum, until agreement is reached or Dispute Resolution is initiated.

Exhibit “X”

Construction Manager’s Insurance Certificate(s)

See attached.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/12/2015

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

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

PRODUCER Tucker Agency, Ltd. P O Box 2285 Ft. Worth TX 76113		CONTACT NAME: Judy Branch PHONE (A/C No. Ext): (817) 336-8520 FAX (A/C, No): (817) 336-6501 E-MAIL ADDRESS: judy@tuckeragency.com	
INSURED Thos S Byrne Ltd P O Box 470546 Ft Worth TX 76147		INSURER(S) AFFORDING COVERAGE INSURER A: Amerisure Insurance Company INSURER B: Amerisure Partners Ins Co INSURER C: Travelers Property & Casualty INSURER D: Hanover Insurance Co INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: 15/16 All Lines w/BR REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	Y	CPP 2048720 09	10/1/2015	10/1/2016	MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> XCU Included <input checked="" type="checkbox"/> Contractual Liability						PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						\$
B	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	Y	Y	CA 2048723 08	10/1/2015	10/1/2016	PROPERTY DAMAGE (Per accident) \$
	PIP-Basic					\$ 2,500	
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR						EACH OCCURRENCE \$ 25,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 25,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	ZUP-21N55695-15-NF	10/1/2015	10/1/2016	\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N	N/A	WC 2048722 08	10/1/2015	10/1/2016	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
			Y				E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Blanket Builder's Risk			IM 2048724 07	10/01/2015	10/01/2016	Limit Per Disaster \$20,000,000 Deductible 10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Additional insured in favor of certificate holder applies to all policies except workers compensation if required by written contract. Coverage provided is primary and non-contributory if required by written contract. Waiver of subrogation in favor of certificate holder applies to all policies if required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Richland Hills Attn: Eric Strong, City Manager 3200 Diana Drive Richland Hills, TX 76118	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Tracy Tucker/JUDY
---	--

Exhibit “Y”

Guaranteed Maximum Price Amendment

To be submitted after receipt of the 50% Construction Documents per the
Construction Manager’s Project Schedule.

Exhibit “Z”

Schedule of Exhibits

See Attached.

City of Richland Hills Activities Center
AIA A133 Owner-CMaR Agreement
Exhibit "Z" - Schedule of Exhibits

Contract Date: 20 OCT 15
 Printed: 10/13/2015 at 2:44 PM

Description	Prepared By	Date Due
Exhibit "A" - Scope of Work	Contractor	Attached
Exhibit "B" - Construction Manager's Project Schedule	Contractor	Attached
Exhibit "C" - Construction Manager's Soft Costs and Fee	Contractor	Attached
Exhibit "D" - Key Personnel	Contractor	Attached
Exhibit "E" - Confidentiality of the Project	Owner	21-Jan-16
Exhibit "F" - Customary and Usual Labor Rates	Contractor	18-Feb-16
Exhibit "G" - Rental Rates	Contractor	18-Feb-16
Exhibit "H" - Alternates with Costs and Expiration Dates	Contractor	18-Feb-16
Exhibit "I" - Unit Costs	Contractor	18-Feb-16
Exhibit "J" - Allowances	Contractor	Attached
Exhibit "K" - Schedule of Values	Contractor	18-Feb-16
Exhibit "L" - Control Estimate # 01	Contractor	Attached
Exhibit "M" - Escrow and Financing Conditions	Owner	21-Jan-16
Exhibit "N" - Disputed Work Schedule	Owner	N/A
Exhibit "X" - Construction Manager's Insurance Certificate(s)	Contractor	Attached
Exhibit "Y" - Guaranteed Maximum Price Amendment	Contractor	18-Feb-16
Exhibit "Z" - Schedule of Exhibits	Owner	Attached
OWNER (Signature)	CONTRACTOR (Signature)	
Eric Strong, City Manager	Martin Lehman, President, T.S. Byrne Management, Inc., General Partner	



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General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Richland Hills Activity Center

City of Richland Hills, TX

THE OWNER:

(Name, legal status and address)

City of Richland Hills

3200 Diana Drive

Richland Hills, TX

THE ARCHITECT:

(Name, legal status and address)

Barker Rinker Seacat Architecture, P.C.

3457 Ringsby Court

Unit 200

Denver, CO 80216

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

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

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(1968601416)

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2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. The Contractor shall assist and cooperate in preparing the Agreement, and within five (5) days after notification of award of the Work, having met with the Owner to finalize the Agreement, execute and deliver four (4) copies to the Owner.

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE DESIGN DOCUMENTS

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

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 THE INDEMNITEES

The Owner, which includes the Mayor, members of the City Council, employees, agents, assigns, and other city officers, the Owner's consultants, the Architect, Architect's consultants, and the agents and employees of any of them shall hereafter be known as the "Indemnitees".

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§ 1.1.10 CONSTRUCTION MANAGEMENT PLAN

The Construction Management Plan is prepared by the Contractor for its use in managing the Work, and is not a Contract Document. The Construction Management Plan must include, at a minimum and without limitation, the following separate deliverables, which are subject to review and approval by the Architect and Owner:

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

§ 1.1.11 AS-BUILT DOCUMENTS

The As-Built Documents are the Drawings, Specifications, and addenda thereto that may be updated by the Contractor to accurately reflect the actual Work in place, including without limitation, the incorporation of Change Orders, Responses to the Contractor's requests for information, Architect's supplemental instructions, field modifications, and other similar changes made to the Work during construction. The As-Built documents shall conform to the format and compatibility requirements of Section 1.5.3.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Where a conflict occurs between or within standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence and coordination of the Contract Documents are as follows:

- .1 Any addenda and modifications to the Drawings and Specifications take precedence over any earlier Contract Documents.
- .2 Should there be a conflict within the Specifications, or within the Drawings, or between the Drawings and Specification, the Architect shall decide which stipulation will provide the best installation and his/her decision shall be final.
- .3 The Drawing and Specifications are intended to coordinate with each other. Anything shown on the Drawings but not mentioned in the Specification or vice-versa, or anything not expressly set forth in either, but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both without any extra charge.
- .4 The Drawings, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the Contractor, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. Each Contractor, Subcontractor, and Sub-subcontractor shall properly coordinate his/her work with that of all other Multiple Prime Contractors and the Owner's other contractors. It is not within the scope of the Drawings to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of each Contractor to plan, coordinate, and install his/her work in such a manner so as to conform to the structure. Any conflict within the Drawings shall be referred to the Architect for disposition prior to the installation of any affected work.
- .5 Figured dimensions contained in the Contract Documents shall be accurately followed, even though they differ from scaled measurements. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Architect as to the dimensions to be used. Larger scale Drawings shall have preference over smaller scale drawings, but discrepancies shall be referred to the Architect for interpretation.

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. Design Documents are the product of work made for hire. These are and shall remain the sole property of the Owner. The Architect assigns to Owner all remaining proprietary rights that the Architect and its consultants may possess in the Design Documents including, without limitation, all copyright and other intellectual property rights. Disputes between the parties shall not impact this transfer of ownership, neither will a termination of this Agreement. In the event of a dispute between the parties regarding payment for Basic or Additional Services, the Architect is not obligated to deliver additional Design Documents or services for which it claims that it has not been paid, but the Owner's right to use the Design Documents and other services in its possession shall not be restricted.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. Project is the property of the Owner, and, without limitation, the Architect may not use the Design Documents for any purpose not related to the Project without the Owner's prior written consent.

§ 1.5.3 When requested by the Owner, the Architect shall furnish to the Owner the most current Design Documents, to include, without limitation all the most current drawings, design and engineering calculations, specifications, and any other information which the Architect or the Architect's consultant(s) have created in connection with or for the Project. At a minimum this information shall be provided in electronic format compatible with the most recent versions of the industry standard software for such information. Specifically, drawings shall be compatible with AutoCADD; design and engineering calculations compatible with MS Excel; and specifications with MS Word. All layers and information shall be fully accessible (not "PDF", "protected", or "plot" files).

§ 1.5.4 Submittal or distribution of the Design Documents or any portion thereof to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 1.5.5 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Design Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Design Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Design Documents on other

projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner, without limitation, all electronic and hard copies of any Project-related materials, records, notices, memoranda, recordings, drawings, specifications, mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.8 The representations and warranties contained in the Contract Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~§ 2.1.2~~ The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. The following information to a person, including the Architect or Contractor, who makes a request for information under Texas Government Code Sec. 2253, related to a payment or performance bond: (1) a certified copy of a payment bond and any attachment to the bond; (2) the public work contract for which the bond was given; and (3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.

§ 2.1.3 The Owner may obtain independent review(s) of the Architect's Design Documents, or of any document or other materials submitted by the Contractor, by a separate architect, engineer, contractor, cost estimator or any other consultant they deem necessary and put under contract to or cause to be employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Architect and Contractor shall cooperate with such Owner's other consultants fully, and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the Owner to obtain an independent review or imply that the Owner is in any way assuming responsibility for the work of the Architect and Contractor.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the ~~Owner-Owner~~, but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.2.6 The foregoing are, without limitation and in addition to, the other duties and responsibilities of the Owner specified in Article 6; Article 9; and Article 11.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day period after seventy-two (72) hour period~~ after receipt of verbal notification by the Architect to an officer of the Contractor, or within forty-eight (48) hours from receipt of written notice from the Owner or Architect to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 EXTENT OF OWNER RIGHTS

§ 2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents; at law; or in equity.

§ 2.5.2 In no event shall the Owner or Architect have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Notwithstanding anything else herein, and without limitation, any review(s), independent or otherwise, or approval(s) by the Owner or Architect of the Design Documents, the Contract Documents, the Contractor's Construction Management Plan(s), the Contractor's Construction Schedule, shop drawings, submittals, meeting minutes or other Contractor's services, deliverables or activities; nor the exercising of any of the rights and authority granted the Owner or Architect in the Contract Documents shall in any way reduce, diminish, or otherwise affect the Contractor's responsibilities, duties and accountability to the Owner for, without limitation, the construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Contract or Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is ~~located~~-located, Tarrant County, Texas. The Contractor shall designate in writing

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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 obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner and Architect assume no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner and Architect shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of and verify any existing conditions related to that portion of the Work, and shall observe and verify the impact of any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction per Section 12.2. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning

construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and 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 written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required 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 carefully check its own work and that of Subcontractors as the work is being performed.

§ 3.3.5 During the finishing stages of the project, the Contractor shall make frequent inspections of the Work, with the applicable Subcontractor(s) involved, if any, with seven (7) days advance notice to the Architect, and the Contractor shall identify incorrect and faulty Work.

§ 3.3.6 The Contractor shall ensure that incorrect or faulty Work is corrected immediately.

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

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 ~~Except~~ The Contractor is encouraged to consider products and systems that improve the project and retain the character of the products specified, but do not alter the intent of the project. However, ~~except~~ in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only by a formal request for substitution of products in place of those specified with the consent of the Owner, after evaluation by the Architect and in accordance with the conditions set forth below and elsewhere in the Contract Documents, and a Change Order or Construction Change Directive. The Contractor must submit to the Architect and the Owner, for each proposed substitution:

.1 A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog "cut sheets", warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;

.2 A written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable;

.3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable;

.4 The adjustment, if any, in the time of completion of the Contract and the Contractor's Construction Schedule in the event the substitution is acceptable;

.5 An affidavit stating that (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (2) the Contractor accepts the

warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect:

.6 Proposals for substitutions shall be submitted in triplicate to the Architect and the Owner's other consultants (if any), in sufficient time to allow no less than ten (10) business days for their respective reviews:

.7 No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein:

.8 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (1) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (2) specified products are unavailable through no fault of the Contractor; (3) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (4) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (5) when, in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations; and

.9 Whether or not any proposed substitution is accepted by the Owner, the Owner's other consultants (if any), or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect, and the Owner's other consultants for evaluating each proposed substitute.

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

§ 3.4.4 All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.

§ 3.4.5 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.5 WARRANTY

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~~ with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor shall defend and hold the Owner harmless against any claim, demand, loss, or damage by any breach of this warranty, and Contractor acknowledges it shall not limit such warranty by the provisions of Section 12.2.

§ 3.5.1 When written warranties are specified, the document shall include the following information:

Name and address of Project and Owner;
Article, materials, or systems covered;
Name and address of Installer;
Name and address of Contractor; and
Signature of individual authorized to sign contracts for the company issuing the warranty.

§ 3.5.2 The following minimum warranty terms shall be incorporated:

.1 Duration shall be one year or as otherwise specified, dated from the Date of Substantial Completion;

.2 The article, material or system is free from defective materials and workmanship;

.3 Costs of repair or replacement shall not accrue to the Owner, including without limitation repair or replacement of other work disturbed by, or because of, repair or replacement; and

.4 The warranty period of one year, or as otherwise specified, shall recommence upon the identification and completion by Contractor and acceptance by Owner of any warranty claim during the initial one-year warranty period.

§ 3.5.3 Warranties which are provided by a manufacturer for his/her product shall be received by the Contractor, filled out and filed with the manufacturer or other appropriate entity for the Owner. Certificates or registration stubs shall be included with the record documents submitted for the Owner upon completion of the Work. The Owner shall administrate manufacturer's warranties/guarantees after expiration of the Contractor's warranty.

§ 3.5.4 Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Contract Documents before final completion and written acceptance by the Architect and Owner shall not be construed as evidence of the Architect's or the Owner's acceptance of same, or the commencement of any warranty periods.

§ 3.5.5 The Owner has the privilege of such temporary or trial usage, for such reasonable time as the Owner, or the Architect deem proper. The Contractor shall make no claims for damage or injury to, or breaking of, any parts of such work which may be caused by weakness or insufficiency of structural parts, or by defective materials or workmanship.

§ 3.5.6 The Contractor may, without cost to the Owner, make such trial usage. However, trials shall only be conducted with the Architect's prior approval and under its observation as may be required by either of them. Equipment and/or materials shall be replaced or returned to "as new" condition prior to acceptance by the Owner.

§ 3.5.7 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.5.8 If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one (1) year period following the date of Substantial Completion described in Section 12.2.2.

§ 3.6 TAXES

The Contractor shall, to the extent not exempted under Section 13.12.11 herein, pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. In no event shall the Owner pay the Contractor for taxes that were not properly due or for which the Owner is exempt from paying under Texas law.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the ~~Contractor~~ Owner shall secure and pay for the building permit as well as for permit. The Owner shall also pay for any applicable gas, water, sewer and electrical service application fees; assessments against the property, including property tax, developmental excise and similar

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taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with Contract Documents, and without notice to the Architect that the Contract Documents are at variance with applicable laws, ordinances, rules, or regulations, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the Drawings, Specifications, or other Contract Documents, except where the Contract Documents call for Work or materials of higher standards than those required by codes or ordinances, in which case, the Contract Documents shall govern. Nothing contained in the Contract Documents shall be construed as authority for the Contractor to violate any applicable codes or ordinances in effect at the site.

§ 3.7.4 **CONCEALED OR UNKNOWN CONDITIONS.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 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 an equitable adjustment 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 in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.4.1 In no event shall any adjustment in the Contract Sum or Contract Time be made for conditions which should have been known to the Contractor or would have been noticed by a Contractor of similar size and experience pursuant to his/her on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the site which have been made available to the Contractor or have been performed by the Contractor or its Subcontractors; are part of the Contract Documents; or are part of the materials provided by the Contractor to be used in constructing the improvements.

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

§ 3.7.6 The Contractor shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including but not limited to all immigration, environmental and safety laws, statutes, rules, codes, orders and regulations.

.1 The Contractor shall also maintain at all times during the term of the this Agreement (and for the time otherwise required by law) all records required by the United States Citizenship and Immigration Services ("USCIS"), including without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees and shall respond at all times during the term of this Agreement in a timely fashion to any inspection request related to such I-9 forms by the Contractor, Owner or governmental agency or authority;

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.2 Furthermore, during the term of this Agreement (and for the time otherwise required by law), Contractor shall cause its officers, directors, managers, agents, and employees to cooperate fully in all respects with any audit, inquiry, inspection, or investigation that may be conducted by the USCIS of the Contractor or any of its employees or subcontractors;

.3 The Contractor shall immediately, and in any event within two (2) hours of Contractor's first notice of an event described in this Section 3.7.6, notify the Owner in writing and by in-person voice communications (not voicemail) of any unscheduled inspections, raids, investigations, inquiries, visits, or audits conducted by the USCIS, OSHA, or any other governmental agency or authority related to environmental, immigration, or employee safety issues of the Contractor, its agents, employees, its Architect, Subcontractors, or Sub-subcontractors;

.4 The Contractor shall, on a monthly basis during the term of this Agreement, conduct an audit of the I-9 forms for its employees and shall promptly correct any defects or deficiencies that are identified as a result of such audit;

.5 The Owner may, at its sole discretion, terminate this Agreement immediately if, at any time during the term of this Agreement, the Contractor violates or is in breach of any provision of this Section 3.7.6, or the USCIS determines that Contractor has not complied with any of the immigration laws, statutes, rules, codes, or regulations of the United States or any applicable state laws or regulations, or any applicable local ordinances, including without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and any successor statutes thereto.

.6 If an employee of the Contractor or if the Contractor is later determined to not have valid I-9 information then that employee shall be removed and barred from the Project site at the Contractor's expense; and

.7 The Contractor shall require the Subcontractors, Sub-subcontractors and material suppliers to make the representations and warranties set forth in this Section 3.7.6 and to be bound by the same requirements set forth herein.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work including but not limited to weekends, evenings and nights, or as otherwise reasonably and mutually agreed in writing with the Owner, until all punch list items have been completed to the satisfaction of the Architect. No subcontractor shall perform work on the site without the presence of the Superintendent or Assistant Superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has a reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 All of the Contractor's proposed on-site personnel must be approved by the Architect and Owner. The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made a reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the Contractor's on-site personnel must be preceded by written notification of the Architect and Owner no less than seven (7) business days before the anticipated event. Such proposed changes must be approved by the Architect and Owner. The Contractor shall designate a second person in charge in writing in the event the Superintendent is temporarily absent due to illness, vacation, or any other cause(s).

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.1.1 Where the Contract is based on a Stipulated Sum, the Contractor, immediately after being awarded the Work, and before execution of the Agreement, shall meet at a Preconstruction Conference with the Owner for the purpose of reviewing the Contractor's proposed Construction Management Plan; assisting the Owner with further developing the Master Project Schedule; and integrating the Work of the Contractor into that of the Multiple Prime Contractors and Owner's other contractors (if any).

§ 3.10.1.2 Where the Contract is based on Cost of the Work with a Guaranteed Maximum Price, the Preconstruction Conference to review the Contractor's proposed Construction Management Plan shall take place when mutually agreed between the Contractor and Owner, but in no event later than forty-five (45) days prior to the date of commencement or Notice to Proceed with construction, whichever is earlier.

§ 3.10.1.3 The Contractor's initial Construction Management Plan presented at the Preconstruction Conference shall include, without limitation, the Contractor's proposed, completed deliverables for those components specified in this Contract. The Construction Management Plan and its components shall be provided and presented by the Contractor to the Owner and Architect in a clear, concise format to allow their effective and expedient review. All elements of the Construction Management Plan will be to the most current national standards of the industry for a project of similar size and complexity; in addition the Quality Management, Commissioning and Turnover Plan will conform, at a minimum and without limitation, to the requirements of Sections 3.2, 3.3, 3.4 and 13.5.

§ 3.10.1.4 The Owner, after consultation with the Architect, shall provide comments to Contractor on the Construction Management Plan proposed by Contractor no more than fifteen (15) days after the Preconstruction Conference, and the Contractor shall revise and resubmit the Construction Management Plan within seven (7) days of receiving comments. As the approval of the Construction Management Plan is required to proceed with the Work, subsequent review(s) and revision(s), if required shall be prompt and thorough. The final Construction Management Plan and its components shall be subject to the approval of the Owner, which approval shall be a requirement precedent to the Contractor's mobilization on site to begin the Work.

§ 3.10.1.5 The Owner's review, comment and approval and Architect's review of the Contractor's Construction Management Plan is for general content in limited areas of specific interest or concern to the Owner and Architect. Such review, comment and approval is not an endorsement of the Contractor's means and methods, nor suitability or effectiveness of the Contractor's Construction Management Plan, for which the Contractor is solely responsible. Such review, comment or approval by the Owner and review by the Architect does not in any way diminish, reduce or relieve the Contractor of any duties, responsibilities or requirements to perform created under this Agreement.

§ 3.10.1.6 As a key component of the Construction Management Plan, the Contractor's Project Schedule will include, but is not limited to, work activities required by each section of the specifications as listed in the Contract Documents to complete the Contract. The duration, sequence, cost for each work activity (separate amounts for labor and material), and dependency of the work activity on other work activities will be generated by the Contractor, and will also conform to the standards in this Section 3.10 and elsewhere in the Contract Document, if any.

§ 3.10.1.7 The Contractor's Project Schedule must include all of the following:

.1 Use precedence format, critical path method scheduling without the use of artificial activity constraints or "negative float";

.2 Use software, techniques and methods satisfactory to the Owner;

.3 Provide an electronic and graphic representation of all activities and events that will occur during performance of the Work;

.4 Identify each subproject, to include, without limitation preconstruction, construction, commissioning, turnover of the Work, and Owner's occupancy;

.5 Set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Contractual Milestone Dates");

.6 Upon review by the Architect and written review and acceptance by the Owner of the Contractual Milestone Dates, the Contractor's Project Schedule shall be deemed part of the Contract Documents and attached to the Agreement as a new Exhibit, issuance of a Change Order for the purpose by the Architect; and signing of such Change Order by the Contractor, Architect, and Owner, in that order;

.7 If not accepted, the Contractor's Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and resubmitted for acceptance;

.8 Submission of an updated Contractor's Project Schedule with each Application for Payment shall be a mandatory condition precedent to the payment by the Owner to the Contractor pursuant to an Application for Payment, and the Owner shall not be obligated to make payment if the Contractor fails to include an updated Contractor's Project Schedule reflecting the then-current conditions on the Project and the anticipated progress of Work based on those conditions; and

.9 All requests for change orders, modifications or additional compensation from the Contractor affecting the Contract Time or Contract Sum shall include a detailed schedule with both data and graphics showing the specific effect of the changed, modified or differing condition(s) on the critical path of the Contractor's Project Schedule.

§ 3.10.1.8 The Contractor, prior to preparing the Construction Management Plan and attending the Preconstruction Conference, will have reviewed the sequences, durations, sequencing and dependencies of activities, material deliveries, and sequenced man-hour staffing to complete the Work. Work activities which have an installed value of twenty thousand dollars (\$20,000) or more will be broken down into major products or operations except where mutually agreed otherwise by Contractor and Owner, and these values cost-loaded into the Contractor's Project Schedule as deemed necessary by the Owner. Upon request by the Owner, the Contractor shall support values given for each work activity with data that will substantiate its correctness. The Owner may require the Contractor to show separate work activities and Contractual Milestones for, as examples only and without limitation, Substructure Completion; Superstructure Completion; Building Exterior Skin Completion; Interior Finishes Completion; Owner's Beneficial Occupancy, and other similar dates the Owner, at its sole discretion deems important to the Project.

§ 3.10.1.9 In the event the Contractor does not timely provide the Contractor's Construction Management Plan with an acceptable Contractor's Project Schedule containing such elements, information, and processes in a form and with a level of detail acceptable to the Architect and the Owner, the Owner may, at the Owner's discretion, unilaterally generate the target Contractor's Project Schedule at the Contractor's expense, and impose such schedule, sequences,

logic, and/or durations on the Contractor as it deems necessary to complete the Work, or the Owner may declare the Contractor in breach of contract. Whether or not the Owner decides to implement this option, all other contractual provisions relating to breach of contract will continue to be in full force and apply without modification. The Owner may deduct from the Contractor's Application(s) for Payment the amount paid by the Owner for generating the Contractor's Project Schedule.

§ 3.10.1.10 Upon completion of the Master Project Schedule, and signed acceptance by the Owner and all Multiple Prime Contractors, the Master Project Schedule shall supersede previously submitted schedules. Each updated Master Project Schedule shall supersede previous updates.

§ 3.10.2 The Contractor shall ~~prepare a submittal schedule, promptly after being awarded the Contract and thereafter,~~ at the Preconstruction Conference, and as a sub-system of its Contractor's Project Schedule, prepare an easily isolated, sorted and separately viewed submittal schedule, and thereafter update it as necessary to maintain a current submittal schedule, and shall submit ~~the such schedule(s)~~ for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's Construction Schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not an approvable submittal schedule thirty (30) days prior to the date established for commencement of the Work, the Contractor shall not mobilize on site, or be entitled to any increase in Contract Sum or extension of Contract Time based on the ~~time required for review of submittals,~~ delay of the Work or time required for review of submittals during the prosecution of the Work.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent ~~schedules submitted to the Owner and Architect.~~ Contractor's Project Schedule submitted to the Owner and Architect and incorporated into the approved Master Project Schedule.

§ 3.10.4 The Owner together with the Contractor, will monitor the Master Project Schedule, and incorporate the Contractor's updates to its portions of this overall schedule. As all Multiple Prime Contractors are also obligated to follow the Master Project Schedule and their respective schedules therein, they will be required to actively cooperate and participate in the preparation and updating of their portion of this schedule, as well as updating the overall Master Project Schedule by the Owner. The Contractor will be kept updated on all significant Master Project Schedule changes materially affecting the Contractor's Project Schedule.

§ 3.10.5 The Contractor will produce a Short Interval Schedule containing activities for not less than one (1) previous week and the next three (3) weeks, and which focuses on the major weekly work activities of each subsystem. At each weekly meeting this Short Interval Schedule will be reviewed by the Contractor with all affected Subcontractors and the Owner.

§ 3.10.6 In the event of substantial delay, if excusable under the Contract, for which extension of the Contract Time has or will be granted, the Owner will review and may require revision by the appropriate contractor(s) of affected component of the Master Project Schedule as required by the specific applicable situation(s), and with the cooperation of all the Multiple Prime Contractors on the Project.

§ 3.10.7 The Contractor shall, at mutually agreed intervals, submit to the Architect a progress report stating, without limitation, labor forces mobilized and working on site; areas worked in or on; percent complete of current work activities; any potential schedule or coordination problems; material deliveries received; site visitors; and other information as required by the Owner.

§ 3.10.8 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Contractor's Project Schedule and shall promptly advise the Owner of any delays or potential delays. The accepted Contractor's Project Schedule shall be updated to reflect actual conditions as frequently as mutually agreed by the Contractor and Owner; but in no event less frequently than with each Application for Payment; and at other times as may be reasonably requested by the Owner or Architect. In the event any progress report or schedule update indicates any actual or potential delays, the Contractor shall, using both the most currently approved Contractor's Project Schedule as a baseline for comparison, and a written narrative, propose an affirmative plan to correct the delay (hereinafter referred to as the "Proposed Recovery Schedule") which must include the following:

.1 The Proposed Recovery Schedule will show the results of working additional shift or days, adding additional labor, and any of the other actions specified in Section 8.4, if necessary, all as described in the accompanying narrative;

.2 The Proposed Recovery Schedule will be reviewed by the Owner, and the Contractor will promptly and diligently make all adjustments to the Proposed Recovery Schedule reasonably requested as a result of such review;

.3 The Proposed Recovery Schedule shall become the most current, approved Contractor's Project Schedule upon its approval by the Owner, issuance of a Change Order for the purpose by the Architect; and signing of such Change Order by the Contractor, Architect, and Owner, in that order.

.4 In no event shall any progress report, schedule update or Proposed Recovery Schedule constitute an adjustment in the Contract Time, any Contractual Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.9 In the event the Owner or Architect, determine that the performance of the Work, as of a Contractual Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation those further specified in Section 8.4.

§ 3.10.10 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10 and Section 8.4 as frequently as the Owner and Architect deem necessary to ensure that the Contractor's performance of the Work will comply with any Contractual Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.11 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of any part of the Owner's organization or any stakeholders or invitees thereof. The Contractor shall, upon the Owner's or Architect's request, reschedule such portion of the Work during hours when the interference to the Owner's organization, or any stakeholders or invitees thereof, will be minimized or eliminated. Any postponement, rescheduling, or performance of the Work under this Section 3.10.13 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1; and an equitable adjustment in the Contract Sum if the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents; and to the extent such rescheduling or postponement is required for the convenience of the Owner.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall make available to the Owner or Architect for inspection and copying the record copy of the drawings, specifications, addenda, Change Orders and other Modifications, including all such documents maintained by the Contractor in electronic format, upon reasonable request of the Owner or Architect and, in any event, within twenty-four (24) hours of receipt by Contractor of a request from Owner or Architect for such review and/or copying. The Owner or Architect may request the record copy of the As-Built Documents, specifications, addenda, Change Orders and other modifications of the Work to be updated before Substantial Completion to reflect the most current condition of the Project, as additional Cost of the Work paid as a Change Order at the Owner's expense. The Owner or Architect may require the Contractor to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the Owner's expense.

§ 3.11.1 The Contractor shall provide final electronic files and one "hard" copy of the Drawings and Specifications to the Owner updated to reflect the final condition of the Project with the final Application for Payment as a condition precedent to final payment.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents, after Contractor has verified the information contained within said submittals is in accordance with representations required by Section 3.12.6 and in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents and (4) verified the information contained within said submittals is in accordance with all applicable Federal, state and local codes or ordinances in effect at the site.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

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

§ 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 written 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. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop

Drawings and other submittals prepared by such ~~professional~~ professional who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 Copies of all approved Shop Drawings, Product Data, Samples and similar submittals shall be preserved in an orderly manner and delivered by the Contractor to the Owner upon Final Completion.

§ 3.13 USE OF SITE, DELIVERY AND STORAGE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.1 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner before using any portion of the site.

§ 3.13.2 The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto, which includes, but is not limited to, the all of the following duties and acknowledgements:

.1 The Contractor acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract.

.2 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions.

.3 The Contractor shall be responsible for the mitigation and/or abatement of all noise, dust, fumes, traffic or other by-product of construction activity that, in the opinion of the Owner or the Architect, have an adverse affect on the quality of life or productivity for Project stakeholders, the Owner's current operations, or the Owner's employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the Owner and Architect.

.4 The Contractor shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the Owner and Architect. Repeat offenses will cause the Owner or Architect to require, through the Contractor, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site.

.5 The Contractor shall, at a minimum, secure the site by erecting and maintaining a 6'-0" chain link fence around the perimeter of the construction site. This fence shall remain intact until such time the site becomes secure in the opinion of the Contractor, as a result of construction progress (by way of example, and without limitation, completion of site grading and backfill, installation of doors and windows, etc.).

.6 The Contractor shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use.

.7 The Contractor is advised that the project site area is subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the Contractor

shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.

§ 3.13.3 The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas, which includes, but is not limited to, all of the following duties:

.1 The access to the site shall be maintained in compliance with all local, state, and Federal code and life safety requirements for ingress by first responders and other similar emergency requirements.

.2 The Contractor shall inform the Owner, Architect and any officials referenced in Section 3.13.4.1 in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to Owner's and Architect's approval, such approval not to be unreasonably withheld.

.3 The Owner shall be responsible for snow removal to the limits of the construction site only so far that the Contractor will have access to the entrance to the construction area.

.4 Snow removal within the limits of work and/or for the purpose of performing and protecting work by individual contractors is the duty of the Contractor.

§ 3.13.4 During the performance of the Work, the Contractor, its Subcontractors, Sub-subcontractors, suppliers and their employees agree they shall:

.1 Use such entrances to the construction site that may be designated by the Owner;

.2 Perform the Work at such times of the day and days of the week as may be designated by the Owner; and

.3 Accept that these entrances and times may be reviewed and changed from time to time by the Owner.

§ 3.13.5 The Contractor shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Owner to proceed has been given to the Contractor. If the utility service must be interrupted, the Contractor shall, at Contractor's sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the city manager, the mayor, the city or county clerk, etc. as applicable) and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give the most effective notice to such utility users.

§ 3.13.6 The Contractor shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed on the job, and shall properly store and protect same at the Contractor's expense.

§ 3.13.7 Notwithstanding any other provision herein, the Contractor shall take all necessary measures to store materials on site for which payment has been requested by the Contractor or been made by the Owner so that they shall not deteriorate, be damaged or be stolen, which includes, but is not limited to, all of the following:

.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor.

.2 Protection of construction materials and equipment stored at the Project site from fire, weather, burglary, pilferage, vandalism and mischief, damage, and all other adversity; and the care and protection of materials and Work installed in the building is solely the responsibility of the Contractor.

.3 The Contractor shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the Owner.

.4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.

§ 3.13.8 The Contractor shall not deliver any materials to the site which are not to be installed by same Contractor without fifteen (15) day's advance notice in writing to the Owner of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the Contractor and a representative of the Owner, who shall agree, and the Contractor shall document such agreement in writing:

.1 the materials delivered are undamaged, or if damaged, such damage is documented by digital photo(s);

.2 they are in the quantities shown on the purchase order, invoice or bill of lading accompanying the shipment or delivery or otherwise provided;

.3 the storage conditions are adequate for the purposes; and

.4 the Contractor has accepted responsibility for insurance and ongoing protection per Section 10.2.8 for such material until it is released to a third party authorized in writing by the Owner to receive it.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's 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 or 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 Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall ~~indemnify~~ indemnify, defend, and hold harmless the Owner, Architect, Owner's consultants, Architect's consultants, and ~~agents~~ agents, officers, and employees of any of them ~~from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising~~

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~~out of or resulting~~ (the Indemnitees) from and against any and all claims, damages, losses, and expenses, including, but not limited to, attorneys' fees, arising out of, resulting, or related in any way to or 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), including loss of use therefrom, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

~~§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, safety violations, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with any:~~

.1 Violation of or failure comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor or any person or entity for whom either is responsible;

.2 Means, procedures, techniques, safety precautions, or sequences of execution or performance of the Work; and

.3 Failure to secure and pay for permits, fees, approvals, licenses, and inspection as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees set out in Section 3.18.1 from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the 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, as the Work progresses and when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The

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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.

§ 4.2.3 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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 Neither the Owner nor the Architect nor the Owner's other consultants shall be responsible or liable for the safety program(s) developed by the Contractor or any of the separate Multiple Prime Contractors, for the safety of persons and property, or for compliance with statutes, rules, regulations, and orders applicable to conduct the Work. Should any Contractor or their Subcontractor(s), or the Sub-subcontractor(s) make a claim against the Indemnitees, or should they or any governmental entity bring any action or levy and fine or penalty against the Indemnitees on account of any safety-related damage or violation of law alleged to have been sustained, the Contractor agrees that it will hold the Indemnitees harmless against any such violation, fine, claim or suit, and that it will reimburse the Indemnitees the cost of defending such suit, and if any judgment against the Indemnitees arises therefrom, the Contractor shall pay or satisfy it and shall pay all costs incurred by the Indemnitees.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.6.1 Failure of Contractor to give the Owner or Architect written notice of Contractor's objections, within three (3) business days, to directives, instructions, interpretations, or minutes from the Owner or Architect, shall constitute final and conclusive consent on the part of the Contractor to such directives, instructions, interpretations, or minutes of the Owner or Architect.

§ 4.2.6.2 Any written notice from the Owner or Architect to the Contractor shall be sufficiently given when delivered to the last known business address of the Contractor, or to his registered or authorized agent, representative, or officer. Any written notice from the Contractor to the Owner shall be sufficiently given when personally delivered to the Owner's Office, Attn: Project Manager, or at such other address and to the attention of such person as the Owner may from time to time designate in writing.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and

completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections ~~3.3, 3.5 and 3.12~~, 1.2, 3.2.1, 3.3, 3.5, 3.12, and 13.9. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret ~~and decide~~ matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations ~~and decisions~~ of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such ~~interpretations and decisions~~, interpretations, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's ~~decisions~~ opinions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or 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 or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the

Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 SUBCONTRACTUAL RELATIONS

~~By appropriate agreement, written where legally required for validity, 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, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, the Owner's other consultants and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, the Owner's other consultants, and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available 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.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as an Exhibit, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. The Contractor's subcontractors, however, are not intended third-party beneficiaries of this Agreement by pass through, assignment, or otherwise, except as provided in the Contract Documents, and the Owner shall not be bound to Contractor's subcontract agreements.

§ 5.3.3 Whenever the Contractor receives payment pursuant to the Contract Documents, the Contractor shall make payments to each of its Subcontractors of any amounts actually received which were included in the Contractor's Application for Payment to the Owner for such subcontracts. The Contractor shall make such payments within ten (10) days of receipt of payment from the Owner in the same manner as the Owner is required to pay the Contractor under

the Contract Documents if the Subcontractor is satisfactorily performing under its contract with the Contractor. Such payments from Owner to Contractor shall be imposed with an express trust to assure that payment is made to all Project Subcontractors, Sub-subcontractors, and suppliers. In addition to the express trust imposed upon such funds and the fiduciary duties incumbent upon the Contractor, Texas Property Code Chapter 162 shall apply when applicable.

§ 5.3.4 The Contractor shall monitor the Subcontractors, who shall pay all suppliers, Sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the Subcontractor any amounts actually received which were included in the Subcontractor's request for payment to the Contractor for such persons, in the same manner set forth in this Section 5.3 regarding payments by the Contractor to the Subcontractor. If the Subcontractor fails to make such payments in the required manner, the Subcontractor shall pay said suppliers, Sub-subcontractors, and laborers interest in the same manner set forth in Section 5.3.5 regarding payments by the Contractor to the Subcontractor.

§ 5.3.5 At the time the Subcontractor submits a request for payment to the Contractor, the Subcontractor shall also submit to the Contractor a list of the Subcontractor's suppliers, Sub-subcontractors, and laborers. The Contractor shall be relieved of the requirements of this Section regarding payment in ten (10) days and interest payments until the Subcontractor submits such list. If the Contractor fails to make timely payments to the Subcontractor as required by this Section, the Contractor shall pay the Subcontractor interest as calculated by Texas Government Code Sec. 2251.025, on the amount of the payment which was not made in a timely manner. The interest shall accrue for the period from the required payment date to the date on which payment is made. Nothing in this Section 5.3 shall be construed to affect the retention provisions of any contract.

§ 5.3.6 The provisions of this Section 5.3 shall be made a part of each contract between the Contractor and each Subcontractor, either expressly or by incorporation by reference to this Section of the Contract Documents.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

§ 5.4.2 ~~Upon such assignment, if the Work~~ If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for ~~increases in cost resulting from~~ any increase in direct verifiable costs incurred by such Subcontractor as a result of the suspension.

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

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the assignment of the Subcontractor to the Owner after suspension and termination of the Contract, as provided in this Section 5.4. This Section 5.4 shall be construed to prohibit a pass through or assignment of rights, unless authorized by the Owner in writing.

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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or

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operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the 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, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends ~~for on~~ proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report 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, except as to defects not then reasonably discoverable.

§ 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 the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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

§ 6.2.6 Should the Contractor wrongfully delay or cause damage to the work or property of any separate contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such separate contractor sues or initiates a judicial proceeding against the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense. The Owner may fund the defense of such proceedings

contemplated by this Section but, in any event, if any judgment or award against the Owner arises therefrom, the Contractor shall pay to satisfy it to the extent of Contractor's responsibility.

§ 6.2.7 Should any such separate contractor wrongfully delayed or damaged by the Contractor or persons for whom the Contractor is responsible per Section 6.2.6 make a claim against the Indemnitees, or bring any action against the Indemnitees, on account of the damage alleged to have been so sustained, the Contractor shall hold the Indemnitees harmless and defend them against any such claim or suit, and shall reimburse to the Indemnitees the cost including, without limitation, reasonable, additional attorney's fees incurred defending such suit, and if any judgment against the Indemnitees arises there from, the Contractor shall pay or satisfy it and shall pay all costs incurred by the Indemnitees.

§ 6.2.8 Should the Contractor be caused damage by any separate contractor, by reason of such separate contractor's failure to perform properly under his/her contract with the Owner, no action will lie against the Owner, and the Owner shall have no liability therefore, but the Contractor may assert his/her claims for damages directly against such separate contractor and the Owner shall assign such rights to Contractor, as allowed under Texas law.

§ 6.2.9 Inasmuch as the completion of the building within the prescribed time is dependent very largely upon the close and active cooperation of all those engaged therein, it is, therefore expressly understood and agreed that each Contractor shall lay out and install his/her work at such time(s) and in such manner as to not delay or interfere with the carrying forward of the work of the other contractors.

§ 6.2.10 Where the work of one contractor directly affects the conditions of the work of another contractor including, as examples only, and not limited to, providing shoring for backfilling, providing protective covering for painting, providing adequate bracing of door jambs, etc., the Contractor performing the work which will adversely affect another contractor's work shall be responsible for providing adequate protection based upon methods used to perform his/her work.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate ~~contractors and~~ contractors, or the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those ~~responsible~~, responsible, which allocation shall be final.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and reasonably inferable from the intent of the Contract Documents may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 or as otherwise provided herein, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 CHANGE ORDERS

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

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- .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.

§ 7.2.4 Methods used in determining adjustments to the Contract Sum may include those listed in Sections 7.3.3, 7.3.7 and 7.3.10.

§ 7.2.5 Agreement on any Change Order constitutes a final settlement of all past and future claims, at law or in equity, concerning all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, delays, all direct and indirect costs, any claim for damages associated with such change, and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.2.6 CHANGE ORDERS REQUIRING CITY COUNCIL APPROVAL

The Contract Sum may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Richland Hills City Council is required if a Change Order involves a decrease or an increase of \$50,000.01 or more. The original Contract Sum may not be increased under this Section 7.2 by more than twenty-five percent (25%). The original Contract Sum may not be decreased by more than twenty-five percent (25%) without the consent of the Contractor, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the Contractor under this Section 7.2, the additional time required to obtain City Council approval shall not be factored into any past or future claim for delays or calculated as a part of the Change Order request.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed ~~or~~ percentage-fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 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.

§ 7.3.6 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.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit ~~as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ calculated using the sum of the actual costs allowed in Sections 7.3.7.1 through 7.3.7.5, and using the percentages as set forth in Section 7.3.12 below. In such case, and also under Section ~~7.3.3.3, 7.3.3,~~ the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 ~~Additional costs of supervision and field office~~ Additional, verifiable payroll and subsistence costs incurred by the Contractor, Subcontractor, and Sub-subcontractor of field personnel directly attributable to the change.

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

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

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

§ 7.3.11 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination. The Architect may consult with the Owner in connection with such determination either at the direction of the Owner or at the Architect's discretion.

§ 7.3.12 In Subparagraph 7.3.6, the allowance for the combined total of onsite and offsite overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;
- .2 For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7;

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.6 Under no circumstance shall costs of the Contractor's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work under 7.3.7. Conversely, the Contractor shall be compensated for their labor within the overhead and profit percentage specified in Section 7.3.12 below.

.7 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also.

.8 When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.

.9 Overtime, when specifically authorized by the Owner and not as a requirement for the Contractor to fulfill its obligations under this Agreement, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

§ 7.4 MINOR CHANGES IN THE WORK

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

§ 7.5 SUPPORTING INFORMATION

Notwithstanding the above, requests for an adjustment in the Contract Sum or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner and Architect. The Contractor shall also comply with all provisions of Articles 8 and 15 with respect to claims. The required information shall be provided by the Contractor in less than twenty-one (21) days from the Contractor's request for an adjustment in the Contract Sum or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the Owner or Architect.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of mortgages, deeds of trust, and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Attention is directed to the fact that the Work is urgently needed by the Owner; for this reason it shall be agreed that the Contractor will substantially complete all Work under the Contract within the time established in the Contract Documents and the most recently approved Contractor's Project Schedule. The Contractor shall begin the Work on the date of commencement as defined in the Contract Documents; carry the Work forward with adequate resources; furnish, without limitation such labor, supervision, materials, facilities, and equipment; and work such hours, including night shifts, overtime operations, and Sundays and/or holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the most recently approved Contractor's Project Schedule.

§ 8.2.4 The Contractor shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in the Contract Documents, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the Owner in writing.

§ 8.2.5 The Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the Contractor as well as the respective Multiple Prime Contractors.

§ 8.2.6 The Contractor shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.

§ 8.2.7 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, transportation, unavoidable casualties or other causes beyond the Contractor's control; causes; or by delay authorized by the Owner pending mediation and arbitration; mediation; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

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

§ 8.3.4 Any claims for extension of time shall be made in writing to the Owner and Architect not more than ten (10) days after commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the Contractor should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.

§ 8.3.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at <http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm> or other data as mutually agreed by the Architect and Contractor for the Project area. In allowing delays for weather, the Architect will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis of one-and-four-tenths (1.4) calendar days credit for every working day lost, with each separate extension figured to the nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

§ 8.4 CONTRACTOR'S OBLIGATIONS AFTER DELAY

§ 8.4.1 If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or Contractor's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the Architect that the Work will not be completed within the Contract Time or in accordance with the Contractor's Construction Schedule, the Contractor agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the Owner or Architect, as required to substantially eliminate, in the judgment of the Architect, the backlog of Contractor's Work on the Project:

§ 8.4.2 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;

§ 8.4.3 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;

§ 8.4.4 Reschedule activities to achieve maximum practical concurrence of accomplishment; and

§ 8.4.5 Do whatever else is reasonably required by the Owner or Architect.

§ 8.4.6 These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Contractor's Construction Schedule.

§ 8.4.7 In the event of a delay, the Architect may also require the Contractor to immediately submit a Proposed Recovery Schedule as specified in Section 3.10.10 above. If the Proposed Recovery Schedule is not satisfactory, the Architect may unilaterally establish a new Proposed Recovery Schedule acceptable to the Owner; issue it as a Construction Change Directive; and the Contractor shall comply therewith. The Architect may also require the Contractor to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the Owner, or Architect.

§ 8.4.8 Failure of the Contractor to substantially comply with the requirements of this Section 8.4 shall be considered grounds for a determination by the Owner, after consultation with the Architect, that the Contractor is in breach of this Agreement by failing to prosecute the Work and that of the Project so as to ensure its completion within both the Contract Time and the updated Contractor's Construction Schedule.

§ 8.4.9 Likewise, in the event the progress of the Project falls behind the predictions of the Master Project Schedule through no fault of the Contractor, the Owner or Architect may request, and the Contractor may agree to take one or more of the Extraordinary Measures, with the Owner bearing the cost for such measures by Change Order.

§ 8.4.10 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 8.4, except as specifically noted otherwise in Section 8.4.9.

§ 8.5 OWNER'S RIGHTS AFTER DELAY

§ 8.5.1 In the event that any Contractor fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved Contractor's Project Schedule, the Owner or the Architect shall have the right to impose any or all of the following options:

§ 8.5.2 Require the Contractor to substantiate the capability to get back on schedule within ten (10) business days;

§ 8.5.3 Require the Contractor to take some or all of the Extraordinary Measures, and do whatever else is required by the Owner or Architect until Contractor confirms, to the satisfaction of the Owner and Architect, the progress of the Work is in compliance and congruence with the most recently approved Contractor's Construction Schedule, such measures being at no extra cost to Owner and Architect;

§ 8.5.4 Withhold progress payment, or portions thereof, until such time as the Contractor is in compliance and congruence with the most recently approved Contractor's Project Schedule; and

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§ 8.5.5 Contact or visit the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at Contractor's expense.

§ 8.6 LIQUIDATED DAMAGES

§ 8.6.1 Should the Contractor fail to substantially complete the Work on, or before, the original date set forth in the Contract, (or on or before the corrected date as granted by extensions to Contract Time), the Owner may at its sole discretion permit the Contractor to proceed, and in such case, there shall be deducted from any monies due or which may become due the Contractor, a sum as specified herein, for each and every calendar day that the Work shall remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the Owner. Liquidated damages are intended to compensate the Owner for the Contractor's failure to meet the deadlines set forth herein, and shall not excuse the Contractor from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The Contractor agrees that the sums in Section 8.6.2 are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

§ 8.6.2 Contractor shall pay as liquidated damages to the Owner: **Seven-Hundred and Fifty Dollars (\$750.00)** for each calendar day that expires after the date set forth in the Contract for Final Completion of the Work.

§ 8.6.3 The parties acknowledge, covenant, and agree that the daily basis and the amount set forth above for liquidated damages are reasonable because of the unique nature of the Project as a benefit to the public; the fact that inconvenience to the public will be one of the significant impacts of any failure by the Contractor to timely complete the Work; and that it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to the Owner and the public.

§ 8.6.4 Permitting the Contractor to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract. The Contractor acknowledges the Owner receives no benefits from early completion of the Project or the Work, therefore all rights, if any, to an early completion bonus or other increases in the Contract Sum for such early completion are hereby waived by the Contractor.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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.

§ 9.2 SCHEDULE OF VALUES

~~Where the Contract is based on a stipulated sum or Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating meet with the Architect at the Preconstruction Conference with a proposed Schedule of Values as specified in Section 3.10. The Contractor's Schedule of Values will be reviewed by the Owner and Architect in the context of the Contractor's proposed Construction Management Plan, including but not limited to the Contractor's Construction Schedule therein. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the Contractor's Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to the Contractor's and Subcontractor's contract amount(s). The Schedule of Values shall allocate the entire Contract Sum to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the Owner and Architect may require. This schedule, Schedule of Values, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's 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. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of

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requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and Architect and in compliance with all applicable statutes:

.1 A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;

.2 Duly executed unconditional waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment;

.3 Duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors conditional upon and establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in the current Application for Payment;

.4 An updated Contractor's Construction Schedule per Section 3.10.1.7 clearly showing the actual progress of the Work for each activity against the Work previously scheduled to be completed during the period, and against targeted activities' previously approved completion dates; and

.5 If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

.6 Notwithstanding the above, Applications for Payment shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Architect, and shall include, at a minimum, an updated monthly Contractor's Construction Schedule clearly and graphically comparing the actual "work-in-place" completed to the Work previously projected to be complete for the period. Failure to provide this information in the proper form may be, in and of itself, grounds for rejection of the Application for Payment, at the discretion of the Architect.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the ~~Owner's title to such materials and equipment or otherwise protect the Owner's interest, and~~ stored materials and equipment which must be properly tagged as to material and job identification; must be available for inspection by the Architect; and such requests for payment must be accompanied by documentary evidence as specified, without limitation, in Sections 3.13 and 11.3.1.4, which supports the request's validity; quantity and value of materials; proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of Insurance or otherwise protects the Owner's interests. Such request shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Such materials shall be:

- .1 Protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, and the Lender;
- .2 Specifically marked for use on the Project; and
- .3 Segregated from other materials at the storage facility.

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

.1 The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens or verified claims filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, the project bond or any portion of the property of any of the Indemnitees (referred to collectively as "liens or verified claims" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or verified claims and agrees to pay any judgment or liens or verified claims resulting from any such actions, lawsuits, or proceedings.

.2 The Owner shall release any payments withheld due to a lien or verified claim if the Contractor obtains security acceptable to the Owner or a lien bond that is (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than Two Hundred percent (200%) of such lien or verified claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

.3 Notwithstanding the foregoing, the Owner reserves the right to settle any disputed lien or verified claim by payments to the claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made if the amount paid exceeds the amount remaining owed under the subcontract.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 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 comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 Certification will be issued for ninety percent (90%) of the amount requested by the Contractor and approved by the Architect to be properly due until the Contractor is ninety percent (90%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that, should the Contractor at any time fail to keep current with the approved progress schedule, fail to assure payment to Subcontractors, Sub-subcontractors and suppliers as required hereunder; or fails to promptly and diligently correct Work that does not comply with the Contract Documents, certification of ninety percent (90%) shall automatically again become effective and shall apply as long as the Contractor lags behind such progress or fails to assure such payment.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to ~~make~~ assure payments properly to Subcontractors, Sub-subcontractors and suppliers or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance ~~with the Contract Documents.~~ with the Contract Documents;
- .8 Contractor's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;
- .9 failure to fully execute the Contract with all associated documents as required;
- .10 liens filed for any portion of the Work; or
- .11 failure of the Contractor to comply with any provisions of the Contract Documents, including without limitation Section 8.4.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously ~~withheld~~ withheld less all associated damages, costs and expenses, suffered or accrued by the Owner or Architect. In the event the Architect nullifies a previously issued Project Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Contractor shall promptly reimburse to the Owner amounts the latter had paid pursuant to the nullified project Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until and unless the reasons for nullification of the previously issued project Certificate for Payment have been remedied and all associated damages, costs, and expenses of Owner and Architect have been paid by the Contractor.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 The Contractor shall not stop work or terminate the Contract if the Architect or Owner's lender should refuse to issue any certificate because the Application for Payment does not conform with the requirements of Sections 9.3, 9.4, 9.5 or any other portion of these General Conditions, as supplemented herein.

§ 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall pay each ~~Subcontractor~~ Subcontractor, Sub-subcontractor and supplier, no later than ~~seven~~ ten (10) days after receipt of payment from the Owner the amount to which the ~~Subcontractor~~ Subcontractor, Sub-subcontractor and supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's, Sub-subcontractor's and supplier's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, Sub-subcontractor and supplier, require each ~~Subcontractor~~ to make payments to their Sub-subcontractors and suppliers in a similar manner.

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

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

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

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

§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments~~ The Contractor shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner. Sums withheld by the Owner from the Contractor for deficiencies solely attributable to the Contractor shall not be grounds for the Contractor to withhold sums due to any Subcontractor. All sums paid to the Contractor for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the Contractor for payment to those persons to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. ~~Nothing~~ However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 To the extent Contractor has received payment in accordance with the terms of this Agreement, the Contractor agrees to keep the Work and the site of the Project and all project bonds free and clear of all liens and verified claims related to labor and materials furnished in connection with the Work.

§ 9.6.9 Notwithstanding anything to the contrary contained in the Contract Documents, if any lien or verified claim is filed or there is evidence to believe that any lien or verified claim may be filed at any time during the progress of the Work or the duration of this Contract, the Owner may refuse to make any payment otherwise due the Contractor or may withhold from any payment due the Contractor a sum sufficient in the opinion of the Owner to pay all obligations and expenses necessary to satisfy such lien or verified claim. The Owner may withhold such payment unless or until the Contractor, within ten (10) calendar days after demand therefore by the Owner, shall furnish satisfactory evidence that the indebtedness and any lien or verified claim in respect thereof has been satisfied, discharged, and released of record, or that the Contractor has legally caused such lien or verified claim to be released of record pending the resolution of any dispute between the Contractor and the person or persons filing the lien or verified claim. If the Contractor fails to furnish satisfactory evidence within ten (10) calendar days of the demand thereof, the Contractor, the Architect, and the Owner shall meet within two (2) additional business days to review and agree in writing on the Contractor's action plan for disposing of the lien or verified claim in question. Failing an agreement satisfactory to the Owner and the Architect,

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the Owner may discharge such indebtedness in any manner and may deduct the amount thereof, together with any and all losses, costs, damages, and attorney's fees suffered or incurred by the Owner from any sum payable to the Contractor under the Contract Documents, including but not limited to final payment and retained amounts.

§ 9.6.10 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, at the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.7 FAILURE OF PAYMENT

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

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, all major systems are operational, and all safety features are completed and Owner's receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the Owner. In addition to the other requirements of the Contract Documents, and without limitation, the Contractor must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the Contractor shall be deemed to have achieved Substantial Completion.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor will also provide the Architect a comprehensive list of all claims previously and properly made in writing and identified by the Contractor as unsettled at the time of Substantial Completion.

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

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

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

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

§ 9.8.6 The Contractor's acceptance of payment per Section 9.8.5 shall constitute a waiver for all purposes of all claims or causes of action by the Contractor against the Owner and the Architect, except those previously and properly made in writing and identified in the list provided by the Contractor as unsettled at the time of Substantial Completion per Sections 9.8.2.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, ~~provided as~~ such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 ~~and provided it is~~ authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, 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 terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under Section 3.5 or otherwise required pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least ~~30~~ forty-five (45) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed 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 surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties or other warranties required by the Contract Documents.

~~§ 9.10.5 Acceptance Application for and acceptance of final payment by the Contractor, a Subcontractor or material supplier-Contractor shall constitute a waiver of claims by that payee against the Owner or Architect except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment, arising after the waiver given at Substantial Completion payment described in Sections 9.8.2 and 9.8.6.~~

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 all of the following:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; 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 erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel~~-personnel, and the Contractor shall give the Owner and the Architect reasonable advance written notice of such planned activities.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone

directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.2.9 The Contractor shall immediately report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately electronically, as well as by telephone or messenger to the Owner and the Architect.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 Hazardous materials include any material in such quantity, concentration, and physical or chemical characteristics including but not limited to ignitability or toxicity, so as to be capable of posing an unreasonable risk to health, safety and/or property if released into the atmosphere, transported, stored, or disposed of. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials.

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 report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such 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 duly processed and approved, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up-start-up, both as specified in Article 7. The term "rendered harmless" shall be interpreted to mean, without limitation that levels of hazardous materials, including but not limited to asbestos and polychlorinated biphenyls, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 To the fullest extent permitted by Texas law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or

death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for 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 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 indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~

§ 10.4 EMERGENCIES

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

§ 10.5 Site Visits

Anyone other than the Owner's designated representatives, the Architect, the Architect's consultants, and the Owner's other consultants visiting the job site who is not employed by a Contractor shall be required to register with the Contractor's site office before proceeding onto the job site.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in ~~the jurisdiction in which the Project is located Texas~~ and as further qualified in Paragraph 11.5.1, such insurance as will protect the Contractor and the Indemnitees from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that which are applicable to the Work to be performed including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities exempt by statute from the requirements of Section 11.1.1.1, but required by the Contract Documents to provide the insurance required by that Section;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than eight (8) years following final payment; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18. The Contractor's commercial general liability insurance should be written on ISO Form CG 00 01 10 01 or its equivalent and provide the following:

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- (1) Premises/operations (Including X-C-U coverages as applicable);
- (2) Independent contractors;
- (3) Products and completed operations with a per project aggregate limit, which coverage shall be maintained for a period of eight (8) years from the date of the Final Payment;
- (4) Personal injury (libel, slander, false arrest) liability with employment exclusion deleted;
- (5) Blanket Contractual, including, but not limited to a specified provision for the Contractor's obligations under Section 3.18 of the Contract Documents;
- (6) Pollution;
- (7) Broad form property damage including but not limited to completed operations; and
- (8) Umbrella excess liability.

.9 Professional Errors and Omissions Liability is required from all licensed and certified professionals, including, but not limited to, contractors, engineers, architects, design-build and design professionals as follows:

- (1) The retroactive date preceding the date of the contract; and
- (2) an extended reporting period of three (3) years past substantial completion.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in this Article 11, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work; and for such duration as required in the Contract Documents; policies of insurance issued by a responsible carriers acceptable to the Owner, and in form and substance satisfactory to the Owner, that afford the coverages set forth in the Schedule of Insurance, attached to the Contract and made a part of it as Exhibit "X" – Construction Manager's Insurance Certificate(s). All such insurance shall be written on an occurrence basis, with the sole exception of Professional Errors and Omissions Liability Insurance. In the event professional liability coverage is not available on "an occurrence" basis, a "claims made" basis policy with effective and retroactive dates prior to the effective date of the Contract Documents and an extended reporting period of at least three (3) years beyond Substantial Completion or as otherwise required by the Contract Documents, whichever is greater, may be substituted with the written consent and approval of the Owner and Architect. The Contractor's completed operations coverage shall be maintained until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. The Contractor agrees to deliver to the Architect, for transmittal to the Owner with a copy to the Architect within ten (10) days of the date of the Owner-Contractor Agreement and prior to bringing any equipment or personnel onto the site of the Work or the Project site, and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. of insurance, certified copies of all required insurance policies procured by the Contractor under or pursuant to this Article 11 or, with the written consent of the Owner and Architect, Certificates of Insurance in form and substance satisfactory to the Owner and Architect evidencing the required coverages with limits not less than those specified in Section 11.7 below. The coverage afforded under any insurance policy obtained under or pursuant to this Section 11.1 shall be primary to any valid and collectible insurance carried separately by any of the Indemnitees. Furthermore, all policies and Certificates of Insurance shall expressly provide that no less than forty-five (45) days prior written notice (ten (10) days for non-payment of premium) shall be given the Architect and Owner in the event of material alteration, cancellation, nonrenewal or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.3.1 Certificates of Insurance with the following or similar wording are not acceptable: "Failure to notify the certificate holder shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. In no event shall any failure of the Architect to receive certified copies or certificates of policies required under Paragraph 11.1 or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the Contractor's obligations to obtain insurance pursuant to this Article 11.

§ 11.1.5 When any required insurance, due to the attainment of normal expiration date or renewal date, shall expire, the Contractor shall furnish to the Architect Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy forty-five (45) days prior to renewal date. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differ in any way from the previous policy, the Contractor shall also furnish the Architect with a certified copy of the renewal or replacement policy unless the Owner provide the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and Architect, and written by carriers acceptable to the Owner and Architect.

§ 11.1.6 Any Aggregate limit under the Contractor's liability insurance, shall by endorsement, apply to this Project separately.

§ 11.1.7 The Contractor shall notify the Owner and Architect in writing of any reduction in collectible limits (aggregate limits) by an amount in excess of Fifty Thousand Dollars (\$50,000), and the Contractor shall promptly procure, at no expense to the Owner, such additional coverage as necessary to restore the valid and collectible limits of such insurance to that required under the Contract Documents.

§ 11.1.8 The Contractor shall cause each Subcontractor to procure insurance congruent with the Contractor's insurance requirements as specified in the Contract Documents and satisfactory to the Owner and Architect and name each of the Indemnitees as additional insureds under the Subcontractor's commercial general liability policy. The additional insured endorsement included on the Subcontractor's comprehensive general liability policy shall state that coverage is afforded the additional insureds with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

§ 11.1.9 The Indemnitees shall also be shown as "Additional Insureds" on the property, commercial general liability, automobile liability and umbrella (excess) liability policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided listing the Indemnities as Additional Insureds, using ISO forms CG2010, CG2037, CA0070, CA0032 or their equivalents.

§ 11.1.10 A "waiver of subrogation" clause in favor of the Owner will be attached to the workers compensation, commercial general liability, umbrella (excess) liability, and the property insurance policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided showing waivers of subrogation in favor of the Indemnities using ISO forms CG2404, CA0070, CA0032, WC0003 or their equivalents.

§ 11.1.11 The Owner reserves the right to review the insurance requirements during the effective period of its Agreement with the Contractor, and provide a written request for the Contractor to make any reasonable and commercially available adjustments to insurance coverages and/or limits when deemed reasonably prudent by the Owner based upon its unilateral interpretation of changes in statutory law, court decisions or the Owner's potential increase in exposure to loss.

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§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

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

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, sprinkler leakage, backup of sewers and drains, mold, pollutant cleanup, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition and increased cost of construction occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner ~~does not intend~~ intends to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. ~~The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~

§ 11.3.1.3 If the property insurance requires deductibles, the ~~Owner-Contractor~~ shall pay costs not covered because of such deductibles.

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

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

§ 11.3.6 Before an exposure to loss may occur, the ~~Owner-Contractor~~ shall file with the Contractor ~~a copy of each policy that includes Owner and Architect certificates of insurance evidencing such insurance coverages required by this Section 11.3.~~ Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least ~~30 days'~~ forty-five days' (ten (10) days for non-payment of premium) prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation. All Contractor and Subcontractor insurance policies shall provide waivers of subrogation against the Owner by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

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

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

§ 11.3.10 The Owner as fiduciary in good faith shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. ~~If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to Contractor must furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Such bonds shall be issued in an amount equal to the total Contract Sum by a surety company licensed in the state where the Project is located, with a current A.M. Best rating of at least A- X, included on the U.S. Treasury Department's listing of approved sureties, and acceptable to the Owner and Architect, or as expressly agreed otherwise by the Owner and Architect in writing.

.1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment, and shall satisfy the requirements Texas Government Code Chapters 2253 and 2269.

.2 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.

.3 Every Bond under this Section 11.4.1 must display the Surety's Bond Number and a rider including the following provisions, which shall be attached to each Bond:

- (1) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents.
- (2) Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
- (3) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

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

§ 11.4.3 The Bond Form shall be "Performance Bond" - AIA Document A312, 2010 Edition, pages one through four, together with "Payment Bond" - AIA Document A312, 2010 Edition, pages one through four.

§ 11.4.4 Additional Performance and Payment Bonds may be recommended by the Architect and required by the Owner, at the Owner's sole discretion, from any Subcontractor. The Owner will pay such actual, additional expenditures as Cost of the Work using the process specified in Article 7 for Changes in the Work. All such bonds shall be in form and substance satisfactory to the Owner and Architect.

§ 11.4.5 The Contractor shall deliver the required bonds to the Owner no later than three (3) business days following the date of the Agreement is entered into, or if the Work is to be commenced prior to the date the Agreement is entered into, in response to a notification of award. The Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§ 11.4.6 The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

§ 11.5 Insurance Companies

All insurance coverage procured by the Contractor shall be provided by insurance companies having current policyholder ratings no lower than "A- X" by A.M. Best and acceptable by the Owner and Architect, or as expressly agreed otherwise by the Owner, Construction Manger and Owner in writing. Such companies must be licensed to do business in the State of Texas.

§ 11.6 Failure to Purchase Insurance

If one or more of the Indemnitees, or the Contractor is damaged by the failure of either the Owner or the Contractor to purchase or maintain the insurance required under this Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees and court and settlement expenses) properly attributable to the failure.

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§ 11.7 Insurance Limits Required

The following insurance limits are the minimums to be carried by the Architect, the Architect's consultants, the Owner's other consultants, the Contractor, and the Subcontractors, Sub-subcontractors, and suppliers, unless higher limits are required by their respective Agreements or Texas law (in which case those limits shall control):

.1 Automobile Liability

\$1,000,000 Combined Single Limit

.2 Commercial General Liability

\$1,000,000 Aggregate, Occurrence and Personal Injury

\$ 500,000 Fire Damage

\$ 5,000 Medical Payments

.3 Professional Errors & Omissions Liability

One times project amount;

\$1,000,000 Occurrence & Aggregate Minimum

\$5,000,000 Occurrence & Aggregate Maximum

.4 Worker's Compensation

Statutory Limits

\$1,000,000 Employers Liability

.5 Umbrella or Excess Liability

\$1,000,000 Occurrence & Aggregate Minimum

\$25,000,000 Occurrence & Aggregate Maximum

.6 All Risk Builders Risk or Installation Floater

Contract Limit or replacement cost of the Work, whichever is greater

§ 11.7.1 Limits for primary policies may differ from those shown when Umbrella or Excess Liability insurance is provided.

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, specifically including but not limited to additional testing and inspections, the cost of uncovering and replacement, and replacement; the cost of any additional supervision, material, labor, equipment, rental charges, home office overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work of both the Contractor and the Project, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions; as well as, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.1.1 If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable or for which the Contractor is otherwise responsible.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, or within such longer period of time as may be prescribed by law, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During~~ If the condition is reasonably discoverable, during the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.2.4, and charge the reasonable costs to the Contractor.

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

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

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

§ 12.2.2.3 The one-year period for correction of Work shall also be extended by the period of time between Substantial Completion and the actual completion of the corrective Work performed by the Contractor pursuant to this Section 12.2, but only with respect to those portions of the Work.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. These costs specifically include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office overhead, and other expenditures necessitated to rectify the non-complying conditions, protect adjacent Work, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions.

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

§ 12.2.6 The Contractor's obligations under this Section 12.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as

appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. In the event final payment has been made by the Owner subsequent to accepting such non-conforming Work, the Contractor shall pay the Owner for the reduction in the Contact Sum occasioned by such acceptance.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the ~~law of the~~ laws of the state of Texas. Venue on any dispute arising out of this Contract shall be in Tarrant County, Texas, which is the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4 and where performance is primarily to occur.

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 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.

§ 13.4.2 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 there under, except as may be specifically agreed in writing.

§ 13.5 QUALITY MANAGEMENT TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 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 13.5.1, 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 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 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 and all costs specified in Section 12.2 shall be at the Contractor's expense. The Contractor also agrees the cost of testing, inspection, and approval services required for the convenience of the Contractor in scheduling and performance of the Work, and the cost of such similar services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

§ 13.5.4 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.

§ 13.5.5 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.

§ 13.5.6 It is the intent of the Construction Documents to require the Contractor to control the quality of the Work using the processes specified in the Contractor's Quality Management, Commissioning, and Turnover Plan contained within the most recent Construction Management Plan approved by the Owner and Architect. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work, and shall conform to the most recently approved Contractor's Construction Schedule.

§ 13.5.7 The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the Contractor's, as is the obligation to provide the Work and a complete and functional project per the Contract Documents. Notwithstanding anything herein, or in subsequently approved Quality Management, Commissioning and Turnover Plans, the Architect's approval of such plan(s) does not relieve the Contractor in any way of this responsibility.

§ 13.5.8 The Contractor shall be in charge of testing and inspections of the Work, including but not limited to, the services of a certified testing laboratory which shall be contracted to and paid for by the Owner; acceptable to the Architect; and which will perform the tests as called for in the Contract Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:

.1 The frequency and type of Quality Control testing shall be established by the Contractor, and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Contract Documents. The type and amount of testing required by the Contract Documents shall be seen as the minimum required, and shall be increased, if in the opinion of the Contractor, more testing is needed to meet the above requirements of the Contractor.

.2 The Contractor shall concurrently provide the Architect copies of all test results it receives within three (3) business days of receipt of same.

.3 The Owner shall provide such Quality Assurance testing as it and the Architect mutually deem adequate for their own needs. The Owner shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the Owner, or lack thereof shall in no manner affect the responsibilities of the Contractor or Architect under this Agreement.

§ 13.5.9 The Contractor shall facilitate and conduct weekly (or more frequent if necessary) meetings on site for the coordination of all mechanical, electrical and special systems installation activities and possible interference(s) above ceilings, in mechanical rooms, etc. The mechanical trades shall typically have preference in the event of conflicts, and therefore the mechanical contractor's coordinator will usually lead each meeting, unless the Contractor decides another trade or the Contractor should take the lead. The Architect shall be informed of the meetings at least seven (7) days in advance, and the appropriate Architect's consultants should be invited to attend by the Contractor, as supplemented and coordinated by the Architect.

§ 13.5.10 The Contractor's Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes, Contractor will review, in detail, the steps for completing testing of all building systems with the Owner and Architect. This plan shall be coordinated with and shall be made part of the Contractor's Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall

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be performed in the presence of the appropriate Owner's and Architect's consultant(s), representatives of the Owner, and at its option, either or both the Architect.

§ 13.5.11 When heating, air conditioning, ventilating, exhaust, or other items of mechanical, electrical or other similar equipment are installed, or other systems or equipment requiring testing as may be specified in the Contractor's Quality Management, Commissioning and Turnover Plan, it shall be the responsibility of the Contractor, Subcontractor or Sub-subcontractor installing such equipment to operate it for a period of time satisfactory to the Owner prior to acceptance and before the start of Warranty. The duration of such operation shall be as the Owner, Owner's consultant(s), Architect's consultant(s), Owner's employees and other Owner's representatives (the Turnover Team) shall reasonably require for proper testing of the respective system and thorough instruction of the Owner's operating personnel.

§ 13.5.12 All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the Owner's operating personnel on each system's operations and maintenance shall be provided by the Contractor, Subcontractor or Sub-subcontractor responsible for providing and installing the equipment. Such tests and instruction shall be in meetings held solely for this purpose (the Turnover Meetings), which shall be coordinated and managed by the Contractor, who shall show their dates in the Contractor's Construction Schedule at least sixty (60) days prior to occurrence. The Contractor shall schedule the Turnover Meetings at times reasonably convenient for the Owner's consultant(s), Architect's consultant(s), Owner's employees and other Owner's representatives that the Owner and Architect agree are necessary to attend for each system. The Architect may attend such Turnover Meetings at its discretion.

§ 13.5.13 The Contractor shall provide a digital video record to the Owner, with copies to the Architect of all meetings for the purpose of Owner operational staff instruction or training; as well as commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.

§ 13.5.14 The Contractor shall prepare a digital video record of the project for the Owner with copies to the Architect at such stages as shall be indicated by the Architect for the purpose of documenting the location of piping, conduit, equipment, or other construction to be concealed at a later date; recording key inspections and tests; providing evidence of unforeseeable conditions encountered by the Contractor on site; and other construction issues as the Architect may reasonably require from time to time.

§ 13.5.15 The Contractor shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Contractor shall notify the Architect in writing immediately upon completion of this marking, and the Architect will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the Owner. The Architect will then give permission for removal in writing to the Contractor. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located, the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest stops accruing on the date the party mails or electronically transmits the payment.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. ~~The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.~~

§ 13.8 RELEASE OF RETAINAGE AT SUBSTANTIAL COMPLETION

Notwithstanding any other provision in the Contract Documents to the contrary, upon Substantial Completion of the Work the Owner shall be entitled to retain from the Contract Sum due to the Contractor an amount equal to the greater

of: (a) the product obtained by multiplying eight (8) times the total cost of completion of the Punch List items as estimated by the Architect; or (b) twenty-five thousand dollars (\$25,000), whichever is greater.

§ 13.9 MEASUREMENT

Before ordering any material or doing any Work, the Contractor shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Architect for consideration before proceeding with the Work. The Contractor shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the Owner and Architect of these prior to commencing any Work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

§ 13.10 EXPEDITING MATERIALS

The Contractor shall immediately, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work, and shall submit to the Architect evidence that such orders have been placed in accordance with the Contractor's Construction Schedule.

§ 13.11 ADDRESSING THE OWNER'S ADDITIONAL NEEDS AND CONCERNS

§ 13.11.1 Notwithstanding the above, the Owner has a unique set of stakeholders and organizational structure that creates special challenges the Contractor must completely and successfully address to the satisfaction of the Owner and Architect in the performance of the Work under this Agreement. The actions that shall be taken to address these special challenges include, but are not limited to, the following:

.1 The Contractor shall provide the Superintendent once per month for a scheduled meeting with the Owner for a progress update on the project if requested by the Owner. A walk-through of the site may be held as a part of this meeting, which shall be scheduled for 4pm or shortly thereafter on a standard business day.

.2 The Contractor may be required to provide the Superintendent for one meeting per month with the Architect for the purpose of assisting the Owner in preparing City Council agenda items and assisting City staff in preparing presentations to the City Council for the benefit of the public. The actual preparation and submission of the City Council of any agenda or work session item shall be performed by the Owner.

.3 In addition to the meetings required to complete the Project, it is anticipated the Owner may request tours from time to time of the project and the site. The Contractor shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Owner.

§ 13.12 ADDITIONAL PROVISIONS

§ 13.12.1 In the event that any provision herein is held to be unlawful, against public policy, or a violation of the Charter or Ordinances of the City of Richland Hills, Texas, such provision shall be modified to make it valid, or if modification is not possible, such provision shall be deleted and the remainder of this Agreement shall remain in full force and effect.

§ 13.12.2 Each party hereto agrees to, without limitation, perform all acts; provide all services, material, equipment, labor and supervision; and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.12.3 All exhibits referred to in the Contract Documents are, by reference, incorporated herein for all purposes.

§ 13.12.4 The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of the Contract Documents.

§ 13.12.5 Any specific requirement in this Contract that require responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Contract Documents or the applicable subcontract.

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§ 13.12.6 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written document signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific material restated in the written document signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes under any Agreement with the Owner shall be allowed.

§ 13.12.7 The Contractor shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.12.8 The Contractor shall provide Owner with copies of all notices received by Contractor from Subcontractors, Sub-subcontractors, and/or suppliers to Contractor.

§ 13.12.9 The Owner is a Texas home-rule municipality and as such is generally exempt from taxation under Texas law, which may include the purchase of items, materials, or supplies purchased on behalf of the Owner for this public works project. Contractor shall confirm that the Owner is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the Owner.

§13.12.10 Owner affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by Owner to Contractor subject to the terms and conditions of the Contract Documents. In the event that Owner approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by Contractor, (other than that contemplated by the Contract Documents under any remedy-granting provision), Owner will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the Owner's governing body.

§ 13.12.11 In the event the Owner is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the Contractor shall notify the Owner and Architect of such requirement(s) in writing not less than thirty (30) days in advance, and attach a copy of the specific advertising and noticing required.

§13.12.12 The Contractor shall, in addition to compliance with the requirements of Section 3.7.6 and without limitation, not knowingly employ or contract with an illegal alien to perform any of the Work under this Agreement. The Contractor shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (ii) fails to certify to the Contractor that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.

§13.12.12.1 The Contractor has verified or attempted to verify through participation in the federal basic pilot program ("Basic Pilot Program"), if applicable, that the Contractor does not employ any illegal aliens or the Contractor verifies that the Contractor has not been accepted into the Basic Pilot Program prior to entering into this Agreement. The Contractor further verifies that if the Contractor has not been accepted into the Basic Pilot Program, the Contractor will apply to participate in the Basic Pilot Program every three months until the Contractor is accepted or this Agreement is completed, whichever is earlier. If the Basic Pilot Program is discontinued or suspended by the federal government, this Section 13.12.12.1 shall not be required or be effective.

§13.12.12.2 The Contractor shall not use Basic Pilot Program procedures to undertake pre-employment screening of job applicants while performing under this Agreement.

§13.12.12.3 If Contractor obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall:

- .1 Notify the Subcontractor and the Owner within three (3) days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and,

- .2 Terminate the subcontract with the Subcontractor if, within three (3) days of receiving notice that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien, the Subcontractor does not stop employing or contracting with the illegal alien. The Contractor shall not terminate the contract with the Subcontractor if during the three (3) days, the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

§13.12.12.4 The Contractor shall comply with any reasonable request of the Texas Workforce Commission made in the course of an investigation pursuant to state law.

§13.12.12.5 In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Contract Document the Owner may be entitled to for a breach of the Agreement, if the Owner terminates this Agreement, in whole or in part, due to Contractor's breach of the obligations set forth above in this Section 13.12.12 Contractor shall be liable for actual and consequential damages to the Owner.

§ 13.12.13 It is the express intention of the parties that this Agreement is not to be construed as a waiver of any immunities or defenses of the Owner under Texas law.

§ 13.12.14 Notwithstanding any other provision in the Contract Documents to the contrary, public property is protected from forced sale and therefore may not be made the subject of a mechanic's lien. Nothing in the Contract Documents shall be construed to allow a mechanic's lien on public property owned by the Owner. The Owner does not waive its immunities or right to object to or contest such a lien.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2** An act of government, such as a declaration of national emergency that requires all Work to be stopped;
or
- .3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, 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 promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1. Documents.~~

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 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' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including ~~reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~ other costs allowed by law.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the ~~Contractor~~ Contractor:

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall ~~include profit.~~ be as specified in Article 7. No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor ~~shall~~ shall:

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

§ 14.4.3 ~~In case of~~ Upon such termination for the Owner's convenience, the Contractor shall ~~be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~ recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely

fabricated off the Project site, delivered and stored in accordance with the Contract Documents and Owner's further instructions. The Contractor waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, lost opportunity costs, and potential and actual unabsorbed overhead costs. The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims that the Owner has against the Contractor under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

~~§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary, the Contractor shall provide written notice as required by Sections 8.3.4 and 8.3.5.~~

~~§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction in accordance with Section 8.3.5.~~

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

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

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

§ 15.2 INITIAL DECISION

§ 15.2.1 ~~Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, Claims~~ shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision or request another method of alternative dispute resolution (ADR) other than mediation, as the parties may agree in writing at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation or join in another method of ADR within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation agree to ADR within the time required, then both parties waive their rights to mediate or pursue ~~binding dispute resolution ADR~~ proceedings with respect to the initial ~~decision.~~ decision, and will default to litigation.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

§ 15.3 MEDIATION

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract ~~except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.~~ shall be subject to mediation or other Alternative Dispute Resolution ("ADR") as mutually agreed by the parties as a condition precedent to precedent to defaulting to the court having competent jurisdiction per the Contract Documents. If a statute of limitations is at issue, then suit may be filed by either party to toll the statute, but the suit shall then be stayed pending completion of the agreed mediation or ADR process. If the parties cannot agree on a mediator, then the court may appoint one upon application of either party.

~~§ 15.3.2~~ The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation, mediation, or ADR. A request for mediation or ADR, shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Contract.

~~§ 15.3.3~~ The parties shall share the mediator's fee and any filing or ADR's costs and fees equally. The mediation or ADR shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements-Written agreement(s) reached in mediation or ADR shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 15.4.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

~~§ 15.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

~~§ 15.4.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 15.4.4.2~~ Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chris Squadra, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 11:29:44 on 10/14/2015 under Order No. 4903104065_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)