

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION MANAGER AT RISK CONTRACT WITH STEELE & FREEMAN, INC., FOR CONSTRUCTION PHASE SERVICES OF THE LINDA MCNATT ANIMAL CARE AND ADOPTION CENTER PROJECT FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8558 – AWARDED TO STEELE & FREEMAN, INC., INCLUDING THE GUARANTEED MAXIMUM PRICE IN THE NOT TO-EXCEED AMOUNT OF \$17,546,956.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for construction phase services of the Linda McNatt Animal Care and Adoption Center Project for the Capital Projects Department; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies, or services shown in the “Request Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

<u>RFP</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8558	Steele & Freeman, Inc.	\$17,546,956.00

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Jordan Villarreal, District 1:	_____	_____	_____	_____
Nick Stevens, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2026.

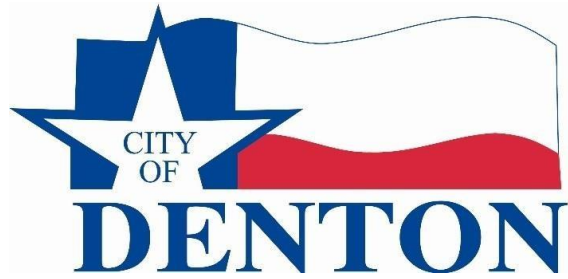
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

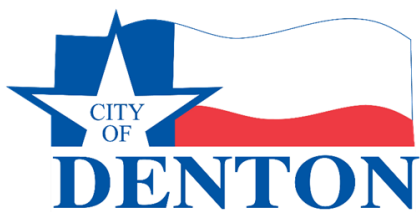
APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush



DocuSign City Council Transmittal Coversheet

RFP	8558
File Name	CMAR Animal Shelter Renovation GMP1
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	



CITY OF DENTON, TEXAS

**CONSTRUCTION MANAGER AT RISK FOR CMAR LINDA MCNATT ANIMAL SERVICES RENOVATION AND
EXPANSION**

**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION PHASE SERVICES**

CONTRACT NO. 8558

TABLE OF CONTENTS

<u>Article</u>	<u>PAGE</u>
RECITALS.....	1
Article 1 - Definitions	2
Article 2 – CM@Risk’s Services and Responsibilities	6
Article 3 - City’s Services and Responsibilities.....	13
Article 4 - Contract Time.....	16
Article 5- Contract Price	20
Article 6 - Changes to the Contract Price and Time	22
Article 7- Procedure for Payment	27
Article 8- Claims and Disputes	30
Article 9 – Suspension and Termination.....	32
Article 10 - Insurance and Bonds	34
Article 11 – Indemnification	38
Article 12 – General Provisions	39
EXHIBIT A – SITE DESCRIPTION	
EXHIBIT B – APPROVED GMP NO. 1	
EXHIBIT C – TECHNICAL SPECIFICATIONS	
EXHIBIT D – CONSTRUCTION DRAWINGS	
EXHIBIT E – GENERAL CONDITIONS	
EXHIBIT G – PREVAILING WAGE RATES	
EXHIBIT V – WARRANTY	
EXHIBIT W – USE OF THE SITE, DELIVERY & STORAGE (for vertical projects)	
EXHIBIT X – COST OF THE WORK	
EXHIBIT Y – GENERAL CONDITINS COSTS	

CITY OF DENTON

ANIMAL SERVICES EXPANSION IMPROVEMENTS

CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES

GMP No. 1

Project No. 240004-1 CONTRACT NO. 8558

THIS AGREEMENT, made and entered by and between City of Denton, hereinafter designated the “City” and Steele & Freeman, Inc., hereinafter designated the “Construction Manager at Risk” or “CM@Risk”

RECITALS

- A.** The City Manager of the City of Denton, Texas, or their designee, is authorized and empowered by provisions of the City Charter to execute contracts for construction services.

- B.** The City intends to construct Linda McNatt Animal Services Expansion Improvements as more fully described in Exhibit A attached.

- C.** To undertake the Project the City has entered into a contract with Quorum Architects, Inc., hereinafter referred to as the “Design Professional.”

- D.** The CM@Risk has represented to the City the ability to provide the construction phase services described herein and to construct the Project and based on this representation the City engages the CM@Risk to provide these services and construct the Project.

- E.** Contract No. 8558 has been executed previously between City and CM@Risk to perform Preconstruction Phase services. Those services may continue during the duration of this Construction Phase Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM@Risk as follows:

Article 1 - Definitions

“Agreement” (“Contract”) means this written document signed by the City and CM@Risk covering the construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract. The terms Agreement and Contract shall be used interchangeably throughout unless specifically stated otherwise.

“Approved GMP” means any GMP or GMP amendment agreed to by the parties in accordance with this Agreement.

“Application for Payment” – See definition for Payment Request.

“Architect” means the qualified, licensed person, firm or corporation who furnishes architectural services required for the Project.

“Asbestos” means asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cumingtonite-grunerite), anthophyllite, tremolite, or actinolite or any material that contains one percent or more of any asbestiform variety. Refer to the Texas Administrative Code, Title 25, Chapter 296.

“Change Directive” means a written order prepared and signed by City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

“Certificate of Substantial Completion” has the meaning given such term in Subsection 4.1.5.

“Change Order” means a type of contract amendment issued after execution of this Agreement or future GMP Amendments signed by City and CM@Risk, agreeing to changes to an agreement. The Change Order will state the following: the addition, deletion, or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Contract terms.

“City (“Owner” or “OWNER”) means the City of Denton, a municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contract. Regulatory activities handled by the City of Denton Developmental Services, Fire, Engineering, Facilities, Municipal Electric, and Planning Departments or any other City Department are not subject to the responsibilities of the City under this Agreement.

“City’s Representative” means the person designated in Subsection 8.3.1.2.

“City’s Senior Representative” means the person designated in Subsection 8.3.1.1.

“CM@Risk” means the firm selected by the City to provide construction services as detailed in this Agreement.

“CM@Risk’s Representative” means the person designated in Subsection 8.3.2.2.

“CM@Risk’s Senior Representative” means the person designated in Subsection 8.3.2.1.

“Contingency, Marketplace Risk” – A fund to cover the costs of cost escalation, supply chain interruptions, and buyout decisions made for the City’s benefit that may have more risk than a normal subcontract award. Use and management of the Marketplace Risk Contingency is described in Section 5.1.3.

“Contingency, CM@Risk’s” – A fund to cover cost growth during the Project used at the discretion of the CM@Risk usually for costs that result from Project circumstances. Use and management of the CM@Risk’s Contingency is described in Section 5.1.4.

“Contingency, Owner’s” – A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. Use and management of the Owner’s Contingency is described in Section 5.1.6.

“Contract Documents” means the following items and documents in descending order of precedence executed by the City and the CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications. In the event of a conflict between this Agreement and the other Contract Documents, including the General Conditions, the terms of this Agreement will control.

“Construction Documents” The plans, specifications, and drawings prepared by the Design Professional and issued as approved for construction meaning the documents are sealed by the Design Professional, signed and acceptable for permitting.

“Construction Fee” means the lump sum amount for CM@Risk’s administrative costs for branch or home office overhead, and profit at the time of GMP.

“Contract Price” means the amount or amounts set forth in Article 5.

“Contract Time” means the Days as set forth in Article 4 the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Project.

“Cost of the Work” The direct costs or stipulated rates necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, General Conditions Costs, and related items. See Exhibit X – Cost of the Work and Exhibit Y – General Conditions Costs for more definitions of these terms. The Cost of the Work shall not include the CM@Risk’s Construction Fee.

“Critical Path” means the sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

“Day(s)” mean calendar days unless otherwise specifically noted in the Contract Documents.

“Preconstruction Phase Contract” means the agreement between the City and CM@Risk for services provided by the CM@Risk during the design phase which may include the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimates, MBE/WBE/SBE utilization, subcontractor bid phase services, and GMP preparation.

“Design Professional” means a qualified, licensed design professional, including an Engineer or Architect, who furnishes design and/or construction administration services required for the Project. A Design Professional is referenced in Recital C, above.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Engineer” The qualified, licensed person, firm or corporation who furnishes engineering services required for the Project.

“Final Acceptance” means the completion of the Work as prescribed in Section 4.2.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“General Conditions Costs” Includes those Cost of Work items shown in Exhibit Y - General Conditions Costs.

“Guaranteed Maximum Price” or “GMP” means the sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CM@Risk’s Contingency including authorized adjustments.

“GMP Amendment” means an amendment, executed in writing and signed by both parties, to the GMP.

“GMP Plans and Specifications” means the plans and specifications upon which the Guaranteed Maximum Price proposal is based as listed in the GMP proposal.

“Hazardous Environmental Condition” means the presence at the site of Asbestos, PCB’s, Petroleum, Hazardous Waste, Radioactive Material, or other materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

“Hazardous Material or Substance” includes 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.

“Hazardous Waste” means any solid waste listed as hazardous or possesses one or more hazardous characteristics as defined in the federal waste regulations, as amended from time to time.

“Legal Requirements” means all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders, and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Milestones” - A principal event in the performance of the Work that the Contract requires CM@Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the CM@Risk to start Work. Such notice shall be provided to the CM@Risk at least seven days prior to the commencement date stipulated herein and shall be provided no later than 30 days after the GMP proposal is approved by the City and all the required documentation is received by the City.

“Payment Request” means the City form used by the CM@Risk to request progress payments for Work in accordance with Article 7.

“PCB’s” means polychlorinated biphenyls.

“Performance Period” means the period of time allotted in the Contract Documents to substantially complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP proposal and shown on the Project Schedule.

“Petroleum” means petroleum including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@Risk to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in each Approved GMP.

“Project Schedule” means a schedule, prepared and maintained by CM@Risk, describing the sequence and duration of the activities comprising the CM@Risk’s plan to accomplish the Work within the Contract Times.

“Project Record Documents” means the documents created pursuant to Section 2.10.

“Radioactive Material” Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

“Samples” means physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be evaluated.

“Shop Drawings” mean drawings, diagrams, schedules, submittals and other data specially prepared for the Work by the CM@Risk or a Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

“Site” means the land or premises on which the Project is located generally described in in Exhibit A.

“Specifications” means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto as listed in the GMP proposal.

“Subcontractor” means an individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid individual or firm at any tier, who undertakes to perform a part of the construction phase Work for which the CM@Risk is responsible.

“Subconsultant” - A person, firm or corporation having a contract with the CM@Risk to furnish services required as its independent professional associate or consultant with respect to the Project.

“Substantial Completion” means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) receipt of written confirmation after final inspections by the applicable electrical, plumbing, City Fire Marshall, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the City; (ii) all systems in place, and confirmed to be fully functional to satisfaction of the City and its representatives; (iii) all materials and equipment installed; (iv) all systems reviewed and accepted by the City; (v) draft O&M manuals and record documents reviewed and accepted by the City; (vi) City operation and maintenance training complete; (vii) landscaping and site work; and (viii) final cleaning. In addition to the other requirements of the Contract Documents, and without limitation, the CM@Risk 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 CM@Risk shall be deemed to have achieved Substantial Completion. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed letter pursuant to Subsection 2.4.3.

“Supplier” means a manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CM@Risk or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

“Work” means the entire completed construction or the various separately identifiable parts thereof, required by the Agreement to be furnished and installed during the construction phase. “Work” includes and is the result of performing or furnishing supervision and labor; and furnishing and incorporating materials, resources, and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

Article 2 – CM@Risk’s Services and Responsibilities

- 2.0** The CM@Risk shall furnish any and all supervision, labor, materials, equipment, transportation, utilities, services, and facilities required to perform all Work required by the Contract Documents, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@Risk in Denton, Texas. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project’s Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described.
- 2.1. General Services**
- 2.1.1.** CM@Risk’s Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk’s Representative shall communicate regularly with City but not less than once a week and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk’s Representative may be replaced only with the written consent of City.
- 2.1.2** City’s Project Management Information System (Procore)
- 2.1.2.1** The CM@Risk will be required to maintain all project records in electronic format. The City provides a web-based project management database which the CM@Risk will be required to utilize in the fulfillment of the contract requirements. Although this electronic platform does not fulfill this requirement in its entirety, the CM@Risk will be required to utilize this platform as the basis for this Work. Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.
- 2.1.2.2** The CM@Risk can expect to use Procore to process all primary level tri-partite contract documents related to the construction phase of the Project including but not limited to: requests for interpretation/information, potential Change Orders, Change Orders, construction meeting minutes, Submittals, Design Professional’s supplemental instructions and Payment Requests.
- 2.1.2.3** The CM@Risk will be required to process information into electronic digital form. In order to fulfill this requirement, the CM@Risk shall provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to Procore, and transfer electronic data.
- 2.1.2.4** CM@Risk shall provide a computerized networked office platform with broadband internet connectivity. Wired or wireless is acceptable. This platform shall function well in a web-based environment utilizing an internet browser compatible with the City Procore system.
- 2.2 Government Approvals and Permits**
- 2.3.1** Unless otherwise provided, CM@Risk shall obtain or assist the City to obtain all necessary permits, approvals, and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. **The CM@Risk is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**
- 2.3.2** Copies of these permits and notices must be provided to the City’s Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City’s Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice

requirements.

2.3.3 City shall be responsible for all City of Denton review and permit(s) fees for building and demolition permits. City will also pay review and permit fees for grading and drainage, water, sewer, right-of-way, gas service, electrical service, and landscaping; assessments against the property, including property tax, developmental excise and similar taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. City shall also pay for utility design fees for permanent services.

2.3.4 CM@Risk shall be 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 not specifically listed in Subsection 2.3.3 above. Specifically, and without limitation, the CM@Risk is responsible for the cost of meter(s), and all utility bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CM@Risk's responsibility.

2.4 Pre-construction Conference

2.4.1 Prior to the commencement of any Work, the City's Representative will schedule a pre-construction conference.

2.4.2 The purpose of this conference is to establish a working relationship between the CM@Risk, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Record Project Documents required, and emergency telephone numbers for all representatives involved in the course of construction.

2.4.3 The Notice to Proceed date will be agreed to. After the meeting a Notice to Proceed letter will be issued confirming the construction start date, Performance Period, and, if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion will be listed.

2.4.4 The CM@Risk shall provide a schedule of values based on the categories used in the buyout of the Work but not greater than the approved GMP and identifying the CM@Risk's Contingency. The schedule of values will subdivide the Work into all items comprising the Work.

2.4.5 Minimum attendance by the CM@Risk shall be the CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the CM@Risk's safety officer.

2.5 Control of the Work

2.5.1 Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, CM@Risk shall provide through itself, its Vendors or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit CM@Risk to complete the Work consistent with the Contract Documents.

2.5.2 CM@Risk shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction.

2.5.3 CM@Risk, the CM@Risk's Representative or other authorized representative shall be present

at the Site at all times that construction activities are taking place.

- 2.5.3.1** All elements of the Work shall be under the supervision of a superintendent employed by the CM@Risk for the purpose; or their designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.
- 2.5.4** In the event of noncompliance with this Section, the City may require the CM@Risk to stop or suspend the Work in whole or in part. Where the Contract Documents require that a particular product be installed and/or applied, or the installation and/or application be observed by an entity approved by the manufacturer, it is the CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer; or their installation and/or application is so observed.
- 2.5.5** Before ordering materials or doing work, the CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No increase to the approved GMP will be allowed because of differences between actual dimensions and the dimensions indicated in the Contract Documents; differences, which may be found, shall be submitted to the City for resolution before proceeding with the Work.
- 2.5.6** The CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the City at once.
- 2.5.7** The CM@Risk shall establish and maintain all primary building and construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Texas.
- 2.5.8** Any person employed by the CM@Risk or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful, and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM@Risk or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. **THE CM@RISK OR SUBCONTRACTOR SHALL HOLD THE CITY HARMLESS FROM DAMAGES OR CLAIMS WHICH MAY OCCUR IN THE ENFORCEMENT OF THIS SECTION.**
- 2.5.9** CM@Risk assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.5.10** CM@Risk shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, CM@Risk agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.6 Control of the Site

- 2.6.1** Throughout all phases of construction, including suspension of Work, CM@Risk shall keep the Site reasonably free from debris, trash, and construction wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@Risk shall remove all debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

- 2.6.2** CM@Risk shall take all reasonable steps, procedures, or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the local requirements.
- 2.6.3** CM@Risk shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.
- 2.6.4** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the CM@Risk.
- 2.6.5** See Exhibit W – Use of Site, Delivery & Storage for more detailed information on the CM@Risk's responsibilities for maintaining and using the site.
- 2.7 Shop Drawings, Product Data and Samples**
- 2.7.1** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CM@Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 2.7.2** The CM@Risk shall review, approve, verify, and submit to the City each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the CM@Risk, which are not required by the Contract Documents, may be returned without action.
- 2.7.3** The CM@Risk shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the City. Such Work shall be in accordance with approved submittals.
- 2.7.4** By approving, verifying, and submitting Shop Drawings, Product Data, Samples, and similar submittals, the CM@Risk represents that the CM@Risk has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 2.7.5** The CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM@Risk has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. The CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval thereof.
- 2.7.6** The CM@Risk 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 City on previous submittals.
- 2.7.7** Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.

2.7.8 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.8 Quality Control, Testing and Inspection

2.8.1 The CM@Risk shall follow the project-specific construction quality control requirements defined in the Construction Management Plan created, reviewed, and approved under the Preconstruction Phase Agreement. The following requirements are in addition to those found in the Construction Management Plan, and shall be incorporated into the Construction Management Plan for the construction phase.

2.8.2 All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

2.8.3 All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances, or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.

2.8.4 The procedures and methods used to sample, and test material will be determined by the City, in consultation with the Design Professional.

2.8.5 The City may select a pre-qualified City or independent testing laboratory and may perform additional acceptance testing at the City's cost.

2.8.5.1 When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the CM@Risk. CM@Risk's Contingency cannot be utilized for the cost of re-testing.

2.8.5.2 When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

2.8.6 The CM@Risk will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.

2.8.7 At the option of the City, materials may be approved at the source of supply before delivery is started.

2.8.8 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the CM@Risk as a Cost of the Work, unless otherwise provided in the Contract Documents or unless required by Chapter 2269 of the Texas Government Code.

2.8.9 CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of the CM@Risk and paid by the CM@Risk as a Cost of the Work.

2.9 Trade Names and Substitutions.

2.9.1 Contract Document references to equipment, materials, or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, substitute, or alternate items may be permitted, subject to the following:

2.9.2 The substitution shall be submitted by CM@Risk in writing to the City.

2.9.3 The CM@Risk shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same

use as that specified.

- 2.9.4** The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
- 2.9.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.
- 2.9.6** The CM@Risk if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- 2.9.7** The City will make the final decision and will notify the CM@Risk in writing as to whether the substitution has been accepted or rejected. If the City does not respond in a timely manner, the CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

2.10 Project Record Documents

- 2.10.1** During the construction period, the CM@Risk shall maintain at the jobsite a set of the Construction Document drawings, specifications and Shop Drawings for Project Record Document purposes.
 - 2.10.1.1** The CM@Risk shall update these documents to indicate the actual installation where the installation varies appreciably from the original Construction Documents. Give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
 - Dimensional changes to the drawings.
 - Revisions to details shown on drawings.
 - Depths of foundations.
 - Locations and depths of underground utilities.
 - Revisions to routing of piping and conduits.
 - Revisions to electrical circuitry & device locations.
 - Revisions to low voltage systems & controllers/sensors/device locations.
 - Actual equipment locations.
 - Locations of concealed internal utilities.
 - Changes made by Change Order.
 - Details not on original Contract Drawings.
 - 2.10.1.2** Mark completely and accurately Project Record Construction Documents or Shop Drawings, when Shop Drawings are the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference to the Shop Drawings on the appropriate Construction Documents location.
 - 2.10.1.3** Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
 - 2.10.1.4** The CM@Risk shall as a condition of Substantial Completion, submit Project Record Drawing and Shop Drawings prints to the City or its representative for review and comment.
- 2.10.2.** Upon receipt of the reviewed Project Record Drawings from the City, the CM@Risk shall correct any deficiencies and/or omissions to the drawings and prepare for submission to the City within 14 Days.

2.11 Project Safety

- 2.11.2.** CM@Risk recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury, or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- 2.11.3.** CM@Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.11.4.** CM@Risk shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's safety representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.
- 2.11.5.** The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors, and others as applicable.
- 2.11.6.** CM@Risk and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.
- 2.11.7.** CM@Risk will report in writing any safety-related injury, loss, damage, or accident arising from the Work to City's Representative in not less than four (4) hours (via email); follow up with a full, written report on details, causes and results of the incident within two (2) business days; and submit an incident prevention and "lessons learned" plan within one (1) week of the occurrence. To the extent mandated by Legal Requirements, report the incident as required to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.11.8.** CM@Risk's responsibility for safety under this Section is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.12 Warranty

- 2.12.1** CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.12.2.** CM@Risk's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CM@Risk or anyone for whose acts CM@Risk may be liable.
- 2.12.3.** CM@Risk's warranty obligation shall be for two years.
- 2.12.4.** Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section or the Contract Documents. CM@Risk will provide City with all manufacturers' warranties upon Substantial Completion.
- 2.12.5.** See Exhibit V – Warranty Requirements for more detailed information on the CM@Risk's warranty responsibilities.

2.13 Correction of Defective Work

- 2.13.2.** CM@Risk agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of two years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 2.13.3.** During the Work, CM@Risk shall take meaningful steps to commence correction of such nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps during the Work, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk, and its surety, with written notice that City will commence correction of such nonconforming Work with its own forces.
- 2.13.4.** CM@Risk shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.12 above, within seven Days of receipt of written notice from City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps within such seven Day period, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk, and its surety, with written notice that City will commence correction of such nonconforming Work with its own forces.
- 2.13.5.** If City does perform such corrective Work, CM@Risk and/or its surety shall be responsible for all reasonable costs incurred by City in performing such correction.
- 2.13.6.** If the nonconforming Work creates an emergency requiring an immediate response, the CM@Risk will respond and initiate corrections within twenty-four hours.

The two-year period referenced in Subsection 2.12.1 above applies only to CM@Risk's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding CM@Risk's other obligations under the Contract Documents.

Article 3 - City's Services and Responsibilities

3.1 Duty to Cooperate.

- 3.1.1** City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations, and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.
- 3.1.2** City shall furnish at the CM@Risk's request, at no cost to the CM@Risk, a CADD file of the Construction Documents in AutoCAD format compatible with City of Denton Engineering and Architectural Services Department CADD technology.
- 3.1.3** The City will, if needed, provide training in the use and operation of the Procore system.

3.2 City's Representative

- 3.2.1** City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.

- 3.2.2** City's Representative shall also provide CM@Risk with prompt notice if it observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents.
- 3.2.3** The City may utilize its own or a third party's field staff to assist the City's Representative during construction in observing performance of the CM@Risk and performing other City functions. This field staff is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory or materials testing and special inspections firm contracted to the City pursuant to Subsection 2.8.5.
 - 3.2.3.1** Through onsite observation of the Work in progress and field checks of materials and equipment, the field staff shall endeavor to provide protection against defects and deficiencies in the Work.
 - 3.2.3.2** The field staff will be authorized to review all Work and materials furnished. Such review may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
 - 3.2.3.3** The field staff will not be authorized to issue instructions contrary to the Construction Documents or to act as a supervisor for the CM@Risk.
 - 3.2.3.4** The field staff shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.
 - 3.2.3.5** The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequence or procedures, or for safety precautions or programs or responsibility for the CM@Risk's failure to perform the work in accordance with Contract Documents.

3.3 Design Professional Services

- 3.3.1** The City may contract separately with one or more Design Professionals to provide services for the project. The Design Professional's contract(s) as well as other firms hired by the City to provide services on the project shall be furnished to the CM@Risk. The CM@Risk shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and Design Professional.
- 3.3.2** The City may contract with the Design Professional or a designated third party to provide some or all of the following services during the performance of the Work.
 - 3.3.2.1** Provide oversight of the Work. The City and CM@Risk shall endeavor to communicate through the Design Professional or designated third party. Communications by and with the Design Professional's consultants shall be through the Design Professional.
 - 3.3.2.2** Make visits to the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and work in progress and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority, but not the responsibility to reject construction which does not conform to the Construction Documents; and may require additional inspection or testing of the construction in accordance with Section 2.8.
 - 3.3.2.3** Review and approve or take other appropriate action upon the CM@Risk's submittals such as

Shop Drawings, Product Data and Samples in accordance with Section 2.7.

- 3.3.2.4** Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM@Risk. The Design Professional's or designated third party's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
- 3.3.2.5** Prepare Change Orders and may authorize minor changes in the Work as provided in Subsection 6.6.1.
- 3.3.2.6** Conduct reviews to determine Substantial Completion and Final Acceptance.
- 3.3.2.7** Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the CM@Risk.
- 3.4** **City's Separate Contractors.** City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with, CM@Risk in order to enable CM@Risk to timely complete the Work consistent with the Contract Documents. Any City separate contractors will be subject to City insurance and subrogation requirements.
- 3.5** **Permit Review and Inspections.**
 - 3.5.1** If requested by the CM@Risk, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.
 - 3.5.2** Regulating agencies of the City, such as Developmental Services, Fire and Planning Departments, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

Article 4 - Contract Time

4.0. Contract Time.

- 4.0.1.** Contract Time shall start with the commencement date established in the Notice to Proceed for the first Approved GMP and end with Substantial Completion.
- 4.0.2.** Each GMP will establish a separate commencement date and a date of Substantial Completion and a Performance Period. The Performance Periods may not be sequential and may run concurrently. The Performance Period to achieve Substantial Completion for each GMP shall be set forth in each GMP submission.
- 4.0.3.** CM@Risk agrees that it will commence performance of the Work and achieve the Performance Periods and Contract Time.
- 4.0.4.** All of the times set forth in this Article 4 shall be subject to adjustment in accordance Article 6.

4.1. Substantial Completion

- 4.1.1.** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1. and with the criteria set forth in the Notice to Proceed.
- 4.1.2.** Prior to notifying the City in accordance with Subsection 4.1.3 below, the CM@Risk shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. The CM@Risk 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 CM@Risk to complete all Work in accordance with the Contract Documents.
- 4.1.3.** CM@Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.
- 4.1.4.** Within five (5) days of City's receipt of CM@Risk's notice, City and CM@Risk will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 4.1.5.** If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CM@Risk's responsibility for the Project's security, maintenance, utilities, and insurance pending Final Acceptance, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 4.1.6.** City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Subsection 4.1.5 above, (ii) CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM@Risk agree that City's use or occupancy will not interfere with CM@Risk's completion of the remaining Work.

4.2. Final Acceptance. Upon receipt of written notice that the Work or identified portions of the Work is ready for final acceptance, City, Design Professional and CM@Risk will jointly verify that the remaining items of Work have been completed as set forth in Subsection 4.1.5. The City will issue a Final Acceptance Letter and payment pursuant to Section 7.5.

4.3. Liquidated Damages.

4.3.1. CM@Risk recognizes that ***TIME IS OF THE ESSENCE*** for the CM@Risk to achieve Substantial Completion and City will suffer financial loss if the Work is not completed within the Contract Time. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding, the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor shall pay City One Thousand Dollars (\$1,000.00) for each day of delay past thirty (30) calendar days after Substantial Completion, as adjusted in accordance with the Contract, until the day the Final Acceptance occurs with the exception of work subject to long-lead items, specialty material procurement, and additional scope

4.3.2. The City may at its sole discretion deduct from any monies due or which may become due the CM@Risk, 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 City. Liquidated damages are intended to compensate the City for the CM@Risk's failure to meet the deadlines set forth herein, and shall not excuse the CM@Risk from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The CM@Risk agrees that the sums in Section 4.3.1 are reasonable in light of the anticipated or actual harm caused by the delay and breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

4.3.3. 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 CM@Risk 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 City and the public. Permitting the CM@Risk 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 City of any of its rights under the Contract.

4.4. Project Schedule

4.4.1. The Project Schedule approved as part of a GMP shall be updated and maintained throughout the Work.

4.4.2. The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

4.4.3. Updated Project Schedules shall be submitted monthly in electronic forms to the City as part of the Payment Request.

4.4.4. CM@Risk shall provide City with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to Project Schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP proposal and within the Contract Time. Each status

report shall also include the following:

- Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate.
- Current and anticipated delays including:
 - Cause of the delay;
 - Corrective action and schedule adjustments to correct the delay;
 - Known or potential impact of the delay on other activities, Milestones, and the date of Substantial Completion.
- Changes in construction sequence
- Pending items and status thereof including but not limited to:
 - Time Extension requests;
 - Other items.
- Substantial Completion date status:
 - If ahead of schedule, the number of calendar Days ahead;
 - If behind schedule, the number of calendar Days behind.
- Other project or scheduling concerns

4.4.5. City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM@Risk of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

4.4.6. The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

4.4.6.1. The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

4.4.6.2. The CPM diagram schedule shall indicate all relationships between activities.

4.4.6.3. The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work. Further, activities shall be included for, without limitation, any and all City franchised or private utilities required to be temporarily or permanently demolished, relocated or installed; design, procurement, furnishing and installing of equipment, information technology systems, security systems, furnishings, and other City improvements (whether installed by the CM@Risk or the City) required for the Work to be completely functional as intended. These Owner Activities will be shown in the schedule with the appropriate precursor and successor activities necessary for monitoring and evaluating the progress of the Owner Activities.

4.4.6.4. The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values, but the Project Schedule is not required to be **cost-loaded**.

4.4.6.5. The CPM diagram schedule shall show all critical submittals associated with each work activity and the review time for each submittal.

4.4.6.6. The Project Schedule shall show Milestones, including Milestones for Owner-furnished information, utilities and improvements when those Milestones are interrelated with the CM@Risk activities.

4.4.6.7. The Project Schedule shall include a Critical Path activity that reflects anticipated rain delay

during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.

- 4.4.7.** The Project Schedule shall consider the City's and the other stakeholder occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 4.4.8.** Float time shall be as prescribed below.
 - 4.4.8.1.** The total Float within the overall Project Schedule, is not for the exclusive use of either the City or the CM@Risk but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract Milestones and the Project contract time.
 - 4.4.8.2.** The CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the Project Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.
 - 4.4.8.3.** Since Float time within the Project Schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

Article 5- Contract Price

- 5.0.** The CM@Risk agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved GMP proposal.
- 5.1. Contract Price.**
- 5.1.1.** The Contract Price will be as approved in the Guaranteed Maximum Price proposal attached as an Exhibit including an amount for Owner's Contingency.
- 5.1.2.** Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The CM@Risk is at risk to cover any additional Project costs. Any amounts in excess of the actual Cost of the Work and/or CM@Risk's Contingency shall revert to the City.
- 5.1.2.1** The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.
- 5.1.2.2** The General Conditions Costs and the Construction Fee are firm fixed lump sums, but subject to adjustments as permitted in the Contract Documents.
- 5.1.3** Additional Marketplace Risk: After the City has executed this Construction Phase Agreement, the CM@Risk will award Subcontractors' contracts. CM@Risk will use its best efforts to award eighty percent (80%) of those subcontracts (by value) within thirty (30) days of the City's execution of the Construction Phase Agreement; and ninety-five percent (95%) of those subcontracts within sixty (60) days of that date. The CM@Risk and the City shall closely coordinate on the scope of work within the remaining percentage of the unawarded subcontracts remaining after (60) days to accomplish complete buy-out of the scope of work as soon as possible. Failure to meet the milestones set forth in this section will limit the CM@Risk's access to the Additional Marketplace Risk Contingency.
- 5.1.3.1** Within seventy (70) days after the City's execution of this Construction Phase Agreement, a reconciliation of the Guaranteed Maximum Price and the awarded subcontracts will be performed by the CM@Risk, identifying savings beneath the Guaranteed Maximum Price (if any). These savings shall be reallocated to the Owner's Contingency; except as mutually agreed by the City and CM@Risk to be collated into "Additional Marketplace Risk" line item(s) in the Schedule of Values. This Additional Marketplace Risk is to (i) protect the Cost of the Work from known scope gaps between subcontracts, as well as uncommitted commodities subject to future price changes (if any), not to exceed 1.0% of the Guaranteed Maximum Price; and (ii) protect the Guaranteed Maximum Price from specific Subcontractor(s)' risk profile(s); and (iii) will be allocated accordingly in the Schedule of Values.
- 5.1.3.2** The CM@Risk will prepare, for the City's review and approval, a schedule of dates by which the CM@Risk will have resolved the issue(s) impacting each Additional Marketplace Risk line item, and return the uncommitted amount to the Owner's Contingency. Use of the Additional Marketplace Risk by the CM@Risk before that date will be as mutually agreed by the City and CM@Risk to be reasonable and necessary under the circumstances.
- 5.1.4** CM@Risk's Contingency is an amount the CM@Risk may be used under the following conditions: (1) at its discretion for increases in the Cost of the Work approved by the City which shall not be reasonably withheld, or (2) with written approval of the City for increases in General Condition Costs. CM@Risk's Contingency is assumed to be a direct project cost so will have received all markups at the time of GMP submission.
- 5.1.5.1** When the CM@Risk utilize CM@Risk's Contingency funds, the CM@Risk shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from the CM@Risk's Contingency line item and adding the same amount to the line item on the schedule

of values where the funds were used. If the CM@Risk's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.

- 5.1.6** Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@Risk, the sum of which will be the total contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@Risk at the time that Owner's Contingency is used.
- 5.1.7** As a City public procurement project this Project is tax exempt. Appropriate tax exemption forms shall be provided to the CM@Risk.
- 5.1.8** The GMP is subject to adjustments made in accordance with Article 6 and by GMP Amendments to this Agreement.
- 5.1.9** GMP Amendments are cumulative not including CM@Risk Contingency. The amount of CM@Risk Contingency for each GMP amendment will be negotiated separately and shall reflect the CM@Risk's risk from that point in the project forward.
- 5.1.9.1** If the GMP requires an adjustment due to changes in the Work or other causes as allowed in the Contract Documents, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in Article 6.

Article 6 - Changes to the Contract Price and Time

6.1. Delays to the Work

- 6.1.1.** If CM@Risk is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM@Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order.
- 6.1.2.** The CM@Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary. Such notice shall not be later than fourteen (14) Days after such condition or event has been encountered.
- 6.1.3.** By way of example, events that will entitle CM@Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.1.4.** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and that weather conditions had an adverse effect on the scheduled Substantial Completion.
- 6.1.4.1.** In allowing delays for weather, the City will be entitled to consider weather conditions prevailing throughout the entire Contract period. The City and CM@Risk will together reconcile actual working days lost and gained over the entire Contract period every ninety (90) days. The CM@Risk shall then adjust the activities for the schedule's Float reserves where those activities are carried in the CM@Risk's Project Schedule (if any).
- 6.1.5.** It is understood, however, that permitting the CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.
- 6.1.6.** In addition to CM@Risk's right to a time extension for those events set forth in this Section, CM@Risk shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM@Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God. In the event of an occurrence under this Section, the CM@Risk and any Subcontractors will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail, and the CM@Risk and any Subcontractors continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Subcontractors of the CM@Risk shall immediately notify the CM@Risk, who shall then immediately notify the City Project Manager by telephone of any such circumstances or event (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a sufficient level of detail the circumstances causing the non-performance or delay in performance.
- 6.1.7.** If either the Work actually in place falls behind as reflected by the currently updated Project Schedule, or it becomes apparent or likely in the reasonable opinion of the City that the Work will not be completed within the Contract Time or in accordance with the CM@Risk's Project Schedule, due to delays caused by the CM@Risk or its subcontractors, the CM@Risk 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 City or their consultants, as required

to substantially eliminate, in the judgment of the City, the backlog of CM@Risk's Work on the Project:

- 6.1.7.1. Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;
- 6.1.7.2. Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;
- 6.1.7.3. Reschedule activities to achieve maximum practical concurrence of accomplishment; and
- 6.1.7.4. Do whatever else is reasonably required by the City.
- 6.1.8. These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the CM@Risk's compliance with the CM@Risk's Schedule.
- 6.1.9. In the event of such a delay, the City may also require the CM@Risk to immediately submit a Proposed Recovery Schedule for its review and approval, demonstrating to the City's satisfaction the effect of applying the necessary and continuing Extraordinary Measures required to recover the Substantial Completion date shown in the most currently approved Project Schedule.

6.2 Differing Site Conditions

- 6.2.1 If CM@Risk encounters a Differing Site Condition, CM@Risk will be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@Risk's cost and/or time of performance are adversely impacted by the Differing Site Condition.
- 6.2.2 Upon encountering a Differing Site Condition, CM@Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CM@Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been further or substantially disturbed or altered.

6.3 Errors, Ambiguities, Discrepancies and Omissions.

- 6.3.1 If the CM@Risk observes errors, ambiguities, discrepancies, or omissions in the Contract Documents, they shall promptly notify the Design Professional and request clarification.
- 6.3.2 If the CM@Risk proceeds with the Work affected by such known errors, ambiguities, discrepancies, or omissions, without receiving such clarifications, they do so at their own risk. Adjustments involving such circumstances made by the CM@Risk prior to clarification by the Design Professional shall be at the CM@Risk's risk.

6.4 City Requested Change in Work.

- 6.4.1 The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.
- 6.4.2 Such alterations and changes shall not invalidate this Agreement nor release the surety and the CM@Risk agrees to perform the Work as altered, the same as if it has been a part of the

original Contract Documents.

6.4.3 The City will request a proposal for a change in Work from CM@Risk, and an equitable adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

6.5. Legal Requirements.

6.5.1. The Contract Price and/or Contract Times shall be adjusted to compensate CM@Risk for the effects of any changes in the Legal Requirements enacted after the date of the Agreement or the date of the GMP proposal, affecting the performance of the Work.

6.6. Change Directives and Change Orders.

6.6.1. City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

6.6.2. All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents

6.7. Minor Changes in the Work

6.7.1. The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM@Risk. The CM@Risk shall carry out such written orders promptly.

6.7.2. CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk.

6.7.3. Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

6.8. Contract Price Adjustments

6.8.1. The increase or decrease in Contract Price resulting from a change in the Work shall be handled in accordance with the provisions of Section 2251.0521 of the Texas Government Code and determined by one or more of the following methods:

6.8.1.1. Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

6.8.1.2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; or

6.8.1.3. Estimated cost of the Work, General Conditions Costs, if applicable, Construction Fee and tax.

6.8.2. The markups for overhead and profit that shall be allowed on the Cost of the Work driven by each change shall be no greater than that specified in Section 6.8.5 below.

6.8.3. If an increase or decrease cannot be agreed to as set forth in Subsections 6.8.1.1 through 6.8.1.3 above and City issues a Change Directive, the cost of the change of the Work shall be determined by the verifiable, actual expenses and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit as shown in Section 6.8.5 below. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

- 6.8.4.** Cost of the Work for the purposes of this Section 6.8, and in calculating overhead and profit shall be limited to the following:
 - 6.8.4.1.** Costs of labor, including applicable and verifiable payroll taxes, fringe benefits required by agreement, workers' compensation insurance, and other employee costs approved by the City;
 - 6.8.4.2.** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
 - 6.8.4.3.** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the CM@Risk or others;
 - 6.8.4.4.** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
 - 6.8.4.5.** Additional, verifiable payroll and subsistence costs incurred by the CM@Risk, Subcontractor, and Sub-subcontractor of field personnel directly attributable to the change.
- 6.8.5.** The allowance for the combined total of onsite and offsite overhead and profit included in the total cost to the City for proposed Change Orders shall be based on the following schedule
 - 6.8.5.1.** For the CM@Risk, for Work performed by the CM@Risk's own forces, CM@Risk's fee percentage shown in the GMP plus actual direct jobsite costs associated with the additional work, if any;
 - 6.8.5.2.** For the CM@Risk, for Work performed by the CM@Risk's Subcontractor, CM@Risk's fee percentage shown in the GMP plus actual direct jobsite costs associated with the additional work, if any;
 - 6.8.5.3.** 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;
 - 6.8.5.4.** For each Subcontractor, for Work performed by the Subcontractor's sub-Subcontractors, five percent (5%) of the amount due the sub-Subcontractor;
 - 6.8.5.5.** Under no circumstance shall costs of the CM@Risk's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work for such a change. Conversely, the CM@Risk shall be compensated for such personnel within the overhead and profit percentage specified in this Section 6.8.4.
 - 6.8.5.6.** 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 quantities and 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;
 - 6.8.5.7.** When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any; and
 - 6.8.5.8.** Overtime, when specifically authorized by the City and not as a requirement for the CM@Risk to fulfill its obligations under this Agreement, shall be paid for by the City 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 City for overtime.

- 6.8.6.** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.8.7.** If City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 8 hereof.
- 6.8.7.1.** As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
- 6.8.7.2.** If the parties are unable to agree and City expects the CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk (i) directing CM@Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed unless otherwise prohibited under Section 2251.0521 of the Texas Government Code.
- 6.8.8. Emergencies.** In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Section shall be determined as provided in this Article.

Article 7- Procedure for Payment

7.0. For and in consideration of the faithful performance of the Work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to its satisfaction, the City agrees to pay the said CM@Risk the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes, if any, and the CM@Risk's Construction Fee, but no more than the GMP as adjusted by any Change Orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below.

7.1. GMP Payment Request

7.1.1. At the pre-construction conference prescribed in Section 2.4, CM@Risk shall submit for City's review and approval a schedule of values. The schedule of values will serve as the basis for monthly progress payments made to CM@Risk throughout the Work.

7.1.2. At least five (5) working days prior to the date established for a Payment Request, the CM@Risk shall submit an updated Project Schedule and meet with the City's Representative to review the progress of the Work as it will be reflected on the Payment Request.

7.1.3. The Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project and payment, therefore.

7.1.4. The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved Project Schedule.

7.1.4.1. For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment, therefore.

7.1.4.2. For materials and equipment stored off the Site and included in Payment Request, the City must approve the storage. The material and equipment must be stored within Denton County and be accessible for City's inspection. The CM@Risk must protect the City's interest and shall include applicable insurance, bonding, storage, and transportation to the Site.

7.1.4.3. All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.

7.1.5. CM@Risk shall submit payment requests to the City at the beginning of each month beginning with the first month after the construction Notice to Proceed.

7.1.6. With every Payment Request for the Work, CM@Risk will submit an affidavit stating that the CM@Risk has complied with the requirements of Chapter 2258, Texas Government Code. The parties hereto agree that any electronic copy of such affidavit shall be treated as an original for all intents and purposes.

7.2. Payment of GMP

7.2.1. City shall make payment in accordance with the provisions of this Contract and Chapter 2251 of the Texas Government Code. Payment will be made no later than thirty (30) Days after the Payment Request is received by the City, but in each case less the total of payments previously made, and less amounts properly retained under Section 7.3 below.

7.2.2. City shall pay CM@Risk all amounts properly due. If City determines that there is an error in the Payment Request and the CM@Risk is not entitled to all or part of a Payment Request, it will notify CM@Risk in writing within twenty-one (21) Days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk must take to rectify City's concerns. CM@Risk and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

7.3. Retention on GMP

7.3.1. City will retain five percent (5%) of each Payment Request amount provided.

7.4. Substantial Completion. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM@Risk all retained amounts relating, as applicable, to the entire Work or substantially completed portion of the Work, less an amount of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

7.5. Final Payment

7.5.1. After receipt of a final Payment Request, City shall make final payment 30 days after the receipt by the City, provided that CM@Risk has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.

7.5.2. At the time of submission of its final Payment Request, CM@Risk shall provide the following information:

7.5.2.1. An affidavit that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, material, equipment, taxes, or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests;

7.5.2.2. A general release executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment;

7.5.2.3. Conditional waivers and releases executed by all Subcontractors; and

7.5.2.4. Consent of CM@Risk's surety, if any, to final payment (original with raised seal).

7.6. Payments to Subcontractors or Suppliers

7.6.1. CM@Risk shall pay its Subcontractors or suppliers within ten (10) Days of receipt of each progress payment from the City. The CM@Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the CM@Risk shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CM@Risk shall pay Subcontractors or suppliers the reduced retention within ten (10) Days of the payment of the reduction of the retention to the CM@Risk. No contract between CM@Risk and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

7.6.2. If the CM@Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM@Risk agrees that the City may take such actions:

7.6.2.1. To hold the CM@Risk in default under this Agreement;

- 7.6.2.2. Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
- 7.6.2.3. Reject all future offers to perform work for the City from the CM@Risk for a period not to exceed one year from Substantial Completion date of this Project; or
- 7.6.2.4. Terminate this Agreement.
- 7.6.3. All funds paid to the CM@Risk are paid in trust and shall be used for payment of the Subcontractors and Suppliers who have performed work on the Project before the CM@Risk may use any of the funds for any other purpose. Nothing in this provision shall prohibit the CM@Risk from withholding any funds in dispute or back charges or offsets under the provisions of the Subcontract. The CM@Risk shall include a trust fund provision in each subcontract requiring the subcontractor to hold any payment its receives in trust and to use them for payment of its subcontractors and suppliers who have performed work on the Project before Subcontractor may use the funds for any other purpose.
- 7.6.4. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.
- 7.6.5. CM@Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.
- 7.7. **Record Keeping, Audits and Finance Controls**
- 7.7.1. Full and detailed records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to the Cost of the Work for this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis consistently applied, and shall be available for five years after Final Acceptance of the Project, or for such longer period as may be required by law. The accounting and control systems shall be as necessary for proper financial management under this Agreement; and as required to substantiate all costs incurred to the satisfaction of the City.
- 7.7.2. The City, its authorized representative, and/or the appropriate federal agency (if any), reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.
- 7.7.2.1. Specifically, the City and the City's authorized auditors shall, during regular business hours and upon reasonable notice, be afforded access to electronically or within 50 miles of Denton, and shall be permitted to audit, inspect and copy, the CM@Risk's records and accounts, including complete documentation supporting actual, direct and "bare" labor costs, job-cost coded labor reports, accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other information or data relating to this Agreement.
- 7.7.3. The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data.
- 7.7.4. The CM@Risk shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- 7.7.5. The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

Article 8- Claims and Disputes

8.0. Requests for Contract Adjustments and Relief.

- 8.0.1. If either CM@Risk or City believes that it is entitled to relief against the other for any event arising out of or related to the Contract, such party shall provide written notice to the other party of the basis for its claim for relief.
- 8.0.2. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 8.0.3. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 8.0.4. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

8.1. Dispute Avoidance and Resolution

- 8.1.1. The parties are fully committed to working with each other throughout the Project and agree to always communicate regularly with each other so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and City each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions to the Work.
- 8.1.2. CM@Risk and City will first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and City's Representative.
- 8.1.3. If a dispute or disagreement cannot be resolved through CM@Risk's Representative and City's Representative, CM@Risk's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. Should this effort be unsuccessful then the parties may proceed to take appropriate action to enforce any rights or obligations pursuant to the provisions of the Contract.

8.2. Duty to Continue Performance Unless provided to the contrary in the Contract Documents or as provided by statute, CM@Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute or disagreement between CM@Risk and City.

8.3. Representatives of the Parties

8.3.1. City's Representatives

- 8.3.1.1. City designates the City Engineer or their designee as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Subsection 8.1.3.
- 8.3.1.2. City designates the City's project manager as its City's Representative, which individual has the authority and responsibility set forth in Subsection 8.1.2.

8.3.2. CM@Risk's Representatives

- 8.3.2.1.** CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Subsection 8.1.3:

Scott DePauw, Executive Vice President
1301 Lawson Road
Fort Worth, Texas 76131
(817) 232-4742

- 8.3.2.2.** CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibility set forth in Subsection 8.1.2:

Brian Hennington, Senior Project Manager
1301 Lawson Road
Fort Worth, Texas 76131
(817) 232-4742

Article 9 – Suspension and Termination

9.0. City's Right to Stop Work

- 9.0.1.** City may, at its discretion and without cause, order CM@Risk in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive Days.
- 9.0.2.** CM@Risk may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

9.1. Termination for Convenience

- 9.1.1.** Upon receipt of written notice to CM@Risk, City may, at its discretion and without cause, elect to terminate this Agreement. In such event, City shall pay CM@Risk only the direct value of its completed Work and materials supplied as of the date of termination and the reasonable costs and expenses attributable to such termination. CM@Risk shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead.
- 9.1.2.** If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.
- 9.1.3** Upon such termination, the CM@Risk shall proceed with the following obligations:
 - 9.1.3.1** Stop Work as specified in the notice.
 - 9.1.3.2** Place no further subcontracts or orders.
 - 9.1.3.3** Terminate all subcontracts to the extent they relate to the Work terminated and finalize all settlement proposals.
 - 9.1.3.4** Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the CM@Risk and which the City has or may acquire an interest.
- 9.1.4** The CM@Risk shall submit complete termination inventory schedules no later than 120 Days from the date of the notice of termination.
- 9.1.5** The City shall pay CM@Risk the following.
 - 9.1.5.1** The direct, verifiable value of its completed Work and materials supplied as of the date of termination.
 - 9.1.5.2** The reasonable, verifiable costs and expenses attributable to such termination.
 - 9.1.5.3** CM@Risk shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead. Neither shall the CM@Risk be entitled to any costs for lost opportunity, or any other similar, consequential damages. If it appears the CM@Risk would have sustained a loss on the entire Work had it been completed, the CM@Risk shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.
- 9.1.6** The CM@Risk shall maintain all records and documents for five years after final settlement. These shall be maintained and subject to auditing as prescribed in Section 7.7.

9.2. City's Right to Perform and Terminate for Cause

- 9.2.1.** If the City provides the CM@Risk with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM@Risk fails to comply in a time frame specified, the City may have a portion of the Work included in the written order accomplished by other sources.
- 9.2.2.** If CM@Risk persistently fails to: (i) provide a sufficient number of skilled workers; (ii) supply the materials required by the Contract Documents; (iii) comply with applicable Legal Requirements; (iv) timely pay, without cause, Subconsultants and/or Subcontractors; (v) prosecute the Work with promptness and diligence to ensure that the Work is completed within the Contract Times, as such times may be adjusted; or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Subsections 9.2.3 and 9.2.4 below.
- 9.2.3.** Upon the occurrence of an event set forth in Subsection 9.2.2 above, City may provide written notice to CM@Risk, with a copy to the surety, if any, that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of CM@Risk's receipt of such notice.
- 9.2.3.1.** If CM@Risk fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to CM@Risk, with a copy to the surety, if any, of its intent to terminate within an additional seven (7) Day period.
- 9.2.3.2.** If CM@Risk, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to CM@Risk of such declaration, with a copy to the surety, if any.
- 9.2.4.** Upon declaring the Agreement terminated pursuant to Subsection 9.2.3.2 above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials which have been purchased for the performance of the Work, all of which CM@Risk hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.2.5.** In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@Risk will only be entitled to be paid for Work performed and accepted by the City prior to its default.
- 9.2.6.** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the procurement and defense of claims arising from CM@Risk's default.
- 9.2.7.** If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

Article 10 - Insurance and Bonds

10.0. Insurance Requirements

10.0.1 CM@Risk and Subcontractors shall procure and maintain until all of their obligations under this agreement have been discharged, including until any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with the performance of the Work hereunder by the CM@Risk, their agents, representatives, employees, or Subcontractors.

10.0.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

10.0.3 The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of the Work under this Agreement by the CM@Risk, their agents, representatives, employees, or subcontractors. CM@Risk is free to purchase such additional insurance as may be determined necessary.

10.1 Minimum Scope and Limits of Insurance. CM@Risk shall provide coverage with limits of liability not less than those stated below:

10.1.1 Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

- General Aggregate/for this Project \$2,000,000/\$1,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

The policy shall include endorsement CG2503 Amendment of limits (designated project or premises) in order to extend the policy’s limits specifically to the project in question.

The policy shall be endorsed to include the following additional insured language: **“The City of Denton, its Officials, and Employees shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk. This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions naming the City as an additional insured to the insurance policy and providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.”**

10.1.2 Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include the following additional insured language: **“The City of Denton, its Officials, Employees, and Volunteers shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk, including automobiles owned, leased, hired or borrowed by the CM@Risk This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions naming the City as an additional insured to the insurance policy and providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.”**

10.1.3 Workers’ Compensation and Employers’ Liability
Workers’ Compensation

Statutory

Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease – Policy Limit	\$500,000

This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.”

10.1.4 Builders' Risk Insurance or Installation Floater

In an amount equal to the initial Contract Price plus additional coverage equal to Contract Price for all subsequent Amendments and/or Change Orders.

10.1.4.1 The City of Denton, its Officials, and Employees, the CM@Risk, and Subcontractors, shall be **named as Additional Insureds** on the policy.

10.1.4.2 Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for flood and earth movement.**

10.1.4.3 Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Denton, has an insurable interest in the property required to be covered.

10.1.4.4 Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

10.1.4.5 Policy must provide coverage from the time any covered property becomes the responsibility of the CM@Risk, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

10.1.4.6 Loss, if any, shall be adjusted with and made payable to the City of Denton as Trustee for the insureds as their interests may appear.

10.1.4.7 **This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions naming the City as an additional insured to the insurance policy and providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.”**

10.1.4.8 CM@Risk is responsible for the payment of all policy deductibles.

10.2 Additional Insurance Requirements. The policies shall include, or be endorsed to include the following provisions:

10.2.1 On insurance policies where the City of Denton is named as an additional insured, the City of Denton shall be an additional insured to the full limits of liability purchased by the CM@Risk even if those limits of liability are in excess of those required by this Agreement.

10.2.2 The CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

10.2.3 Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

10.2.4 PROFESSIONAL LIABILITY INSURANCE

If CONTRACTOR, SUBCONTRACTOR, or SUBCONSULTANT is a licensed or certified person who renders professional services, then Professional Liability Insurance to provide coverage against any claim which the CONTRACTOR, SUBCONTRACTOR, or SUBCONSULTANT becomes legally obligated to pay as damages arising out of the performance of professional services caused by any negligent error, omission or act with minimum limits of \$1,000,000.00 per claim, \$2,000,000.00 annual aggregate.

- 10.3 **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage, materially changed, or endorsed to lower limits except after thirty (30) Days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.
- 10.4 **Acceptability of Insurers.** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Texas and with an “A.M. Best” rating of at least A or better. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.
- 10.5 Verification of Coverage**
- 10.5.1 CM@Risk shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 10.5.2 All certificates and endorsements are to be received and approved by the City before Work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the contract.
- 10.5.3 All certificates required by this Agreement shall be sent directly to City’s Senior Representative. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**
- 10.5.4 **If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City’s requirements, the CM@Risk must:**
- **Submit a current insurance certificate (dated within 15 Days of the Payment Request submittal) with each Payment Request form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.**
- 10.6 **Subcontractors.** CM@Risk’s certificate(s) shall include all Subcontractors as additional insureds under its policies or CM@Risk shall furnish to the City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.
- 10.7 **Approval.** Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.
- 10.8 Bonds and Other Performance Security.**
- 10.8.1 Prior to execution of this Agreement, the CM@Risk must provide a performance bond, maintenance bond, at the City’s discretion, and a payment bond, each in an amount equal to the total contract price of the GMP set forth in this Agreement. In addition to any criteria set forth

in this provision, the performance and payment bonds must comply with all requirements of Chapter 2253 of the Texas Government Code.

- 10.8.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Texas, issued by the Director of the Texas Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued, updated, or certified within two years prior to the execution of this Agreement.
- 10.8.3** The bonds shall be made payable and acceptable to the City of Denton.
- 10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Texas or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- 10.8.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM@Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 10.8.6** All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A- or better for the prior four quarters" by the A.M. Best Company.

Article 11 – Indemnification

11.1 CM@Risk’s General Indemnification.

11.1.1 CM@RISK AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY OF DENTON, ITS OFFICERS, AGENTS AND EMPLOYEES, AND ANY JURISDICTION OR AGENCY ISSUING PERMITS FOR ANY WORK INCLUDED IN THE PROJECT, THEIR OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, (HEREINAFTER REFERRED TO AS “INDEMNITEES”, FROM ALL SUITS AND CLAIMS, INCLUDING ATTORNEY’S FEES AND COST OF LITIGATION, ACTIONS, LOSS, DAMAGE, EXPENSE, COST OR CLAIMS OF ANY CHARACTER OR ANY NATURE ARISING OUT OF THE WORK DONE IN FULFILLMENT OF THE TERMS OF THE CONTRACT DOCUMENTS OR ON ACCOUNT OF ANY ACT, CLAIM OR AMOUNT ARISING OR RECOVERED UNDER WORKER’S COMPENSATION LAW OR ARISING OUT OF THE FAILURE OF THE CM@RISK, ITS OFFICERS, EMPLOYEES, AGENTS, OR ITS SUBCONTRACTORS OR THE SUBCONTRACTORS’ OFFICERS, EMPLOYEES OR AGENTS, TO CONFORM TO ANY STATUTES, ORDINANCES, REGULATION, LAW OR COURT DECREE. IT IS AGREED THAT THE CM@RISK WILL BE RESPONSIBLE FOR PRIMARY LOSS INVESTIGATION, DEFENSE, AND JUDGMENT COSTS WHERE THIS INDEMNIFICATION PROVISION APPLIES. IN CONSIDERATION OF THE AWARD OF THIS CONTRACT, THE CM@RISK AGREES TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST THE CITY, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FOR LOSSES ARISING FROM THE WORK PERFORMED BY THE CM@RISK, ITS OFFICERS, EMPLOYEES, AGENTS, OR ITS SUBCONTRACTORS OR THE SUBCONTRACTORS’ OFFICERS, EMPLOYEES OR AGENTS, OR ITS SUBCONTRACTORS FOR THE CITY. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY.

Article 12 – General Provisions

12.1 Contract Documents

- 12.1.1** Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, Addenda (if any) and used as the basis for the Guaranteed Maximum Price Proposal; GMP, Performance Bond, Payment Bond, Maintenance Bond, if applicable, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.
- 12.1.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. Anything shown on the Plans but not mentioned in the Specifications 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.
- 12.1.3** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.
- 12.1.3.1** On the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Design Professional as to the dimensions to be used.
- 12.1.3.2** Project Specific plans take precedence over Specifications. Should there be a conflict within the Specifications; or within the Plans; or between the Plans and Specifications; however, the Design Professional be made aware of such conflict in writing, and shall decide, after consultation with the City, which stipulation will provide the best installation and its decision shall be final; provided however, any conflict not presented in writing shall be the sole discretion of the City
- 12.1.3.3** The Plans, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the CM@Risk, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. The CM@Risk, other Contractors, Subcontractors, and Sub-subcontractors shall properly coordinate its work with that of the City and all other Contractors. It is not within the scope of the Plans to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of the CM@Risk and each Contractor to plan, coordinate, and install its work in such a manner so as to conform to the structure. Any conflict within the Plans shall be referred to the Design Professional for disposition prior to the installation of any affected work.
- 12.1.3.4** In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Preconstruction Phase Contract, the Contract Documents take precedence over the Preconstruction Phase Contract.
- 12.1.4** The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 12.1.5** The Contract Documents form the entire agreement between City and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

- 12.2 Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 12.3 Time is of the Essence.** City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- 12.4 Mutual Obligations.** City and CM@Risk commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- 12.5 Cooperation and Further Documentation.** The CM@Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.
- 12.6 Assignment.** Neither CM@Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.
- 12.7 Successorship.** CM@Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.
- 12.8 Third Party Beneficiary.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM@Risk and not for the benefit of any other party.
- 12.9 Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of Texas without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought and tried in the district courts of Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court with the City consenting only to the extent allowed by statute and otherwise reserving all rights and defenses.
- 12.10 Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 12.11 Compliance with Federal Laws.** CM@Risk understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these laws, as well as any other federal laws that may apply, in performing the Contract Documents and to permit the City to verify such compliance.
- 12.12 Legal Requirements.** CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements. It is not the CM@Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM@Risk recognizes that portions of the Construction Documents are at variance therewith, the CM@Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.
- 12.13 Fair Treatment of Workers.** The CM@Risk shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. They shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders, and decrees; this includes, but is not limited to laws and regulations ensuring fair and

equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The CM@Risk shall protect and indemnify the City and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.

- 12.14 Independent Contractor.** The CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct the CM@Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM@Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.
- 12.15 Survival.** All warranties, representations, and indemnifications by the CM@Risk shall survive the completion or termination of this Agreement.
- 12.16 Covenant Against Contingent Fees.** The CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Denton has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City of Denton shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 12.17 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.
- 12.18 Notice.**
- 12.18.1** Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or mailed by certified mail, postage prepaid, return receipt requested or by e-mail; provided however, that e-mail shall not be a permissible method of delivery for any notice, request, instruction or other document that requires execution by both parties, and shall be deemed given upon (a) confirmation of receipt of an e-mail transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM@Risk:
Steele & Freeman, Inc.
1301 Lawson Road
Fort Worth, TX 76131

to City:

Materials Management
ATTN: Contract 8558; Purchasing Manager
901B Texas Street
Denton, Texas 76209
purchasing@cityofdenton.com

With a Copies to:

City Attorney
215 E. McKinney Street
Denton, Texas 76201
legal@cityofdenton.com

Kristine Stewart
401 N Elm St.
Denton, Texas 76201
kristine.stewart@cityofdenton.com

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

12.18.2 Notices Related to Payment, Securities-in-lieu, Bonds. Any notice, request, instruction, or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds, or other instrument securing the performance of this Agreement, including

but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to Contractor:

Reilly Freeman, Vice President of Finance
1301 Lawson Road
Fort Worth, Texas 76131
(817) 232-4742
RFreeman@steelefreeman.com

to City:

City of Denton
ATTN: Contract 8558; Purchasing Manager
901B Texas Street
Denton, Texas 76209
purchasing@cityofdenton.com

With a Copies to:

City Attorney
215 E. McKinney Street
Denton, Texas 76201
legal@cityofdenton.com

Kristine Stewart
401 N Elm St.
Denton, Texas 76201
kristine.stewart@cityofdenton.com

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

12.19 Equal Opportunity/Affirmative Action

12.19.1 The CM@Risk shall comply with the provisions of this Agreement, and the requirements of state, federal, and local law and regulation, pertaining to discrimination and accepting applications or hiring employees. The CM@Risk shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. The CM@Risk will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this Agreement. The CM@Risk further agrees that this clause will be incorporated in all subcontracts, job-consultant contracts of this Contract entered into by the CM@Risk.

12.19.2 The City extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Disadvantaged and/or Minority-owned or Woman-owned business to reflect both the industry and community ethnic composition.

12.19.3 The following two paragraphs apply to the CM@Risk named herein and shall appear in all contracts between the CM@Risk and any and all Subcontractors who are employed on this Project. The CM@Risk further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract.

“Any Party (Subcontractor), in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship.”

The CM@Risk further agrees that the above two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract.

12.20 Confidentiality of Plans & Specifications

12.20.1 Any plans or specifications you receive regarding this Project are for official use only. You may not share them with others except as required to fulfill the obligations of your Contract with the City.

12.20.2 All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the CM@Risk shall include the following language: “These plans are for official use only and may not be shared with others except as required to fulfill the obligations of your contract with the City of Denton”.

12.21 Hazardous Materials

12.21.1 The CM@Risk is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials or Substances.

- 12.21.2** If the CM@Risk 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 CM@Risk, the CM@Risk shall, upon recognizing the condition, immediately stop Work in the affected area and notify the City of the condition in writing.
- 12.21.3** If the suspected Hazardous Material is found to contain asbestos, PCB or other recognized hazardous substances or materials the CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless. The CM@Risk and the City may agree, in writing, to continue work in non-affected areas onsite.
- 12.21.4** An extension of Contract Time may be granted in accordance with Article 6.
- 12.21.5** The CM@Risk will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- 12.21.6** The CM@Risk shall certify, in a form acceptable to City that no Hazardous Materials have been incorporated into the Work.
- 12.21.7** **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CM@RISK SHALL INDEMNIFY AND HOLD HARMLESS CITY, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY THE CM@RISK OR BY ANYONE FROM WHOM CM@RISK IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH SHALL OBLIGATE CM@RISK TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.**
- 12.22** **Traffic Control.** CM@Risk will comply with all provisions of the then current Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.
- 12.23** **Immigration Nationality Act.** CM@Risk shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, CM@Risk shall provide City with copies of all I-9 forms and supporting eligibility documentation for each CM@Risk employee who performs work under this Agreement. CM@Risk shall adhere to all federal and state laws as well as establish appropriate procedures and controls so that no services will be performed by any CM@Risk employee who is not legally eligible to perform such services. **CM@RISK SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CM@Risk's EMPLOYEES.** City, upon written notice to CM@Risk, shall have the right to immediately terminate this Agreement for violations of this provision by CM@Risk.
- 12.24** **Prohibition on Contracts with Companies Boycotting Israel.** CM@Risk acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12.25** **Prohibition on Contracts with Companies Boycotting Certain Energy Companies.**

CM@Risk acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. By signing this agreement, CM@Risk certifies that CM@Risk’s signature provides written verification to the City that CM@Risk: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

- 12.26 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations.** CM@Risk acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. By signing this agreement, CM@Risk certifies that CM@Risk’s signature provides written verification to the City that CM@Risk: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12.27 Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization.** Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. By signing this agreement, CM@Risk certifies that CM@Risk’s signature provides written verification to the City that CM@Risk, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12.28 Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies.** The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future: (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country; (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country; or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

CITY OF DENTON, TEXAS

BY: _____

Printed Name

Title

CM@Risk

DocuSigned by:
BY: *Michael Freeman*

0AB7C48B8A0D4A4...

Michael Freeman

Printed Name

Chief Executive Officer

Title

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

Signed by:
Leah Bush
BY: _____
3A6254145BDA469

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations and
business terms.

Signed by:
Seth Garcia Seth Garcia

A13701F6BC954FC

SIGNATURE PRINTED NAME

Director of Capital Projects

TITLE
Capital projects

DEPARTMENT



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'A'-COD - Project Description
04/10/2026 : Date

PROJECT:
LINDA McNATT ANIMAL CARE & ADOPTION CENTER

SFI JOB No. :
5624

ARCHITECT:
QUORUM ARCHITECTS, INC.
825 W VICKEY BLVD, SUITE 100
FORT WORTH, TEXAS 76104

PROJECT DESCRIPTION

This project includes the renovation and expansion of the Animal Services building. The Linda McNatt Animal Services Building is located in North Denton on US-77 (aka North Elm St).

The main goal of the project is to deliver additional space for dog adoption, staff office space and maximize storage. Major renovations are needed on HVAC and to improve sound absorption. Animals and staff may need to be temporarily relocated. The anticipated staff growth is 22 to 29 in the next five years. Key scope items will include but will not be limited to:

- Additional dog kennel adoption space
- Additional office and storage space
- Dedicated conference room
- Additional dog run space
- Additional washer and dryers
- Upgrade HVAC system
- Improve sound absorption
- Replace artificial turf
- Provide trenches/improved drainage for existing kennels
- Provide integrated power washing/cleaning system
- New cat kennels
- Update surgery suite
- Address concerns regarding retention pond



SFI Exhibit 'B' - GMP Proposal No. 1
04/10/2026 : Date

PROJECT:
LINDA McNATT ANIMAL CARE & ADOPTION CENTER

ARCHITECT:
QUORUM ARCHITECTS, INC.
825 W VICKERY BLVD, SUITE 100
FORT WORTH, TEXAS 76104

SFI JOB No. :
5624

GMP Summary				AMOUNT
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			\$13,826,488.00
B.	CM@Risk's Contingency – Base			\$404,998.00
C.	Additional Marketplace Risk Contingency			\$164,405.00
INDIRECT COSTS				RATE
D.	Construction Fee			4% \$575,835.00
E.	General Conditions			\$1,633,177.00
	E1	Payment and Performance Bond	\$134,500	0.81%
	E2	Insurance		
		- Builders Risk	\$41,512	0.25%
		- Subcontractor Default Insurance	\$205,229	1.65%
		- General / Excess Liability	\$76,383	0.46%
	E3	Two Year Maintenance Bond	\$28,228	0.17%
F.	Approved Alternates			\$430,977.00
G. TOTAL GMP				\$17,035,880.00
H. Owner's Contingency				\$511,076.00
I. Contract Amount				\$17,546,956

Substantial Completion **548** **Calendar Days**
Final Completion **632** **Calendar Days**

See Exhibit E – Schedule for Details



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Project Manual Drawings
04/10/2026 : Date

PROJECT:
LINDA McNATT ANIMAL CARE & ADOPTION CENTER

ARCHITECT:
QUORUM ARCHITECTS, INC.
825 W VICKERY BLVD, SUITE 100
FORT WORTH, TEXAS 76104

SFI JOB No. :
5624

ITEM / SHEET No.	DESCRIPTION	DATED	ADDENDUM
GENERAL			
G-001	TITLE SHEET	February 12, 2026	ADDENDA #2
G-002	LIFE SAFETY AND CODE ANALYSIS	February 12, 2026	ADDENDA #2
G-003	PHASING - SITE PLAN	January 27, 2026	
G-004	PHASING - FLOOR PLAN	January 27, 2026	
G-005	ACCESSIBILITY GUIDELINES (TAS)	January 27, 2026	
G-006	ACCESSIBILITY GUIDELINES (TAS)	January 27, 2026	
G-007	ACCESSIBILITY GUIDELINES (TAS)	January 27, 2026	
G-008	ACCESSIBILITY GUIDELINES (TAS)	January 27, 2026	
G-009	ACCESSIBILITY GUIDELINES (TAS)	January 27, 2026	
CIVIL			
C1.01	COVER SHEET	January 27, 2026	
C2.01	GENERAL NOTES	January 27, 2026	
C3.01	SUMMARY OF QUANTITIES	January 27, 2026	
C4.01	FINAL PLAT	June 6, 2014	
C5.01	DEMOLITION PLAN	January 27, 2026	
C6.01	APPROVED ZONING COMPLIANCE PLAN	January 27, 2026	
C7.01	DIMENSIONAL CONTROL PLAN	February 13, 2026	ADDENDA #2
C8.01	EXISTING DRAINAGE AREA MAP	January 27, 2026	
C8.02	PROPOSED DRAINAGE AREA MAP	January 27, 2026	
C9.01	GRADING PLAN	January 27, 2026	
C9.50	GRADING PLAN DETAILS	January 27, 2026	
C9.60	DETENTION POND PLAN	February 13, 2026	ADDENDA #2
C9.61	DETENTION POND CALCULATIONS	January 27, 2026	
C9.62	DETENTION POND OPERATION & MAINTENANCE MANUAL	January 27, 2026	
C10.01	OVERALL UTILITY PLAN (WATER & STORM)	January 27, 2026	
C11.01	STORM PLAN	February 13, 2026	ADDENDA #2
C11.02	PRIVATE STORM PLAN	January 27, 2026	
C11.50	STORM PROFILES	January 27, 2026	
C12.01	WATER PLAN	January 27, 2026	
C12.50	WATER PROFILE	January 27, 2026	
C12.51	CITY OF DENTON WATER GIS DATA	January 27, 2026	
C14.01	PAVING PLAN	January 27, 2026	
C15.01	SIGNAGE & STRIPING PLAN	January 27, 2026	
C17.01	EROSION CONTROL PLAN	January 27, 2026	
C17.50	EROSION CONTROL DETAILS	January 27, 2026	
C18.01	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.02	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.03	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.04	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.05	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.06	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.07	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.08	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.09	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.10	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.11	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.12	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.13	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.14	CITY OF DENTON STANDARD DETAILS	January 27, 2026	
C18.15	CITY OF DENTON STANDARD DETAILS	January 27, 2026	



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Project Manual Drawings
04/10/2026 : Date

C18.16	CITY OF DENTON STANDARD DETAILS	January 27, 2026
C18.17	CITY OF DENTON STANDARD DETAILS	January 27, 2026
C18.18	CITY OF DENTON STANDARD DETAILS	January 27, 2026
C18.19	CITY OF DENTON STANDARD DETAILS	January 27, 2026
C18.20	CITY OF DENTON STANDARD DETAILS	January 27, 2026
C18.21	CITY OF DENTON STANDARD DETAILS	January 27, 2026
C18.22	CITY OF DENTON STANDARD DETAILS	January 27, 2026
C18.23	CITY OF DENTON STANDARD DETAILS	January 27, 2026
C18.24	CITY OF DENTON STANDARD DETAILS	January 27, 2026
C18.25	CITY OF DENTON STANDARD DETAILS	January 27, 2026
C18.26	CONSTRUCTION DETAILS	January 27, 2026
C18.27	CONSTRUCTION DETAILS	January 27, 2026

LANDSCAPE

LP1.01	LANDSCAPE PLAN	January 27, 2026
LP3.01	PLANTING DETAILS	January 27, 2026
LP3.02	PLANTING DETAILS	January 27, 2026
LP3.03	PLANT SCHEDULE & NOTES	January 27, 2026
TPP.01	TREE PRESERVATION PLAN	January 27, 2026
TPP.02	TREE PRESERVATION TABLE	January 27, 2026
TPP.03	TREE PRESERVATION DETAILS	January 27, 2026
SW.01	SOLID WASTE PLAN	January 27, 2026

IRRIGATION

L1.01	IRRIGATION PLAN	January 27, 2026
LI 3.01	IRRIGATION DETAILS	January 27, 2026
LI 3.02	IRRIGATION SCHEDULE AND SPECIFICATIONS	January 27, 2026

ARCHITECTURAL DEMO

AD-101	DEMOLITION - FLOOR PLAN	January 27, 2026
AD-102	DEMOLITION DETAILS	January 27, 2026
AD-103	DEMOLITION RCP	February 12, 2026
AD-104	DEMOLITION - ROOF PLAN	January 27, 2026
ASD-100	DEMOLITION - SITE PLAN	January 27, 2026

ADDENDA #2

ARCHITECTURAL SITE

AS-100	SITE PLAN	February 12, 2026
AS-101	SCREEN WALL DETAILS / LINE OF SIGHT	January 27, 2026
AS-102	ENLARGED SITE PLAN,	January 27, 2026
AS-103	ENLARGED SITE DETAILS	January 27, 2026
AS-104	ENLARGED PLANS, PLAY YARDS	February 19, 2026
AS-105	ENLARGED PLANS, MONUMENT SIGN	January 27, 2026

ADDENDA #2

ADDENDA #3

ARCHITECTURAL

A-010	EDGE OF SLAB	January 27, 2026
A-100	OVERALL FLOOR PLAN	January 27, 2026
A-101	OVERALL DIMENSION PARTITION PLAN	January 27, 2026
A-101A	DIMENSION PARTITION PLAN - AREA A	January 27, 2026
A-101B	DIMENSION PARTITION PLAN - AREA B	January 27, 2026
A-101C	DIMENSION PARTITION PLAN - AREA C	January 27, 2026
A-101D	DIMENSION PARTITION PLAN - AREA D	January 27, 2026
A-101E	DIMENSION PARTITION PLAN - AREA E	January 27, 2026
A-101F	DIMENSION PARTITION PLAN - AREA F	January 27, 2026
A-102	PARTITION TYPES	January 27, 2026
A-103	REFERENCE FLOOR PLAN OVERALL	January 27, 2026
A-103A	REFERENCE FLOOR PLAN - AREA 'A'	February 12, 2026
A-103B	REFERENCE FLOOR PLAN - AREA 'B'	January 27, 2026
A-103C	REFERENCE FLOOR PLAN - AREA 'C'	January 27, 2026
A-103D	REFERENCE FLOOR PLAN - AREA 'D'	January 27, 2026
A-103E	REFERENCE FLOOR PLAN - AREA 'E'	January 27, 2026

ADDENDA #2



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Project Manual Drawings
04/10/2026 : Date

A-103F	REFERENCE FLOOR PLAN - AREA 'F'	January 27, 2026	
A-104	REFLECTED CEILING PLAN 01/27/26	January 27, 2026	
A-104A	REFLECTED CEILING PLAN - AREA 'A'	January 27, 2026	
A-104B	REFLECTED CEILING PLAN - AREA 'B'	January 27, 2026	
A-104C	REFLECTED CEILING PLAN - AREA 'C'	February 12, 2026	ADDENDA #2
A-104D	REFLECTED CEILING PLAN - AREA 'D'	February 12, 2026	ADDENDA #2
A-104E	REFLECTED CEILING PLAN - AREA 'E'	February 12, 2026	ADDENDA #2
A-104F	REFLECTED CEILING PLAN - AREA 'F'	February 12, 2026	ADDENDA #2
A-105	LOBBY CLERESTORY	January 27, 2026	
A-106	ROOF PLAN 01/27/26	February 12, 2026	ADDENDA #2
A-201	BUILDING ELEVATIONS	January 27, 2026	
A-202	BUILDING ELEVATIONS	January 27, 2026	
A-203	BUILDING ELEVATIONS	January 27, 2026	
A-204	EXTERIOR SIGNAGE	February 12, 2026	ADDENDA #2
A-205	ENLARGED PARTIAL BUILDING ELEVATIONS	January 27, 2026	
A-206	BUILDING MOCK-UP	February 12, 2026	ADDENDA #2
A-207	INTERIOR ELEVATIONS	January 27, 2026	
A-208	INTERIOR ELEVATIONS	January 27, 2026	
A-209	INTERIOR ELEVATIONS	January 27, 2026	
A-210	INTERIOR ELEVATIONS	January 27, 2026	
A-211	INTERIOR ELEVATIONS	January 27, 2026	
A-212	INTERIOR ELEVATIONS	January 27, 2026	
A-213	INTERIOR ELEVATIONS	January 27, 2026	
A-214	INTERIOR ELEVATIONS	January 27, 2026	
A-215	INTERIOR ELEVATIONS	January 27, 2026	
A-216	INTERIOR ELEVATIONS	January 27, 2026	
A-217	INTERIOR ELEVATIONS	January 27, 2026	
A-218	INTERIOR ELEVATIONS	January 27, 2026	
A-219	INTERIOR ELEVATIONS	January 27, 2026	
A-220	INTERIOR ELEVATIONS	January 27, 2026	
A-221	INTERIOR ELEVATIONS	January 27, 2026	
A-222	INTERIOR ELEVATIONS	January 27, 2026	
A-223	INTERIOR ELEVATIONS	January 27, 2026	
A-224	INTERIOR ELEVATIONS	January 27, 2026	
A-225	INTERIOR ELEVATIONS	January 27, 2026	
A-226	INTERIOR ELEVATIONS	January 27, 2026	
A-227	INTERIOR ELEVATIONS	January 27, 2026	
A-228	INTERIOR ELEVATIONS	January 27, 2026	
A-229	INTERIOR ELEVATIONS	January 27, 2026	
A-230	INTERIOR ELEVATIONS	January 27, 2026	
A-231	INTERIOR ELEVATIONS	January 27, 2026	
A-232	INTERIOR ELEVATIONS	January 27, 2026	
A-300	BUILDING SECTIONS	January 27, 2026	
A-301	BUILDING SECTIONS	January 27, 2026	
A-302	WALL SECTIONS	January 27, 2026	
A-303	WALL SECTIONS	January 27, 2026	
A-304	WALL SECTIONS	January 27, 2026	
A-305	WALL SECTIONS	January 27, 2026	
A-306	WALL SECTIONS	January 27, 2026	
A-307	WALL SECTIONS	February 12, 2026	ADDENDA #2
A-308	WALL SECTIONS	January 27, 2026	
A-309	WALL SECTIONS	January 27, 2026	
A-310	WALL SECTIONS	January 27, 2026	
A-311	WALL SECTIONS	January 27, 2026	
A-312	SECTION DETAILS	January 27, 2026	
A-313	SECTION DETAILS	January 27, 2026	
A-314	SECTION DETAILS	January 27, 2026	
A-315	SECTION DETAILS	January 27, 2026	
A-316	SECTION DETAILS	January 27, 2026	
A-317	SECTION DETAILS	January 27, 2026	



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Project Manual Drawings
04/10/2026 : Date

A-401	ENLARGED SHOWER PLANS	January 27, 2026	
A-500	PLAN DETAILS	January 27, 2026	
A-501	PLAN DETAILS	January 27, 2026	
A-502	DETAILS	January 27, 2026	
A-503	DETAILS	January 27, 2026	
A-504	EXPANSION JOINTS	January 27, 2026	
A-505	MILLWORK DETAILS	January 27, 2026	
A-506	MILLWORK DETAILS	January 27, 2026	
A-507	MILLWORK DETAILS	January 27, 2026	
A-601	DOOR AND WINDOW SCHEDULE	February 19, 2026	ADDENDA #3
A-602	EXTERIOR FRAME ELEVATIONS	January 27, 2026	
A-603	INTERIOR FRAME ELEVATIONS	February 12, 2026	ADDENDA #2
A-701	ROOM FINISH PLAN	January 27, 2026	
A-701A	FINISH PLAN - AREA 'A'	February 12, 2026	ADDENDA #2
A-701B	FINISH PLAN - AREA 'B'	February 12, 2026	ADDENDA #2
A-701C	FINISH PLAN - AREA 'C'	February 12, 2026	ADDENDA #2
A-701D	FINISH PLAN - AREA 'D'	February 12, 2026	ADDENDA #2
A-701E	FINISH PLAN - AREA 'E'	February 12, 2026	ADDENDA #2
A-701F	FINISH PLAN - AREA 'F'	February 12, 2026	ADDENDA #2
A-702	INTERIOR FINISH LEGEND	February 12, 2026	ADDENDA #2
A-703	INTERIOR DETAILS	January 27, 2026	
A-704	INTERIOR DETAILS	February 12, 2026	ADDENDA #2
	STRUCTURAL		
S-001	GENERAL NOTES	January 27, 2026	
S-002	SPECIAL INSPECTIONS	January 27, 2026	
SS-101	STRUCTURAL SITE PLAN	January 27, 2026	
SS-102	SITE WALL & MONUMENT SIGN ENLARGED PLANS	February 19, 2026	ADDENDA #3
SS-103	SITE SCREENWALL DETAILS	February 19, 2026	ADDENDA #3
S-101	FOUNDATION DETAILS	January 27, 2026	
S-102	FOUNDATION DETAILS	February 19, 2026	ADDENDA #3
S-103	FOUNDATION DETAILS	February 19, 2026	ADDENDA #3
S-104	FOUNDATION DETAILS	February 19, 2026	ADDENDA #3
S-105	FOUNDATION DETAILS	January 27, 2026	
S-201	OVERALL PIER LAYOUT	January 27, 2026	
S-201A	PIER LAYOUT PLAN - AREA 'A'	January 27, 2026	
S-201B	PIER LAYOUT PLAN - AREA 'B'	January 27, 2026	
S-201C	PIER LAYOUT PLAN - AREA 'C'	January 27, 2026	
S-201D	PIER LAYOUT PLAN - AREA 'D' 01/27/26	January 27, 2026	
S-201E	PIER LAYOUT PLAN - AREA 'E'	January 27, 2026	
S-201F	PIER LAYOUT PLAN - AREA 'F'	January 27, 2026	
S-202	OVERALL FOUNDATION PLAN	January 27, 2026	
S-202A	FOUNDATION PLAN - AREA 'A'	January 27, 2026	
S-202B	FOUNDATION PLAN - AREA 'B'	January 27, 2026	
S-202C	FOUNDATION PLAN - AREA 'C'	January 27, 2026	
S-202D	FOUNDATION PLAN - AREA 'D'	January 27, 2026	
S-202E	FOUNDATION PLAN - AREA 'E'	January 27, 2026	
S-202F	FOUNDATION PLAN - AREA 'F'	January 27, 2026	
S-203	OVERALL ROOF FRAMING PLAN	January 27, 2026	
S-203A	ROOF FRAMING PLAN - AREA 'A'	January 27, 2026	
S-203B	ROOF FRAMING PLAN - AREA 'B'	January 27, 2026	
S-203C	ROOF FRAMING PLAN - AREA 'C'	January 27, 2026	
S-203D	ROOF FRAMING PLAN - AREA 'D'	January 27, 2026	
S-203E	ROOF FRAMING PLAN - AREA 'E'	January 27, 2026	
S-203F	ROOF FRAMING PLAN - AREA 'F'	January 27, 2026	
S-204A	PARTIAL ROOF FRAMING PLAN	January 27, 2026	
S-301	FRAMING DETAILS	January 27, 2026	
S-302	FRAMING DETAILS	January 27, 2026	
S-303	FRAMING DETAILS	January 27, 2026	
S-304	FRAMING DETAILS	January 27, 2026	
S-305	FRAMING DETAILS	January 27, 2026	



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Project Manual Drawings
04/10/2026 : Date

	<u>PLUMBING</u>		
P-100	PLUMBING DEMOLITION PLAN	January 27, 2026	
P-101	OVERALL PLAN	February 12, 2026	ADDENDA #2
P-101A	PLUMBING PLAN - AREA 'A'	January 27, 2026	
P-101B	PLUMBING PLAN - AREA 'B'	January 27, 2026	
P-101C	PLUMBING PLAN - AREA 'C'	January 27, 2026	
P-101D	PLUMBING PLAN - AREA 'D'	January 27, 2026	
P-101E	PLUMBING PLAN - AREA 'E'	January 27, 2026	
P-101F	PLUMBING PLAN - AREA 'F'	January 27, 2026	
P-102	PLUMBING PLAN - ROOF	January 27, 2026	
P-201	PLUMBING SCHEDULES	January 27, 2026	
P-202	PLUMBING DETAILS	January 27, 2026	
	<u>FIRE PROTECTION</u>		
FP-101	FIRE PROTECTION	January 27, 2026	
	<u>MECHANICAL</u>		
M-100	MECHANICAL DEMOLITION PLAN	January 27, 2026	
M-101	OVERALL PLAN - MECHANICAL	January 27, 2026	
M-101A	MECHANICAL PLAN - AREA 'A'	January 27, 2026	
M-101B	MECHANICAL PLAN - AREA 'B'	January 27, 2026	
M-101C	MECHANICAL PLAN - AREA 'C'	January 27, 2026	
M-101D	MECHANICAL PLAN - AREA 'D'	January 27, 2026	
M-101E	MECHANICAL PLAN - AREA 'E'	January 27, 2026	
M-101F	MECHANICAL PLAN - AREA 'F'	January 27, 2026	
M-102	ROOF PLAN - MECHANICAL	January 27, 2026	
M-201	MECHANICAL SCHEDULES	January 27, 2026	
M-202	MECHANICAL DETAILS	January 27, 2026	
M-203	COMCHECK	January 27, 2026	
M-204	M-204 OA CALCULATIONS	January 27, 2026	
	<u>ELECTRICAL</u>		
ES-100	ELECTRICAL SITE PLAN	February 12, 2026	ADDENDA #2
ED-201	FLOOR PLAN - OVERALL - DEMOLITION POWER	February 12, 2026	ADDENDA #2
E-101A	RCP - LIGHTING - AREA 'A'	January 27, 2026	
E-101B	RCP - LIGHTING - AREA 'B'	January 27, 2026	
E-101C	RCP - LIGHTING - AREA 'C'	February 12, 2026	ADDENDA #2
E-101D	RCP - LIGHTING - AREA 'D'	February 12, 2026	ADDENDA #2
E-101E	RCP - LIGHTING - AREA 'E'	February 12, 2026	ADDENDA #2
E-101F	RCP - LIGHTING - AREA 'F'	February 12, 2026	ADDENDA #2
E-102A	RCP - DAYLIGHTING - AREA 'A'	January 27, 2026	
E-102B	RCP - DAYLIGHTING - AREA 'B'	January 27, 2026	
E-102C	RCP - DAYLIGHTING - AREA 'C'	January 27, 2026	
E-102D	RCP - DAYLIGHTING - AREA 'D'	January 27, 2026	
E-102E	RCP - DAYLIGHTING - AREA 'E'	January 27, 2026	
E-102F	RCP - DAYLIGHTING - AREA 'F'	January 27, 2026	
E-201A	FLOOR PLAN - POWER - AREA 'A'	February 12, 2026	ADDENDA #2
E-201B	FLOOR PLAN - POWER - AREA 'B'	February 12, 2026	ADDENDA #2
E-201C	FLOOR PLAN - POWER - AREA 'C'	February 12, 2026	ADDENDA #2
E-201D	FLOOR PLAN - POWER - AREA 'D'	February 12, 2026	ADDENDA #2
E-201E	FLOOR PLAN - POWER - AREA 'E'	February 12, 2026	ADDENDA #2
E-201F	FLOOR PLAN - POWER - AREA 'F'	February 12, 2026	ADDENDA #2
E-202	FLOOR PLAN - POWER - ROOF	January 27, 2026	
E-401	ELECTRICAL SYMBOLS AND SCHEDULES	February 12, 2026	ADDENDA #2
E-402	RISER DIAGRAMS	January 27, 2026	
E-403	ELECTRICAL SYMBOLS AND SCHEDULES	January 27, 2026	
E-501	PANEL SCHEDULES	February 12, 2026	ADDENDA #2
ELV-101	FLOOR PLAN - LOW VOLTAGE	February 12, 2026	ADDENDA #2



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Project Manual Drawings
04/10/2026 : Date

<u>HDG - SECURITY</u>			
ES-000	SECURITY LEGENDS AND NOTES	January 30, 2026	ADDENDA #2
ESD-101	DEMOLITION - FLOOR PLAN - SECURITY	January 30, 2026	ADDENDA #2
ESS-100	SITE PLAN - SECURITY	January 30, 2026	ADDENDA #2
ES-103	OVERALL FLOOR PLAN - SECURITY	January 30, 2026	ADDENDA #2
ES-104	OVERALL REFLECTED CEILING PLAN - SECURITY DETAILS	January 30, 2026	ADDENDA #2
ES-501	SECURITY DETAILS	January 30, 2026	ADDENDA #2
<u>HDG - IT</u>			
IT-000	IT LEGENDS AND NOTES	January 30, 2026	ADDENDA #2
IT-103	OVERALL FLOOR PLAN - IT	January 30, 2026	ADDENDA #2
IT-104	OVERALL REFLECTED CEILING PLAN - IT	January 30, 2026	ADDENDA #2
IT-500	IT DETAILS	January 30, 2026	ADDENDA #2
IT-501	IT DETAILS	January 30, 2026	ADDENDA #2
AV-103	OVERALL FLOOR PLAN - AV	January 30, 2026	ADDENDA #2



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Project Manual Drawings
04/10/2026 : Date

PROJECT MANUAL FOR THE CONSTRUCTION OF LINDA McNATT ANIMAL CARE & ADOPTION CENTER DATED JANUARY 27, 2026

DIVISION 01 - GENERAL REQUIREMENTS (OWNER PROVIDED TABLE OF CONTENTS)

01 11 00	SUMMARY OF WORK	January 27, 2026
01 25 00	SUBSTITUTION PROCEDURES	January 27, 2026
01 29 76	STORED MATERIALS AND EQUIPMENT (MATERIALS ON HAND)	January 27, 2026
01 31 19	PRECONSTRUCTION MEETING	January 27, 2026
01 31 20	CONSTRUCTION PROGRESS SCHEDULE	January 27, 2026
01 32 16	PRECONSTRUCTION VIDEO	January 27, 2026
01 32 33	SUBMITTALS	January 27, 2026
01 33 00	SPECIAL PROJECT PROCEDURES	January 27, 2026
01 35 13	TESTING AND INSPECTION SERVICES	January 27, 2026
01 45 23	TEMPORARY FACILITIES AND CONTROLS	January 27, 2026
01 50 00	STORM WATER POLLUTION PREVENTION PLAN	January 27, 2026
01 57 13	PRODUCT STORAGE AND HANDLING REQUIREMENTS	January 27, 2026
01 66 00	MOBILIZATION AND REMOBILIZATION	January 27, 2026
01 70 00	CONSTRUCTION STAKING AND SURVEY	January 27, 2026
01 71 23	CLEANING	January 27, 2026
01 74 23	CLOSEOUT REQUIREMENTS	January 27, 2026
01 77 19	PROJECT RECORD DOCUMENTS	January 27, 2026

DIVISION 01 - GENERAL REQUIREMENTS

01 02 00	INFORMATION AVAILABLE TO BIDDERS	January 27, 2026
01 02 01	GEOTECHNICAL REPORT	January 27, 2026
01 11 00	SUMMARY OF WORK	January 27, 2026
01 11 13	ADMINISTRATIVE PROVISIONS	January 27, 2026
01 20 00	CONTRACT CONSIDERATION	January 27, 2026
01 23 00	ALTERNATES	January 27, 2026
01 31 13	PROJECT COORDINATION	January 27, 2026
01 33 00	SUBMITTALS	January 27, 2026
01 43 00	QUALITY ASSURANCE	January 27, 2026
01 45 29	TESING LABORATORY SERVICES	January 27, 2026
01 60 00	PRODUCT REQUIRMENTS	January 27, 2026
01 66 00	PRODUCT STORAGE & HANDLING	January 27, 2026
01 73 29	CUTTING AND PATCHING	January 27, 2026
01 75 00	STARTING OF SYSTEMS	January 27, 2026
01 91 00	GENERAL COMMISSIONING	January 27, 2026

DIVISION 03 - CONCRETE

03 10 00	CONCRETE FORMING AND ACCESSORIES	January 27, 2026
03 20 00	CONCRETE REINFORCING	January 27, 2026
03 30 00	CAST-IN-PLACE CONCRETE	January 27, 2026

DIVISION 04 - MASONRY

04 05 11	MASONRY MORTARING AND GROUTING	January 27, 2026
04 05 23	MASONRY ACCESSORIES - FLASHING	January 27, 2026
04 21 13	BRICK MASONRY	January 27, 2026
04 22 00	CONCRETE MASONRY UNITS	January 27, 2026
04 29 00	STONE VENEER MASONRY	January 27, 2026
04 72 00	CAST STONE	January 27, 2026

DIVISION 05 - METALS

05 12 00	STRUCTURAL STEEL FRAMING	January 27, 2026
05 12 13	ARCHITECTURALLY EXPOSED STRUCTURAL STEEL FRAMING	January 27, 2026
05 21 00	STEEL JOISTS FRAMING	January 27, 2026
05 31 00	STEEL DECKING	January 27, 2026
05 40 00	COLD-FORMED METAL FRAMING	January 27, 2026
05 44 00	COLD-FORMED METAL TRUSSES	January 27, 2026
05 50 00	MISCELLANEOUS METALS	January 27, 2026



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Project Manual Drawings
04/10/2026 : Date

DIVISION 06 - WOOD & PLASTICS

06 10 00	ROUGH CARPENTRY	January 27, 2026
06 22 00	FINISH CARPENTRY AND MILLWORK	January 27, 2026
06 64 00	PLASTIC PANELING	January 27, 2026

DIVISION 07 - THERMAL AND MOISTURE PROTECTION

07 17 00	WATERPROOFING	January 27, 2026
07 19 00	WATER REPELLENT	January 27, 2026
07 21 00	INSULATION	January 27, 2026
07 24 00	EXTERIOR INSULATION AND FINISH SYSTEM	January 27, 2026
07 27 00	FLUID-APPLIED MEMBRANE AIR BARRIERS	January 27, 2026
07 40 00	CLADDING SUPPORT SYSTEM	January 27, 2026
07 52 16	MODIFIED BITUMINOUS MEMBRANE ROOFING	February 24, 2026
07 52 17	ROOF DETAILS FROM JM	February 24, 2026
07 61 00	PREFORMED METAL ROOF AND WALLS	January 27, 2026
07 62 00	SHEET METAL FLASHING AND TRIM	January 27, 2026
07 84 00	FIRESTOPPING	January 27, 2026
07 92 00	CAULKING AND SEALING	January 27, 2026

PRE-BID RFI NO. 14
PRE-BID RFI NO. 14

DIVISION 8 - OPENINGS

08 11 00	METAL DOORS AND DOOR & FRAMES	January 27, 2026
08 16 00	FRP DOORS AND FRAMES	January 27, 2026
08 21 00	WOOD DOORS	January 27, 2026
08 31 00	ACCESS DOORS	January 27, 2026
08 41 00	ALUMINUM FRAMES ENTRANCES, STOREFRONTS, AND WINDOWS	January 27, 2026
08 62 23	TUBULAR DAYLIGHTING DEVICE (ALTERNATE)	January 27, 2026
08 71 00	DOOR HARDWARE	February 19, 2026
08 80 00	GLASS & GLAZING	January 27, 2026
08 87 00	GLASS FILM	January 27, 2026

ADDENDA #3

DIVISION 9 - FINISHES

09 20 00	GYPSUM WALLBOARD, METAL FRAME SYSTEMS	January 27, 2026
09 30 00	CERAMIC TILE	January 27, 2026
09 30 50	TILE SETTING MATERIALS & ACCESSORIES	January 27, 2026
09 34 00	WATERPROOF - MEMBRANE CERAMIC TILING	January 27, 2026
09 50 00	ACOUSTICAL CEILINGS	February 19, 2026
09 65 13	RUBBER BASE	January 27, 2026
09 65 19	RESILIENT TILE FLOORING	January 27, 2026
09 67 23	RESINOUS FLOORING	January 27, 2026
09 72 00	FLEXIBLE WALL PROTECTION	January 27, 2026
09 72 03	TEXTILE WALL COVERINGS	January 27, 2026
09 84 13	ACOUSTICAL SOLUTIONS	January 27, 2026
09 90 00	PAINTING	January 27, 2026
09 96 00	HIGH PERFORMANCE COATINGS	January 27, 2026
09 96 59	HIGH PERFORMANCE WALL SURFCACING SYSTEM	January 27, 2026

ADDENDA #3

DIVISION 10 - SPECIALTIES

10 00 00	MISCELLANEOUS ACCESSORIES	January 27, 2026
10 14 00	PLASTIC SIGNS	January 27, 2026
10 14 01	DONOR WALL SIGNS	January 27, 2026
10 14 16	PLAQUES	January 27, 2026
10 26 00	RIGID VINYL SHEET	January 27, 2026
10 26 13	HIGH IMPACT CORNER GUARDS	January 27, 2026
10 26 13.01	STAINLESS STEEL CORNER GUARDS	January 27, 2026
10 28 00	TOILET AND SHOWER ACCESSORIES	January 27, 2026
10 73 00	PROTECTIVE COVERS	January 27, 2026

DIVISION 11 - EQUIPMENT

11 31 00	RESIDENTIAL APPLIANCES	January 27, 2026
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STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

DIVISION 12 - FURNISHINGS

12 24 00	ROLLER SHADES	January 27, 2026	
12 35 39	DISPLAY CASEWORK	January 27, 2026	
12 36 61	SIMULATED STONE COUNTERTOPS	January 27, 2026	

DIVISION 13 - SPECIAL CONSTRUCTION

13 19 13	ANIMAL ENCLOSURES AND EQUIPMENT	January 27, 2026	
13 31 23	TENSILE SHADE STRUCTURE	January 27, 2026	

DIVISION 21 - FIRE SUPPRESSION

21 00 10	BASIC FIRE PROTECTION REQUIREMENTS	February 19, 2026	ADDENDA #3
21 11 00	FIRE PROTECTION PIPING	February 19, 2026	ADDENDA #3
21 13 00	AUTOMATIC SPRINKLER SYSTEMS	February 19, 2026	ADDENDA #3

DIVISION 22 - PLUMBING

22 00 10	BASIC PLUMBING REQUIREMENTS	February 19, 2026	ADDENDA #3
22 05 06	PLUMBING DEMOLITION	February 19, 2026	ADDENDA #3
22 05 12	PLUMBING AND ELECTRICAL COORDINATION	February 19, 2026	ADDENDA #3
22 05 29	PLUMBING SUPPORTS AND ANCHORS	February 19, 2026	ADDENDA #3
22 05 53	PLUMBING IDENTIFICATION	February 19, 2026	ADDENDA #3
22 05 93	PLUMBING TESTING, ADJUSTING AND BALANCING	February 19, 2026	ADDENDA #3
22 07 16	PLUMBING PIPING AND EQUIPMENT INSULATION	February 19, 2026	ADDENDA #3
22 10 00	PLUMBING PIPING	February 19, 2026	ADDENDA #3
22 10 01	PLUMBING SPECIALTIES	February 19, 2026	ADDENDA #3
22 11 19	PIPING SPECIALTIES	February 19, 2026	ADDENDA #3
22 30 00	PLUMBING EQUIPMENT	February 19, 2026	ADDENDA #3
22 40 01	PLUMBING FIXTURES	February 19, 2026	ADDENDA #3

DIVISION 23 - HEATING, VENTILATING AND AIR-CONDITIONING (HVAC)

23 00 10	BASIC MECHANICAL REQUIREMENTS	February 19, 2026	ADDENDA #3
23 05 06	MECHANICAL DEMOLITION	February 19, 2026	ADDENDA #3
23 05 12	MECHANICAL AND ELECTRICAL COORDINATION	February 19, 2026	ADDENDA #3
23 05 53	MECHANICAL IDENTIFICATION	February 19, 2026	ADDENDA #3
23 05 93	MECHANICAL TESTING, ADJUSTING AND BALANCING	February 19, 2026	ADDENDA #3
23 07 13	HVAC DUST INSULATION	February 19, 2026	ADDENDA #3
23 09 00	INSTRUMENTATION AND CONTROL FOR HVAC	February 19, 2026	ADDENDA #3
23 31 13	METAL DUCTWORK	February 19, 2026	ADDENDA #3
23 31 13.19	DUCTWORK ACCESSORIES	February 19, 2026	ADDENDA #3
23 37 13	AIR OUTLETS AND INLETS	February 19, 2026	ADDENDA #3
23 75 33	OUTSIDE AIR HANDLING UNITS	February 19, 2026	ADDENDA #3
23 81 26	SPLIT DX COOLING/HEATING SYSTEMS	February 19, 2026	ADDENDA #3
23 89 65	MOTOR CONTROLLERS	February 19, 2026	ADDENDA #3

DIVISION 26 - ELECTRICAL

26 05 10	GENERAL REQUIREMENTS FOR ELECTRICAL WORK	February 19, 2026	ADDENDA #3
26 05 12	MECHANICAL AND ELECTRICAL COORDINATION	February 19, 2026	ADDENDA #3
26 05 19	WIRES AND CABLES	February 19, 2026	ADDENDA #3
26 05 20	WIRE CONNECTION AND DEVICES	February 19, 2026	ADDENDA #3
26 05 26	GROUNDING	February 19, 2026	ADDENDA #3
26 05 27	SEALING OF PENETRATIONS	February 19, 2026	ADDENDA #3
26 05 29	SUPPORTING DEVICES	February 19, 2026	ADDENDA #3
26 05 32	PULL AND JUNCTION BOXES	February 19, 2026	ADDENDA #3
26 05 33	CONDUITS	February 19, 2026	ADDENDA #3
26 05 34	OUTLET BOXES	February 19, 2026	ADDENDA #3
26 09 26	MISCELLANEOUS ITEMS	February 19, 2026	ADDENDA #3
26 09 43	DIGITAL NETWORK LIGHTING CONTROLS	February 19, 2026	ADDENDA #3
26 24 16	PANELBOARDS	February 19, 2026	ADDENDA #3
26 24 17	DISTRIBUTION PANELBOARDS	February 19, 2026	ADDENDA #3



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Project Manual Drawings
04/10/2026 : Date

26 25 51	GENERATOR DOCKING STATION	February 19, 2026	ADDENDA #3
26 27 13	ELECTRIC SERVICE ENTRANCE	February 19, 2026	ADDENDA #3
26 27 14	ELECTRIC METERING	February 19, 2026	ADDENDA #3
26 27 16	CABINETS	February 19, 2026	ADDENDA #3
26 27 26	WIRING DEVICES	February 19, 2026	ADDENDA #3
26 28 16	OVERCURRENT PROTECTIVE DEVICES	February 19, 2026	ADDENDA #3
26 28 17	DISCONNECT SWITCHES	February 19, 2026	ADDENDA #3
26 29 13	MOTORS, MOTOR STARTERS AND CONTROLS	February 19, 2026	ADDENDA #3
26 36 23	AUTOMATIC TRANSFER SWITCHES	February 19, 2026	ADDENDA #3
26 43 13	SURGE PROTECTION DEVICES (SPDS)	February 19, 2026	ADDENDA #3
26 51 13	LIGHTING	February 19, 2026	ADDENDA #3

DIVISION 27 - STRUCTURED CABLING

27 10 00	STRUCTURED CABLING	February 13, 2026	ADDENDA #2
27 15 01.11	CONDUCTORS AND CABLES FOR ELECTRONIC SECURITY	February 13, 2026	ADDENDA #2

DIVISION 28 - ELECTRONIC SAFETY AND SECURITY

28 05 00	COMMON WORK FOR ELECTRONIC SECURITY	February 13, 2026	ADDENDA #2
28 08 00	COMMISSIONING OF ELECTRONIC SECURITY	February 13, 2026	ADDENDA #2
28 10 00	ACCESS CONTROL SYSTEM	February 13, 2026	ADDENDA #2
28 31 07	EXTENSION OF EXISTING FIRE ALARM SYSTEM	February 19, 2026	PRE-BID RFI NO. 10

DIVISION 31 - EARTHWORK

31 00 00	EARTHWORK	January 27, 2026
31 10 00	SITE DEMOLITION AND CLEARING	January 27, 2026
31 23 00	EXCAVATION AND FILL	January 27, 2026
31 23 16	CIVIL EXCAVATING, BACKFILLING, AND COMPACTION	January 27, 2026
31 23 33	TRENCHING	January 27, 2026
31 41 00	SHORING AND BRACING	January 27, 2026
31 63 29	DRILLED CONCRETE PIERS AND SHAFTS	January 27, 2026

DIVISION 32 - EXTERIOR IMPROVEMENTS

32 00 00	CONCRETE SCREENING WALL	January 27, 2026
32 13 13	PORTLAND CEMENT CONCRETE PAVING AND CURBS	January 27, 2026
32 17 13	CONCRETE WHEEL STOPS	January 27, 2026
32 17 23	PAVEMENT MARKINGS	January 27, 2026
32 18 13	SYNTHETIC GRASS SURFACING	January 27, 2026
32 31 13	CHAIN LINK FENCING AND GATES	January 27, 2026
32 31 32	WOOD COMPOSITE FENCE AND GATES	January 27, 2026
32 84 00	IRRIGATION SYSTEM	January 27, 2026
32 90 00	LANDSCAPING PLANTING	January 27, 2026

DIVISION 33 - UTILITIES

33 10 00	WATER UTILITIES	January 27, 2026
33 30 00	SANITARY SEWERAGE UTILITIES	January 27, 2026
33 40 00	STORM DRAINAGE UTILITIES	January 27, 2026

ADDENDUM'S

ADDENDUM NO. 1	January 30, 2026
ADDENDUM NO. 2	February 13, 2026
ADDENDUM NO. 3	February 19, 2026
ADDENDUM NO. 4	March 9, 2026

PRE-BID RFI'S - PERMIT SET OF DOCUMENTS DATED DECEMBER 12, 2025 (PRIOR TO BID SET ISSUE)

PRE-BID RFI #		DATED	RETURNED
1	CONTINUOUS RIGID INSULATION	January 8, 2026	January 28, 2026
2	AESS STEEL AND CMU WALL REINFORCING	January 8, 2026	January 28, 2026
3	TRENCH DRAIN QUESTION	January 9, 2026	January 28, 2026
4	FRENCH DRAIN QUESTION	January 9, 2026	January 28, 2026



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Project Manual Drawings
04/10/2026 : Date

5	BUILDING PAD PREPARATION	January 15, 2026	January 28, 2026
6	ENVIRON. SITE ASSESSMENT/ASBESTOS, DETENTION POND	January 15, 2026	January 28, 2026
7	GAS LINE QUESTION	January 15, 2026	January 28, 2026
8	SCREEN WALL STRUCTURAL FOUNDATION QUESTIONS	January 20, 2026	January 28, 2026
9	RESIDENTIAL APPLIANCE AND WINDOW SHADE QUESTION	January 21, 2026	January 28, 2026
10	DEMOLITION QUESTIONS	January 21, 2026	January 28, 2026
11	ADD HAWK PRECAST TO SCREEN WALL SPEC, CAST STONE SPEC	January 23, 2026	January 28, 2026
12	RETAIL SHELVING QUESTION	January 23, 2026	January 28, 2026

PRE-BID RFI'S - BID SET OF DOCUMENTS DATED JANUARY 27, 2026

PRE-BID RFI #		DATED	RETURNED
1	FRENCH DRAIN QUESTION	January 27, 2026	February 11, 2026
2	HEIGHT OF TENSILE SHADE STRUCTURE	February 1, 2026	February 11, 2026
3	X-RAY MACHINE QUESTIONS	February 3, 2026	February 11, 2026
4	ALT NO. 6 CEILING QUESTIONS, AND OTHER CEILING QUESTION	February 5, 2026	February 11, 2026
5	SUBSTITUTION REQUEST - CANOPY SOLUTIONS	February 6, 2026	February 11, 2026
6	PVC VENT AND PEX QUESTION	February 6, 2026	February 19, 2026
7	ACOUSTICAL PANEL AND HARDWARE SET QUESTIONS	February 12, 2026	February 19, 2026
8	SUBSTITUTION REQUEST - OTTO ENVIRONMENTAL	February 17, 2026	February 19, 2026
9	SUBSTITUTION REQUEST - EAST TEXAS CANOPIES	February 17, 2026	February 19, 2026
10	FIRE ALARM SPECIFICATION AND EMERGENCY RADIO QUESTION	February 17, 2026	February 19, 2026
11	SUBSTITUTION REQUEST - ALLEGION COMPANIES	February 19, 2026	February 19, 2026
12	30X30 ACT TILE QUESTION	February 19, 2026	February 19, 2026
13	INTEGRAL BLIND QUESTION	February 20, 2026	February 23, 2026
14	MODIFIED BITUMEN SPECIFICATION	February 23, 2026	February 24, 2026
15	SECURITY CAMERA QUESTIONS	March 13, 2026	March 20, 2026
16	RESINOUS FLOORING QUESTIONS	March 13, 2026	



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Allowances

04/10/2026 : Date

PROJECT:
LINDA McNATT ANIMAL CARE & ADOPTION CENTER

ARCHITECT:
QUORUM ARCHITECTS, INC.
825 W VICKEY BLVD, SUITE 100
FORT WORTH, TEXAS 76104

SFI JOB No. :
5624

ALLOWANCES	DESCRIPTION	AMOUNT
1	Construction Contingency - Base	\$404,998
1a	Construction Contingency - Alternates 3-8	\$10,511
2	Additional Marketplace Risk Contingency - Base	\$164,405
2a	Additional Marketplace Risk Contingency - Alternates 3-8	\$4,266
3	Owner Contingency (Carried in Owner's Project Budget)	\$0
4	Pier Casing Allowance	\$200,000
5	Hoisting and Equipment	\$157,301
6	Erosion Control	\$53,742
7	General Clean-up	\$111,442
8	Dumpster	\$100,000
9	Relocation and maintenance of Temporary Dog runs	\$10,000
10	New and re-coating of existing EIFS (See Exhibit D - Clarifications & Exhibit G Unit Prices)	\$49,392
11	Coordination of new and existing hardware with Access Control equipment	\$35,000
12	Anesthesia Machines	\$27,300
13	Patching of Resinous floors in existing areas	\$10,000
ALLOWANCES INCLUDED IN GMP		\$1,338,357



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B - Clarifications
04/10/2026 : Date

PROJECT:
LINDA McNATT ANIMAL CARE & ADOPTION CENTER

ARCHITECT:
QUORUM ARCHITECTS, INC.
825 W VICKERY BLVD. SUITE 100
FORT WORTH, TEXAS 76104

SFI JOB No. :
5624

List of Clarifications, Qualifications, & Assumptions

- 1 Pandemics or global disruption issues may delay delivery of equipment and/or labor. Any and all delays related to pandemics, global disruptions or unforeseen circumstances outside the Construction Managers control shall be claimed as a day per day delay.

Div 01

General Requirements

- 1 We have excluded state sales tax on INCORPORATED materials.
- 2 We have excluded tap, impact & meter fees.
- 3 The Building Permit cost has been excluded.
- 4 Plat by others.
- 5 Bids are based on 100% CD drawings and specifications and other information in this Exhibit B.
- 6 We have excluded materials testing and special inspections.
- 7 It is assumed that the contract documents have been reviewed to meet Federal, state and local codes.
- 8 We exclude all seismic requirements referenced in the specifications due to the Project's location in Denton does not require any Seismic consideration.
- 9 Deposits required in advance to procure materials will be included on the pay application within the same pay period in which payment is due for deposit to the subcontractors / suppliers.
- 10 Materials that are stored onsite or stored at subcontractor's warehouse will be included on pay applications. Invoices, insurance certificates, and photos of stored materials will be provided.
- 11 All unforeseen scope not clearly identified , not quantified and/or not properly referenced in the contract will be presented to the Owner as a Proposed Change (PC).
- 12 This project is not a LEED project, therefor VOC Content Restriction (greater than federal or state requirements) and Commissioning is excluded.
- 13 Video of recorded training will be provided on a thumb drive.
- 14 Temporary Environmental Controls, Flush Out & Air contaminant testing is not included in this scope of work.
- 15 SFI will notify the Design team of any priority submittals and the importance to ensure project stays on schedule. If additional time is required for approval, then delay to material fabrication and delivery could affect the construction schedule.
- 16 Perspective drawings and/or architectural renderings are for conceptual purposes only. Materials, finishes and implied design shall not be inferred from perspective drawings.
- 17 Franchise utility service charges have been excluded for communication lines, , Atmos gas, etc.. Any electrical power service charges will be paid directly by the City
- 18 Delegated Design submittals are recognized for the following sections: 03 10 00 Concrete Forming and Accessories, 03 20 00 Concrete Reinforcing, 05 12 00 Structural Steel Framing (Design Connections), 05 40 00 Cold Formed Metal Framing (Design Calculations), 05 44 00 Cold Formed Metal trusses, 07 40 00 Cladding Support Systems, 09 50 00 Acoustical Ceilings, 13 31 23 Pre-engineered Tensile Shade Structures, 21 13 00 Automatic Sprinkler Systems, 32 00 00 Concrete Screening Wall, 32 84 00 Irrigation System. No other Delegated Design requirements are recognized unless noted by section.
- 19 Unforeseen material delivery and availability issues beyond Steele & Freeman's control shall claimed as defined in the Agreement.
- 20 All utilities including but not limited to domestic water, irrigation water, electricity, gas and communications shall be transferred into the Owners name at Substantial Completion. These utilities shall be the responsibility of the Contractor until Substantial Completion, and then of Owner to provide funding from the Date of Substantial completion. All utilities from this date shall not be funded thru the GMP Budget.
- 21 Substantiation of subcontractor's billings with each monthly application for payment to the Owner is limited to the "Total Completed to Date" amount on the SFI Subcontractor Application for Payment and to Column G "Total Completed and Stored to Date" on the subcontractors detailed schedule of values.

Div 02

Existing Conditions

- 1 Hazardous materials identification, testing, abatement, removal, demolition, and/or disposal is excluded.
- 2 We have included initial costs to relocate the existing dog kennels and synthetic turf in the sub quotes, and an additional allowance to maintain and eventually remove at project completion these temporary runs (see Exhibit C - Allowances).



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Clarifications
04/10/2026 : Date

Div 03

Concrete

- 1 All piers have been bid as dry, with an anticipated bid depth of 21' per the documents. A pier casing allowance is included per the Specifications (see Exhibit C - Allowances).
- 2 Refer to Exhibit G for the unit prices per pier type to adjust the pier bid depth per LF, as well as unit costs and mobilization costs required if casing is required.
- 3 All exposed slab finishes to be Class B
- 4 Includes the specified Stego - 15 Mil Pango Wrap Termite / Vapor Barrier in lieu of termite treatment of the soil.

Div 05

Metals

- 1 We have excluded AISC certifications and inspections. (Cooperation with the Owner's inspector is included).
- 2 This project includes minimal AESS Level 1 only as noted on Permit Pre-Bid RFI No. 2 for the exposed structural steel column and beams at the exterior dog kennels.
- 3 All material sizing to comply with U.L. requirements is the responsibility of the Architect and Engineer and not the Construction Manager. Upsizing of steel beyond what is clearly shown, sized and located in the contract documents is excluded.
- 4 The final version of the Section 05 40 00 light gauge framing and Section 05 44 00 light gauge steel truss shop drawings will include design calculations for framing members and accessories as specified.

Div 06

Woods, Plastics, and Composites

- 1 All millwork has been bid to be built to AWI Standards per the specs. AWI Labels are not noted and are excluded.

Div 07

Thermal and Moisture Protection

- 1 Per Permit Set Pre-Bid RFI #01 and as specified, the Rigid insulation at the exterior will be as specified in 07 21 00 as equal to "THERMAX, XARMOR™ ci Exterior Insulation" with a 4-mil front facer and 1.25 mil embossed aluminum back facer, installed as required by the manufacturers recommendations for a warrantable system. The Fluid Applied Air Barrier is to be as specified and manufactured by Prosoco (or equal).
- 2 Metal roof panels bid as PAC-CLAD Tite Lock panels as specified. Finish to be selected from manufacturer's standard, non-metallic, color selection.
- 3 Metal soffit panels bid as PAC-CLAD Aluminum Flush Panel System as specified. Finish to be selected from manufacturer's wood grain (where indicated) and standard, non-metallic, color selection at all other areas.
- 4 Metal wall panels bid as PAC-CLAD Flush Reveal Metal Wall Panels with concealed clips as specified, installations as shown. Finishes to be selected from manufacturer's standard color selection.
- 5 Modified Bitumen Roof System to be per specification 07 52 16 and 07 52 17 as issued in Pre-Bid RFI No. 14, with details and be a Johns Mannsville (or equal) system.
- 6 Closed Cell Spray Foam Insulation is included in the walls where indicated on the documents and per the specifications.

Div 08

Openings

- 1 Storefront is included as basis of design Kawneer.
- 2 We have included an Allowance for finalization and coordination of new and existing hardware with Access Control equipment (see Exhibit C - Allowances).
- 3 The integral blinds specified in Section 08 80 00, Paragraph 2.03E were deleted per Pre-bid RFI No. 13 and are excluded.

Div 09

Finishes

- 1 ACT-2 (30 x 30) is included only in the corridors where shown. All other ceiling tile to be ACT-1.
- 2 Base ceilings in the rooms identified in Alternate No. 6 (193, 194, 195, 196 & 218) are included as new ACT-1 ceiling, that will re-use the existing lights as noted in Pre-Bid RFI No. 4.
- 3 If Alternate No. 6 is approved, then Rooms 193, 194, 195, 196 & 218 will receive gypsum ceilings and new light fixtures as shown on the documents, and clarified in Pre-Bid RFI No. 4..
- 4 We have included an allowance for the new and re-coating of existing EIFS. Scope includes defined work of new 3" EIFS on north elevation of Area B (3/A202) and all other areas noted on exterior elevations to be patched and repaired as needed. Subcontract will include a set price for the new work and a \$/SF unit price for patching and repairs to be agreed by all parties that will be used to reconcile the allowance included in Exhibit C - Allowances.



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Clarifications
04/10/2026 : Date

Div 10

Specialties

- 1 Specialties are included as noted on the documents and per the Matrix on G-005.

Div 11

Equipment

- 1 Residential Appliances are included as noted on the documents and per the Matrix on G-005.
2. Owner is responsible for disconnecting and reinstalling the existing X-Ray machine as noted in Pre-Bid RFI No. 3.

Div 12

Furnishings

- 1 We have excluded all furniture, except as noted as millwork in Div 6

Div 13

Special Construction

- 1 Animal equipment is included furnished and installed as specified, from Tristar, with the exception of the following items to be purchased separately:
 - a. Saloon Style Pass Thru - BiteGuard 1632 dog door and Surface Mount Frame furnished and installed by PD USA as specified.
 - b. 1 set per cat cage - Kennel Gear double stainless-steel bowls with door mount. Kennel Gear bowls equal to Shor-Line #190.0005.00. Bowls shall be 20oz x 2 mounts per cage color to be selected.
 - c. Surgical/Exam Lights: (Surgery, Room # 179, Flex #176, & Medical #204) Qty 4, to be as specified or equal to Shoreline Prelude Surgical LED ceiling mount light SKU #913.8000.04
 - d. Surgery tables to be as specified or equal to ShorLine SKU #903.4100.02 V-Top Surgery Table Hydraulic Lift V-top Table. Qty. 3 (Electric, heated v-top surgery tables)
 - e. We have included an Allowance for the specified Anesthesia machines s (see Exhibit C - Allowances).

Div 21

Fire Suppression

- 1 It is assumed that the water main will have sufficient pressure to serve the building; therefore, a Fire Pump has been excluded.
- 2 The fire suppression system is delegated-design.
- 3 Flexible type sprinkler heads are included.
- 4 Coverage for the building will be as noted on FP-101, either wet pipe (with ordinary or light hazard), and either dry pipe or dry sidewall heads as designed by the a licensed fire protection contractor as specified.

Div 22

Plumbing

- 1 SFI scope for the gas lines begins at the Gas Meter to be relocated by the Utility Company as noted on P-101B and clarified on Permit Set Pre-Bid RFI #07, with Atmos responsible for sizing the appropriate meter to meet the noted load and pressures. This new meter must be moved in a timely manner to allow for the new gas line to be run for the building to be re-routed so the building pad can be re-routed and tied back in to the existing service location. Shutdowns will be scheduled with the Owner as required to minimize disruptions to the existing services.
- 2 It is assumed that the water main will have sufficient pressure to serve this building; therefore, a Domestic Water Pump has been excluded.
- 3 It is assumed that the MEP engineer has verified that the entire sanitary sewer run will have sufficient code required slope from the furthest plumbing lines in Room 132 (other than revising the main sanitary line in the crawl space from 4" to 6"). No provisions have been included to adjust the existing 6" SS line past where the new 6" line is shown to tie into the line on P-101D.

Div 23

Mechanical

- 1 It is assumed that the MEP engineer has designed the new ductwork routing through the existing trusses without having to modify the trusses. Contractor will utilize BIM coordination as early as possible and identify clashes with the existing structure and work to resolve any conflicts, prior to duct being fabricated.

Div 26

Electrical

- 1 Conduit stub-ups and back boxes are included as shown on the Low Voltage Power Plan (ELV-101) and assumes all required points have been coordinated with the HDG Security and IT Drawings.
- 2 Conduit stub-ups and back boxes for fire alarm is included where shown on ELV-101.
- 3 Arc Flash/Coordination Studies are shown on E-402 and will be included after the actual conductor lengths can be obtained as noted.
- 4 In order to be able to excavate and moisture condition the new building pad, the existing power serving the animal shelter will be re-routed around the new pad area, and through the crawl space.



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Clarifications

04/10/2026 : Date

Div 27

Communications

1. Cabling for both structured cabling (27 10 00) and electronic security (27 15 01.11) will be installed by the low voltage subcontractor. Structured cabling will be terminated by the low voltage subcontractor, while Security and Access Control devices will be terminated under the Division 28 Security and Access Control subcontractor.

Div 28

Electronic Safety & Security

- 1 Fire alarm is included as specified provided in Pre-Bid RFI No. 10,
- 2 Extension and reworking of the existing Silent Knight fire alarm system is included with devices either reused and tested or new as specified and required for a complete code compliant system.
- 3 Access controls and cameras are as specified and shown on the HDG Security
- 4 A new Emergency Radio Communication Enhancement System and testing (BDA System) is excluded per Pre-Bid RFI No. 10.

Div 31

Earthwork

- 1 We have excluded the disposal of any contaminated soils.
- 2 Building pad will be per the General Notes on S-001. Depth of moisture conditioned soils to be verified by Owners Geotechnical Lab, and coordinated with the engineer of record to ensure compliance with the engineer of records intent.
- 3 Identification of geological strata's including bearing strata are to be identified by the Owner's Testing Laboratory Service.
- 4 Earthwork is to grade (within 0.2')

Div 32

Exterior Improvements

- 1 Landscape scope will be substantially complete when the following conditions are met:
 - * Fine Grading has been completed for landscaped areas
 - * Landscape items (Plantings, sod, rocks) are laid & planted
 Establishment of landscape items will be monitored and addressed during the warranty period
 - * Irrigation systems are installed, functioning and programmed
 In addition - when irrigation meters & boxes have been accepted by the Authority Having Jurisdiction (AHJ)

Div 33

Utilities

- 1 Utilities are included as noted on the documents. Trench Drains to be supplied and installed by the plumber, with final connections by the Utility Subcontractor.
- 2 Per Permit Pre-Bid RFI No. 6, the Environmental Site Assessment Study was not required for this project.



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Schedule
04/10/2026 : Date

PROJECT:
LINDA McNATT ANIMAL CARE & ADOPTION CENTER

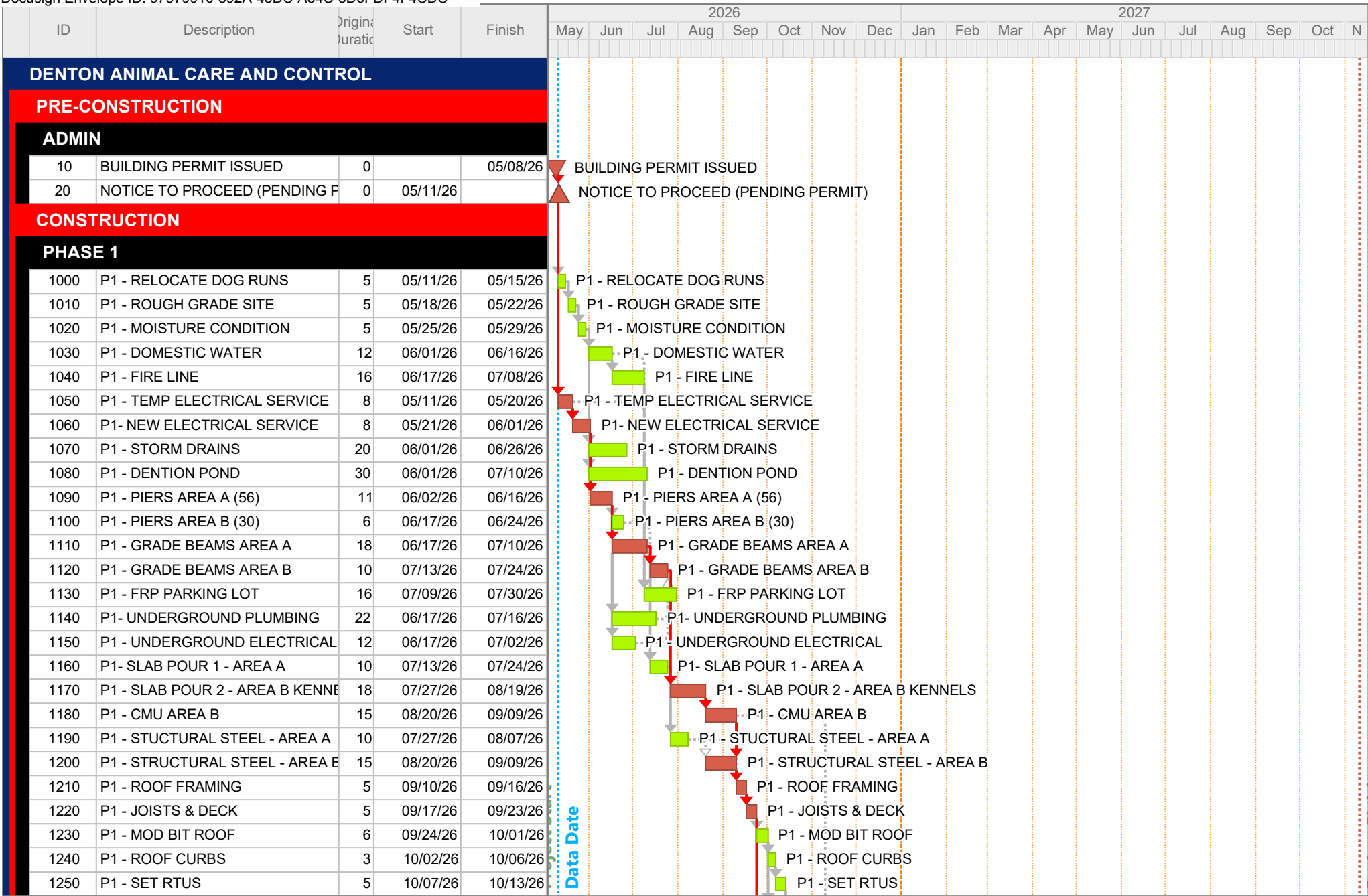
ARCHITECT:
QUORUM ARCHITECTS, INC.
825 W VICKEY BLVD, SUITE 100
FORT WORTH, TEXAS 76104

SFI JOB No. :
5624

GENERAL CONSTRUCTION

Estimated Substantial Completion to be within 548 calendar days from Notice-to-Proceed and/or the issuance of the full and unrestricted building permit(s), which ever is the later.

See Attached Denton Animal Care and Control Schedule, Dated 05/11/26 (6 pages)



Data Date: 05/11/26

Denton Animal Care



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Alternates
04/10/2026 : Date

PROJECT:
LINDA McNATT ANIMAL CARE & ADOPTION CENTER

ARCHITECT:
QUORUM ARCHITECTS, INC.
825 W VICKERY BLVD, SUITE 100
FORT WORTH, TEXAS 76104

SFI JOB No. :
5624

ALTERNATES	Amount	Approved/Reject
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ALT. NO. 1 - ADD SPLASH PAD	\$186,865	REJECTED
ALT. NO. 2 - MONUMENT SIGN	\$123,375	REJECTED
ALT. NO. 3 - ADD NEW 10' SIDEWALK	\$51,918	APPROVED
ALT. NO. 4 - REPLACE EXSTNG KENNEL TOPS & FRONTS	\$212,930	APPROVED
ALT. NO. 5 - ADD NEW ACOUSTICAL PANELS	\$30,331	APPROVED
ALT. NO. 6 - GYP/PAINT IN KENNEL RMS 193, 194, 195, 196 & 216	\$48,529	APPROVED
ALT. NO. 7 - ADD TUBULAR DAYLIGHT TUBES	\$69,428	APPROVED
ALT. NO. 8 - NEW PAINT IN KENNEL RMS 193, 194, 195, 196 & 216	\$17,842	APPROVED



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Unit Prices
04/10/2026 : Date

PROJECT:
LINDA McNATT ANIMAL CARE & ADOPTION CENTER

ARCHITECT:
QUORUM ARCHITECTS, INC.
825 W VICKERY BLVD, SUITE 100
FORT WORTH, TEXAS 76104

SFI JOB No. :
5624

UNIT PRICES	DESCRIPTION	ADD	DEDUCT
-------------	-------------	-----	--------

Piers - Unit Prices Adjusted from Bid Depth of 21'-0" per Linear Foot

1	18" Pier	\$80.00 /LF	(\$6.00) /LF
2	24" Pier	\$96.00 /LF	(\$7.50) /LF

Casing - Unit Prices *

1	18" Pier	\$74.00 /LF	
2	24" Pier	\$82.00 /LF	

* Note: Casing shall be paid according to the unit rates in the table provided. In the event piers are cased, the greater of the sum of the unit rate times the total footage cased or \$12,000 shall apply.

1	Keyed Elevation Note 36 - Existing EIFS to Remain/Patch and Repair New Paint	\$12.00 /SF	
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STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Exhibit 'B' - Guaranteed Maximum Price
04/10/2026 : Date

PROJECT:
LINDA McNATT ANIMAL CARE & ADOPTION CENTER

ARCHITECT:
QUORUM ARCHITECTS, INC.
825 W VICKERY BLVD, SUITE 100
FORT WORTH, TEXAS 76104

SFI JOB No. :
5624

COST SUMMARY - GUARANTEED MAXIMUM PRICE

DIVISION	BID PACKAGE DESCRIPTION	TOTAL COST
01	GENERAL REQUIREMENTS	\$937,484
02	EXISTING CONDITIONS	\$151,900
03	CONCRETE	\$997,000
04	MASONRY	\$449,047
05	METALS	\$554,877
06	WOODS, PLASTICS and COMPOSITES	\$447,583
07	THERMAL and MOISTURE PROTECTION	\$799,341
08	OPENINGS	\$701,925
09	FINISHES	\$1,546,477
10	SPECIALTIES	\$246,865
11	EQUIPMENT	\$1,192,786
12	FURNISHINGS	\$2,585
13	SPECIAL CONSTRUCTION	\$0
21	FIRE SUPPRESSION	\$110,960
22	PLUMBING	\$1,097,986
23	MECHANICAL	\$1,222,778
26	ELECTRICAL	\$1,440,692
27	COMMUNICATION	\$121,964
28	ELECTRONIC SAFETY AND SECURITY	\$428,136
31	EARTHWORK	\$383,225
32	EXTERIOR IMPROVEMENTS	\$658,520
33	UTILITIES	\$334,357
COST OF WORK - SUBTOTAL		\$13,826,488
00	SUBCONTRACTOR DEFAULT INSURANCE FEE	\$205,229
00	CONTRACTOR CONTINGENCY	\$404,998
00	ADDITIONAL MARKET RISK	\$164,405
00	CONSTRUCTION MANAGER FEE	\$575,835
00	PAYMENT and PERFORMANCE BONDS	\$134,500
00	BUILDERS RISK	\$41,512
00	GENERAL / EXCESS LIABILITY	\$76,383
01	GENERAL CONDITION EXPENSE	\$1,147,325
01	TWO YEAR MAINTENANCE BOND	\$28,228
SUBTOTAL		\$16,604,903
APPROVED ALTERNATES 3-8		\$430,977
TOTAL GMP		\$17,035,880



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS

SFI Construction Management Plan Exhibit
04/10/2026 : Date

PROJECT:
LINDA McNATT ANIMAL CARE & ADOPTION CENTER

SFI JOB No. :
5624

ARCHITECT:
QUORUM ARCHITECTS, INC.
825 W VICKEY BLVD, SUITE 100
FORT WORTH, TEXAS 76104

Construction Management Plan Exhibit

The Steele & Freeman Project Management Initiative is a process for developing and documenting the art and science of Quality Assurance and Quality Control. The result is a QA/QC manual designed for use by Project Managers and Superintendents.

This Quality Assurance Plan is a part of the Steele & Freeman Project Management Manual and covers five phases of Quality Management: Pre-Construction, Pre-installation, Construction, After Care and Close-out.

This program is a Steele & Freeman goal for keeping quality and integrity in the process of delivering a building. We are continually searching for a "better way" of delivering high value projects to owners and clients. At Steele & Freeman, design and construction are not separate activities but instead are a single integrated process that starts at programming and ends with a product that functions as intended.

A full copy of the Steele & Freeman Quality Assurance/Quality Control plan has been transmitted to City of Denton Capital Projects/Engineering Department.

EXHIBIT C – TECHNICAL SPECIFICATIONS

Technical Specifications as specified in EXHIBIT B – APPROVED GMP PROPOSAL are set forth herein in full OR made part of this Agreement by reference OR made part of this Agreement as a separate attachment.

EXHIBIT D – CONSTRUCTION DRAWINGS

Construction Drawings as specified in EXHIBIT B – APPROVED GMP PROPOSAL are made part of this Agreement by reference and on file with the:

- Design Professional
- City of Denton Project Manager
- CM@Risk Contractor

EXHIBIT E – GENERAL CONDITIONS (VERTICAL PROJECTS VERSION)

General Conditions

for the following PROJECT:

8558 CMAR for Linda McNatt Animal Services Renovation and Expansion

THE CITY:

City of Denton
215 East McKinney Street
Denton, Texas 76201

TABLE OF CONTENTS

1	GENERAL PROVISIONS
2	CITY
3	CONTRACTOR
4	DESIGN PROFESSIONAL
5	SUBCONTRACTORS
6	CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	OMITTED.
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	OMITTED.
15	CLAIMS AND DISPUTES

Article 1. GENERAL PROVISIONS

Section 1.1 Basic Definitions

a. The Contract Documents

The Contract Documents are enumerated in the Agreement between the City and CM@Risk (hereinafter the Agreement or Contract) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Proposal Documents, 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 Design Professional.

b. The Contract

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the CM@Risk and the Design Professional or the Design Professional's consultants, (2) between the City and a Subcontractor or a Sub-subcontractor, (3) between the City and the Design Professional or the Design Professional's consultants, or (4) between any persons or entities other than the City and the CM@Risk. The Design Professional shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Professional's duties. This Agreement was the result of negotiations between the City and CM@Risk, and has been reviewed by the City, CM@Risk and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party. The terms "Agreement" and "Contract" shall be used interchangeably to have the same meaning as defined in this Section 1.1.b.

c. 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.

d. Design Documents

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

e. Construction Management Plan

The Construction Management Plan is prepared by the CM@Risk 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 Design Professional and City:

- i. Safety and Logistics Plan;

- ii. CM@Risk's Construction Schedule;
 - iii. Cost Management Plan, Control Estimate and Schedule of Values;
 - iv. Quality Management, Commissioning and Turnover Plan; and
 - v. Information Management System.
- f. As-Built Documents

The As-Built Documents are the Drawings, Specifications, and addenda thereto that may be updated by the CM@Risk to accurately reflect the actual Work in place, including without limitation, the incorporation of Change Orders, responses to the CM@Risk's requests for information, Design Professional'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 the Contract Documents including Section 2.10 of the Contract.
- g. Work Breakdown Structure

The Project's Work Breakdown Structure ("WBS") is a deliverable-oriented, hierarchical organization of the Project components to be executed by the City, and its accompanying numbering system. The WBS will be mutually agreed upon by the City and Design Professional and used by the CM@Risk.
- h. Equal to (or Approved Equal)

Products by manufacturers and information about those products other than those products specified in the Contract Documents which the CM@Risk may submit for substitution as equal to those products specified in the Contract Documents; which may be incorporated in the Work after using the process specified in the Contract Documents for review and acceptance by the Design Professional and acceptance of same by the City.
- i. Underground Facilities

All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- j. Force Majeure

An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond CM@Risk's control, not caused by the negligent act or omission of CM@Risk or breach of this Agreement, its Subcontractors, or anyone else for whom CM@Risk is responsible, and not caused by CM@Risk's breach of a project labor or a "no strike" agreement.
- k. Knowledge

The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the CM@Risk, shall be interpreted to mean that which the CM@Risk knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the Work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the Work and in accordance with the highest standards in the construction

profession.

l. Proposal

The offer or proposal of an Offeror submitted on the prescribed form setting forth the prices for the Work to be performed.

m. Offeror

The individual or entity that submits a Proposal directly to City.

n. Proposal Documents

The Proposal Requirements and the proposed Contract Documents including all addenda.

o. Proposal Requirements

The Advertisement or Request for Proposal, Invitation to Offerors, Instructions to Offerors, Offeror's Bond or other Proposal security, the Proposal Form, and the Proposal with any attachments.

p. Notice of Award

A written notice given by City to the Successful Offeror stating that upon timely compliance by the Successful Offeror with the conditions precedent listed in such notice, City will sign and deliver the Agreement.

q. Calendar Day

A day consisting of 24 hours measures from midnight to the next midnight. A "day" or "Day" unless otherwise defined shall mean a Calendar Day.

r. Business Day

A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.

s. Notice to Proceed

A written instrument from the City to the CM@Risk requiring the CM@Risk to proceed with performance of activities, including, but not limited to development of submittals, ordering of materials, and any other services (the "Preconstruction Services") required to prepare for and expedite the construction of the Work as required by the Contract Documents; and complete the Work (the "Construction Services").

t. Any terms not defined herein shall have the meaning as set forth in the Agreement.

Section 1.2 Correlation and Intent of the Contract Documents

- a. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CM@Risk. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the CM@Risk 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 Design Professional shall decide which stipulation will provide the best installation and its decision shall be final.

.3 The Drawing and Specifications are intended to coordinate with each other. Anything shown on the Drawings but not mentioned in the Specification or vice-versa, or anything not expressly set forth in either, but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both without any extra charge.

.4 The Drawings, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the CM@Risk, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. Each CM@Risk, Subcontractor, and Sub-subcontractor shall properly coordinate its work with that of the City and all Separate Contractors. It is not within the scope of the Drawings to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of each CM@Risk to plan, coordinate, and install its work in such a manner so as to conform to the structure. Any conflict within the Drawings shall be referred to the Design Professional 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 Design Professional as to the dimensions to be used. Larger scale Drawings shall have preference over smaller scale drawings, but discrepancies shall be referred to the Design Professional for interpretation.

.6 Underground Facilities

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Design Professional by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Contract Documents:

City and Design Professional shall not be responsible for the accuracy or completeness of any such information or data provided by others; and the cost of all of the following are included in the Contract Price, and CM@Risk shall have full responsibility for:

- reviewing and checking all information and data;
- verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
- coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
- the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

Not Shown or Indicated: If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then CM@Risk shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith, identify the owner of such Underground Facility and give notice to that owner and to City. CM@Risk shall be responsible for the safety and protection of such discovered Underground Facility.

If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 7.

Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

.7 Reliance by CM@Risk on Technical Data:

CM@Risk is provided certain technical data with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. CM@Risk may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

the completeness or accuracy of such reports and drawings for CM@Risk's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CM@Risk, and safety precautions and programs incident thereto; or

other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

the contents of other Site-related documents made available to CM@Risk, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or

any CM@Risk interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

- i. The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.
- b. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the CM@Risk in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

- c. 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.

Section 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 that are a part of this Contract.

Section 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.

Section 1.5 Ownership and Use of Design Documents

- a. Submittal or distribution of the Design Documents or any portion thereof to meet official laws, statutes, ordinances and regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the City’s reserved rights.
- b. The CM@Risk, 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 CM@Risk, 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 City.

Section 1.6 Notice

- a. Except as otherwise provided in Section 1.6.b, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement. In the event notice is provided by mail, it shall be sent certified return receipt requested.
- b. Notice of Claims as provided in Section 15.1.c shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

Section 1.7 Digital Data Use and Transmission

- a. The parties shall agree upon protocols governing the transmission and use of Design Documents or any other information or documentation in digital form. The parties will establish the protocols for the development, use, transmission, and exchange of digital data in writing, as mutually agreed.
- b. The CM@Risk, at any time upon the request of the City, shall immediately return and surrender to the City, 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 City or the Design Professional to the CM@Risk.

Section 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without written agreement to protocols governing the use of, and reliance on, the information contained in the model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

Section 1.9 The representations and warranties contained in the Contract Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

Article 2. CITY

Section 2.1 General

- a. The City 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 City shall designate in writing a representative who shall have express authority to bind the City with respect to all matters requiring the City's approval or authorization. Except as otherwise provided in Section 4.2.a, the Design Professional does not have such authority. The term "City" means the City or the City's authorized representative.
- b. The City shall furnish the following information to a person, including the Design Professional or CM@Risk, who makes a request for information under Texas Government Code Chapter 2253, related to a payment, maintenance, or performance bond: (1) a certified copy of the relevant 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.
- c. **The City may obtain independent review(s) of the Design Professional's Design Documents, or of any document or other materials submitted by the CM@Risk, 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 City. Such independent review shall be undertaken at the City's expense in a timely manner and shall not delay the orderly progress of the Work. The Design Professional and CM@Risk shall cooperate with such City'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 City to obtain an independent review or imply that the City is in any way assuming responsibility for the work of the Design Professional and CM@Risk.**

Section 2.2 Omitted.

Section 2.3 Information and Services Required of the City

- a. Omitted.
- b. The City shall retain a Design Professional lawfully licensed to practice architecture or engineering as applicable, or an entity lawfully practicing architecture or engineering, as applicable, in the

jurisdiction where the Project is located. That person or entity is identified as the Design Professional in the Agreement and is referred to throughout the Contract Documents as if singular in number.

- c. If the employment of the Design Professional terminates, the City shall employ a successor whose status under the Contract Documents shall be that of the Design Professional.
- d. The City 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 CM@Risk shall be entitled to rely on the accuracy of information furnished by the City but shall exercise proper precautions relating to the safe performance of the Work.
- e. The City shall furnish information or services required of the City by the Contract Documents with reasonable promptness. The City shall also furnish any other information or services under the City's control and relevant to the CM@Risk's performance of the Work with reasonable promptness after receiving the CM@Risk's written request for such information or services.
- f. Unless otherwise provided in the Contract Documents, the City shall furnish to the CM@Risk one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.b.
- g. The foregoing are, without limitation and in addition to, the other duties and responsibilities of the City specified in Article 6 and Article 9.

Section 2.4 City's Right to Stop the Work

If the CM@Risk fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the City may issue a written order to the CM@Risk to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the CM@Risk or any other person or entity, except to the extent required by Section 6.1.c nor shall the exercise of the City's right hereunder give rise to any claim by CM@Risk for additions to the Contract Price or Contract Time.

Section 2.5 Omitted.

Section 2.6 Extent of City Rights

- a. The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the City granted in the Contract Documents; at law; or in equity.
- b. In no event shall the City or Design Professional 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 City or Design Professional of the Design Documents, the Contract Documents, the CM@Risk's Construction Management Plan(s), the CM@Risk's Construction Schedule, shop drawings, submittals, meeting minutes or other CM@Risk's services, deliverables or activities; nor the exercising of any of the rights and authority granted the City or Design Professional in the Contract Documents shall in any way reduce, diminish, or otherwise affect the CM@Risk's responsibilities, duties and accountability to the City 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.

- c. The City reserves the right to have the CM@Risk and/or Subcontractors remove person(s) and/or personnel from any and all work on the Project for cause but without cost to the City. Such requests from the City will be made in writing and may be done directly or indirectly through the Design Professional or on-site representative. "Cause" may include, but is not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the project, the facility or others, poor management, cause delay or delays, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The CM@Risk shall provide replacement person(s) and/or personnel acceptable to the City at no cost to the City.

Article 3. CONTRACTOR

Section 3.1 General

- a. The CM@Risk is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The CM@Risk shall be lawfully licensed, if required in the jurisdiction where the Project is located, Denton County, Texas. The CM@Risk shall designate in writing a representative who shall have express authority to bind the CM@Risk with respect to all matters under this Contract. The term "CM@Risk" means the CM@Risk or the CM@Risk's authorized representative.
- b. The CM@Risk shall perform the Work in accordance with the Contract Documents.
- c. The CM@Risk shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the CM@Risk.

Section 3.2 Review of Contract Documents and Field Conditions by CM@Risk

- a. Execution of the Contract by the CM@Risk is a representation that the CM@Risk 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 CM@Risk 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 City and Design Professional 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 CM@Risk shall be solely responsible for providing a safe place for the performance of the Work. The City and Design Professional shall not be required to make any adjustment in either the Contract Price or the Contract Time in connection with any failure by the CM@Risk or any Subcontractor to have complied with the requirements of this Section 3.2.a.
- b. Because the Contract Documents are complementary, the CM@Risk 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 City pursuant to Section 2.3.d,

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 CM@Risk and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the CM@Risk shall promptly report to the Design Professional any errors, inconsistencies or omissions discovered by or made known to the CM@Risk as a request for information in such form as the Design Professional may require. If the CM@Risk performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Design Professional, the CM@Risk 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 CM@Risk's review is made in the CM@Risk's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- c. The CM@Risk 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 CM@Risk shall promptly report to the Design Professional any nonconformity discovered by or made known to the CM@Risk as a request for information in such form as the Design Professional may require.
- d. If the CM@Risk believes that additional cost or time is involved because of clarifications or instructions the Design Professional issues in response to the CM@Risk's notices or requests for information pursuant to Sections 3.2.b or 3.2.c, the CM@Risk shall submit Claims as provided in Article 15. If the CM@Risk fails to perform the obligations of Sections 3.2.b or 3.2.c, the CM@Risk shall pay such costs and damages to the City, subject to Section 15.1.g, as would have been avoided if the CM@Risk had performed such obligations. If the CM@Risk performs those obligations, the CM@Risk shall not be liable to the City or Design Professional 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 unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents in its capacity as a contractor and not as a design professional.

Section 3.3 Supervision and Construction Procedures

- a. The CM@Risk shall supervise and direct the Work, using the CM@Risk's best skill and attention. The CM@Risk shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work in accordance with the Contract Documents.
- b. The CM@Risk shall be responsible to the City for acts and omissions of the CM@Risk's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the CM@Risk or any of its Subcontractors.
- c. The CM@Risk shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- d. The CM@Risk shall carefully check its own work and that of Subcontractors as the Work is being performed.

- e. During the finishing stages of the project, the CM@Risk shall make frequent inspections of the Work, with the applicable Subcontractor(s) involved, if any, with seven (7) days advance notice to the Design Professional, and the CM@Risk shall identify incorrect and faulty Work.
- f. The CM@Risk shall ensure that incorrect or faulty Work is corrected immediately.
- g. The CM@Risk shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the CM@Risk.

Section 3.4 Labor and Materials

- a. Unless otherwise provided in the Contract Documents, the CM@Risk 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.
- b. The CM@Risk 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 Design Professional in accordance with Section 7.4, the CM@Risk may make substitutions only by a formal request for substitution of products in place of those specified with the consent of the City, after evaluation by the Design Professional in accordance with the conditions set forth below and elsewhere in the Contract Documents, and a Change Order or Construction Change Directive. The CM@Risk must submit to the Design Professional and the City, 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 City and the Work in the event the substitution is acceptable;
 - .3 The adjustment, if any, in the Contract Price, in the event the substitution is acceptable;
 - .4 The adjustment, if any, in the time of completion of the Contract and the CM@Risk’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 CM@Risk accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Design Professional;
 - .6 Proposals for substitutions shall be submitted electronically to the Design Professional and the City’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 CM@Risk's submittal of complete substantiating data and information as stated herein; and

.8 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (1) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (2) specified products are unavailable through no fault of the CM@Risk; (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 City or the Design Professional, a substitution would be substantially in the City's best interests, in terms of cost, time, or other considerations; and

.9 Whether or not any proposed substitution is accepted by the City, the City's other consultants, if any (if any), or the Design Professional, the CM@Risk shall reimburse the City for any fees charged by the Design Professional, and the City's other consultants for evaluating each proposed substitute.

- c. The CM@Risk shall enforce strict discipline and good order among the CM@Risk's employees and other persons carrying out the Work. The CM@Risk shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction Site or City's property by any construction personnel.
- d. All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.
- e. The CM@Risk 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 CM@Risk 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 CM@Risk shall make all necessary arrangements to reconcile, without delay, damage, or cost to the City and without recourse to the Design Professional or the City, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade; and

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

Section 3.5 Omitted.

Section 3.6 Taxes

The CM@Risk shall, to the extent not exempted, pay sales, consumer, use and similar taxes for the Work provided by the CM@Risk 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 City pay the

CM@Risk for taxes that were not properly due or for which the City is exempt from paying under Texas law.

Section 3.7 Permits, Fees, Notices and Compliance with Laws

- a. Omitted.
- b. The CM@Risk 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.
- c. If the CM@Risk 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 Design Professional that the Contract Documents are at variance with applicable laws, ordinances, rules, or regulations, the CM@Risk 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 CM@Risk to violate any applicable codes or ordinances in effect at the Site.
- d. Concealed or Unknown Conditions
If the CM@Risk 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 CM@Risk shall promptly provide notice to the City and the Design Professional before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Design Professional will promptly investigate such conditions and, if, in the Design Professional's opinion, they differ materially and cause an increase or decrease in the CM@Risk's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Price or Contract Time, or both. If, in the Design Professional's opinion, the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall promptly notify the City and CM@Risk, stating the reasons. If either party disputes the Design Professional's recommendation, that party may submit a Claim as provided in Article 15.
 - i. In no event shall any adjustment in the Contract Price or Contract Time be made for conditions which should have been known to the CM@Risk or would have been noticed by a CM@Risk of similar size and experience pursuant to its on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the Site which have been made available to the CM@Risk or have been performed by the CM@Risk or its Subcontractors; are part of the Contract Documents; or are part of the materials provided by the CM@Risk to be used in constructing the improvements.
- e. If, in the course of the Work, the CM@Risk encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the

CM@Risk shall immediately suspend any operations that would affect them and shall notify the City and Design Professional. Upon receipt of such notice, the City shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The CM@Risk shall continue to suspend such operations until otherwise instructed by the City but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Price and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

- f. The CM@Risk 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 CM@Risk 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 CM@Risk’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 CM@Risk, City or governmental agency or authority;

.2 Furthermore, during the term of this Agreement, and for the time otherwise required by law, CM@Risk 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 CM@Risk or any of its employees or subcontractors;

.3 The CM@Risk shall immediately, and in any event within two (2) hours of CM@Risk’s first notice of an event described in this Section 3.7.f notify the City 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 CM@Risk, its agents, employees, its Design Professional, Subcontractors, or Sub-subcontractors;

.4 The CM@Risk 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 City may, at its sole discretion, terminate this Agreement immediately if, at any time during the term of this Agreement, the CM@Risk violates or is in breach of any provision of this Section 3.7.f or the USCIS determines that CM@Risk 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 CM@Risk or if the CM@Risk is later determined to not have valid I-9 information then that employee shall be removed and barred from the Project Site at the CM@Risk’s expense; and

.7 The CM@Risk shall require the Subcontractors, Sub-subcontractors and material suppliers to make the representations and warranties set forth in this Section 3.7.f and to be bound by the same requirements set forth herein.

Section 3.8 Allowances

- a. The CM@Risk shall include in the Contract Price 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 City may direct, but the CM@Risk shall not be required to employ persons or entities to whom the CM@Risk has reasonable objection.
- b. Unless otherwise provided in the Contract Documents,
 - .1 allowances shall cover the cost to the CM@Risk of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
 - .2 CM@Risk'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 Price but not in the allowances; and
 - .3 whenever costs are more than or less than allowances, the Contract Price 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.b.1 and (2) changes in CM@Risk's costs under Section 3.8.b.2.
- c. Materials and equipment under an allowance shall be selected by the City with reasonable promptness.

Section 3.9 Superintendent

- a. The CM@Risk 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 City, until all punch list items have been completed to the satisfaction of the Design Professional. No Subcontractor shall perform work on the Site without the presence of the superintendent or assistant superintendent. The superintendent shall represent the CM@Risk, and communications given to the superintendent shall be as binding as if given to the CM@Risk.
- b. The CM@Risk, as soon as practicable after award of the Contract, shall notify the City and Design Professional of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the City or the Design Professional may notify the CM@Risk, stating whether the City or the Design Professional (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Design Professional to provide notice within the 14-day period shall constitute notice of no reasonable objection.
- c. All of the CM@Risk's proposed on-site personnel must be approved by the Design Professional and City. The CM@Risk shall not employ a proposed superintendent to whom the City or Design Professional has made reasonable and timely objection. The CM@Risk shall not change the superintendent without the City's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the CM@Risk's on-site personnel must be preceded by written notification of the Design Professional and City no less than

seven (7) business days before the anticipated event. Such proposed changes must be approved by the Design Professional and City. The CM@Risk 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).

Section 3.10 Omitted.

Section 3.11 Documents and Samples at the Site

The CM@Risk shall make available, to the City, Design Professional or their designees, at the Project Site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy and delivered to the Design Professional for submittal to the City upon completion of the Work as a record of the Work as constructed. The CM@Risk shall make available to the City or Design Professional for inspection and copying the record copy of the drawings, specifications, addenda, Change Orders and other Modifications, including all such documents maintained by the CM@Risk in electronic format, upon reasonable request of the City or Design Professional and, in any event, within twenty-four (24) hours of receipt by CM@Risk of a request from City or Design Professional for such review and/or copying. The City or Design Professional 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 City's expense. The City or Design Professional may require the CM@Risk to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the City's expense.

- i. The CM@Risk shall provide final electronic files and one "hard" copy of the Drawings and Specifications to the City updated to reflect the final condition of the Project with the final Application for Payment as a condition precedent to final payment.

Section 3.12 Omitted.

Section 3.13 Omitted.

Section 3.14 Cutting and Patching

- a. The CM@Risk shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.
- b. The CM@Risk shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The CM@Risk shall not cut or otherwise alter construction by the City or a Separate Contractor except with written consent of the City and of the Separate Contractor. Consent shall not be unreasonably withheld. The CM@Risk shall not unreasonably withhold, from the City or a Separate Contractor, its consent to cutting or otherwise altering the Work.

Section 3.15 Cleaning Up

- a. The CM@Risk shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the CM@Risk shall remove waste materials, rubbish, the CM@Risk's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.
- b. If the CM@Risk fails to clean up as provided in the Contract Documents, the City may do so and the City shall be entitled to reimbursement from the CM@Risk.

Section 3.16 Access to Work

The CM@Risk shall provide the City and Design Professional and their representatives with access to the Work in preparation and progress at all times wherever located, and shall provide proper and safe facilities for such access.

Section 3.17 Royalties, Patents and Copyrights

The CM@Risk shall pay all royalties and license fees. The CM@Risk shall defend suits or claims for infringement of copyrights and patent rights and shall defend and hold the City and Design Professional 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 City or Design Professional. However, if an infringement of a copyright or patent is discovered by, or made known to, the CM@Risk, the CM@Risk shall be responsible for the loss unless the information is promptly furnished to the Design Professional.

Section 3.18 Omitted.

Article 4. DESIGN PROFESSIONAL

Section 4.1 General

- a. The Design Professional is the person or entity retained by the City pursuant to Section 2.3.b and identified as such in the Agreement.
- b. Duties, responsibilities, and limitations of authority of the Design Professional as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the City, CM@Risk, and Design Professional. Consent shall not be unreasonably withheld.

Section 4.2 Administration of the Contract

- a. The Design Professional will provide administration of the Contract as described in the Contract Documents and will be City's representative during construction until the date the Design Professional issues the final Certificate for Payment. The Design Professional will have authority to act on behalf of the City only to the extent provided in the Contract Documents.
- b. The Design Professional will visit the Site at intervals appropriate to the stage of construction, or as otherwise agreed with the City, 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 Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Professional 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 CM@Risk's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.a.

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

- i. **NEITHER THE CITY NOR THE DESIGN PROFESSIONAL NOR THE CITY'S OTHER CONSULTANTS SHALL BE RESPONSIBLE OR LIABLE FOR THE SAFETY PROGRAM(S) DEVELOPED BY THE CM@RISK OR ITS SUBCONTRACTORS FOR THE SAFETY OF PERSONS AND PROPERTY, OR FOR COMPLIANCE WITH STATUTES, RULES, REGULATIONS, AND ORDERS APPLICABLE TO CONDUCT THE WORK. SHOULD ANY CM@RISK OR THEIR SUBCONTRACTOR(S), OR THE SUB-SUBCONTRACTOR(S) MAKE A CLAIM AGAINST THE INDEMNITEES, OR SHOULD THEY OR ANY GOVERNMENTAL ENTITY BRING ANY ACTION OR LEVY OR FINE OR PENALTY AGAINST THE INDEMNITEES ON ACCOUNT OF ANY SAFETY-RELATED DAMAGE OR VIOLATION OF LAW ALLEGED TO HAVE BEEN SUSTAINED, THE CM@RISK 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 CM@RISK SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.**

- d. Communications

The City and CM@Risk shall include the Design Professional in all communications about the Design Professional's services or professional responsibilities. The City shall promptly notify the Design Professional of the substance of any direct communications between the City and the CM@Risk otherwise relating to the Project. Communications by and with the Design Professional's consultants shall be through the Design Professional. Communications by and with Subcontractors and suppliers shall be through the CM@Risk. Communications by and with Separate Contractors shall be through the City. The Contract Documents may specify other communication protocols.

- i. Failure of CM@Risk to give the City or Design Professional written notice of CM@Risk's objections, within three (3) business days, to directives, instructions, interpretations, or minutes from the City or Design Professional, shall constitute final and conclusive consent on the part of the CM@Risk to such directives, instructions, interpretations, or minutes of the City or Design Professional.
 - ii. Any written notice from the City or Design Professional to the CM@Risk shall be sufficiently given when delivered to the last known business address of the CM@Risk, or to its registered or authorized agent, representative, or officer. Any written notice from the CM@Risk to the City shall be sufficiently given when personally delivered to the City's Office, Attn: Project Manager, or at such other address and to the attention of such person as the City may from time to time designate in writing.
- e. Based on the Design Professional's evaluations of the CM@Risk's Applications for Payment, the Design Professional will review and certify the amounts due the CM@Risk and will issue Certificates for Payment in such amounts.
- f. The Design Professional has authority to reject Work that does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable, the Design Professional will have the authority to require inspection or testing of the Work in accordance with Sections 13.4.b and 13.4.c, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Design Professional 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 Design Professional to the CM@Risk, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- g. The Design Professional will review and approve, or take other appropriate action upon, the CM@Risk'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 Design Professional's action will be taken in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Design Professional'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 CM@Risk as required by the Contract Documents. The Design Professional's review of the CM@Risk's submittals shall not relieve the CM@Risk of the obligations under Sections 1.2, 3.2.a, 3.3, 13.9, and the warranty provided in Exhibit V of the Contract. The Design Professional's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- h. The Design Professional will prepare Change Orders and Construction Change Directives and may order minor changes in the Work as provided in Section 7.4. The Design Professional will investigate and make recommendations regarding concealed and unknown conditions as provided in Section 3.7.d.
- i. The Design Professional 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 City, for the City's review and records, written warranties and related documents required by the Contract and assembled by the CM@Risk pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

- j. If the City and Design Professional agree, the Design Professional will provide one or more Project representatives to assist in carrying out the Design Professional's responsibilities at the Site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents. The City shall notify the CM@Risk of any change in the duties, responsibilities and limitations of authority of the Project representatives.
- k. The Design Professional will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the City or CM@Risk. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- l. Interpretations of the Design Professional 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, the Design Professional will endeavor to secure faithful performance by both City and CM@Risk, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.
- m. The Design Professional's opinions on matters relating to aesthetic effect will be considered by the City when making the City's determination on these issues and the City's decision will be final if consistent with the intent expressed in the Contract Documents. Such City's determination shall be communicated through the Design Professional.
- n. The Design Professional will review and respond to requests for information about the Contract Documents. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Design Professional will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

Article 5. SUBCONTRACTORS

Section 5.1 Definitions

- a. A Subcontractor is a person or entity who has a direct contract with the CM@Risk to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.
- b. 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.

Section 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

- a. Unless otherwise stated in the Contract Documents, the CM@Risk, as soon as practicable after award of the Contract, shall notify the City and Design Professional of the persons or entities

proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Design Professional may notify the CM@Risk whether the City or the Design Professional (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Design Professional to provide notice within the 14-day period shall constitute notice of no reasonable objection.

- b. The CM@Risk shall not contract with a proposed person or entity to whom the City or Design Professional has made reasonable and timely objection. The CM@Risk shall not be required to contract with anyone to whom the CM@Risk has made reasonable objection.
- c. If the City or Design Professional has reasonable objection to a person or entity proposed by the CM@Risk, the CM@Risk shall propose another to whom the City or Design Professional has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Price 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 Price or Contract Time shall be allowed for such change unless the CM@Risk has acted promptly and responsively in submitting names as required.
- d. The CM@Risk shall not substitute a Subcontractor, person, or entity for one previously selected if the City or Design Professional makes reasonable objection to such substitution.
- e. Upon request, the CM@Risk shall provide to the City an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.
- f. The CM@Risk shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the CM@Risk from full responsibility.

Section 5.3 Subcontractual Relations

- a. By appropriate written agreement, the CM@Risk shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CM@Risk by terms of the Contract Documents, and to assume toward the CM@Risk all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the CM@Risk, by the Contract Documents, assumes toward the City, the City's other consultants and Design Professional. Each subcontract agreement shall preserve and protect the rights of the City, the City's other consultants, and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor. Where appropriate, the CM@Risk shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The CM@Risk shall make available for review for each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Notwithstanding the above, all Agreements with the City shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.
- b. All subcontracts shall specifically provide that the City is an intended third-party beneficiary of such subcontract. The CM@Risk'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 City shall not be bound to CM@Risk's subcontract agreements.
- c. Whenever the CM@Risk receives payment pursuant to the Contract Documents, the CM@Risk shall make payments to each of its Subcontractors of any amounts actually received which were included in the CM@Risk's Application for Payment to the City for such subcontracts unless otherwise allowed to withhold payment by the terms and conditions of the subcontract or as allowed by law. The CM@Risk shall make such payments within ten (10) days of receipt of payment from the City in the same manner as the City is required to pay the CM@Risk under the Contract Documents if the Subcontractor is satisfactorily performing under its contract with the CM@Risk. Such payments from City to CM@Risk 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 CM@Risk, Texas Property Code Chapter 162 shall apply.
 - d. The CM@Risk 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 CM@Risk for such persons, within ten (10) days of receipt of payment from the CM@Risk. The construction payments made by the CM@Risk to the Subcontractor shall be trust funds as set forth in Chapter 162 of the Texas Property Code. If the Subcontractor fails to make such payments in the required manner, the Subcontractor shall pay said suppliers, Sub-subcontractors, and laborers interest as set forth in Chapter 162 of the Texas Property Code.
 - e. At the time the Subcontractor submits a request for payment to the CM@Risk, the Subcontractor shall also submit to the CM@Risk a list of the Subcontractor's suppliers, Sub-subcontractors, and laborers. The CM@Risk 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 CM@Risk fails to make timely payments to the Subcontractor as required by this Section, the CM@Risk shall pay the Subcontractor interest as calculated under the provisions of Chapter 2251 of the Texas Government Code. Nothing in this Section 5.3 shall be construed to affect the retention provisions of any contract.
 - f. The provisions of this Section 5.3 shall be made a part of each contract between the CM@Risk and each Subcontractor, either expressly or by incorporation by reference to this Section of the Contract Documents.

Section 5.4 Contingent Assignment of Subcontracts

- a. Each subcontract agreement for a portion of the Work may be assigned by the CM@Risk to the City, provided that
 - .1 assignment is effective only after termination of the Contract by the City for cause pursuant to Section 9.2 of the Contract and only for those subcontract agreements that the City accepts by notifying the Subcontractor and CM@Risk; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the City accepts the assignment of a subcontract agreement, the City assumes the CM@Risk's rights and obligations under the subcontract.

- b. If the Work in connection with a subcontract has been suspended for more than thirty (30) days, after termination of the Contract by the City pursuant to Section 9.2 of the Contract and the City accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct verifiable costs incurred by such Subcontractor as a result of the suspension.
- c. Upon assignment to the City under this Section 5.4, the City may further assign the subcontract to a successor contractor or other entity, including the performance bond Surety's takeover or completion contractor, which shall relieve the City of any legal responsibility under the subcontract.
- d. Each subcontract shall specifically provide that the City shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the assignment of the Subcontractor to the City 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 City in writing

Section 5.5 City Payments to Subcontractors

- a. In the event of any default hereunder by the CM@Risk, or in the event the City or Design Professional fails to approve any Application for Payment that is not the fault of a Subcontractor, the City may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the CM@Risk.
- b. Nothing contained herein shall create any obligation on the part of the City to make any payments to any Subcontractor, and no payment by the City to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

Article 6. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

Section 6.1 City's Right to Perform Construction and to Award Separate Contracts

- a. The term "Separate Contractor(s)" shall mean other contractors retained by the City under separate agreements. The City reserves the right to perform construction or operations related to the Project with the City's own forces, and with Separate Contractors in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the CM@Risk claims that delay or additional cost is involved because of such action by the City, the CM@Risk shall make such Claim as provided in Article 15.
- b. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "CM@Risk" in the Contract Documents in each case shall mean the CM@Risk who executes each separate City-CM@Risk Agreement.
- c. The City shall provide for coordination of the activities of the City's own forces and of each Separate Contractor with the Work of the CM@Risk, who shall cooperate with them. The CM@Risk shall participate with any Separate Contractors and the City in reviewing their construction schedules. The CM@Risk shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the CM@Risk, Separate Contractors, and the City until subsequently revised.

- d. Unless otherwise provided in the Contract Documents, when the City performs construction or operations related to the Project with the City's own forces or with Separate Contractors, the City or its Separate Contractors shall have the same obligations and rights that the CM@Risk has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10 and 12.
- e. The CM@Risk accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are listed in and identified as part of the Contract Documents. The CM@Risk shall be responsible for such pre-purchased items, if any, as if the CM@Risk were the original purchaser. The Contract Price 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.

Section 6.2 Mutual Responsibility

- a. The CM@Risk shall afford the City 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 CM@Risk's construction and operations with theirs as required by the Contract Documents.
- b. If part of the CM@Risk's Work depends on proper execution or results upon construction or operations by the City or a Separate Contractor, the CM@Risk shall, prior to proceeding with that portion of the Work, promptly notify the Design Professional of any apparent discrepancies or defects in the construction or operations by the City or Separate Contractor that would render it unsuitable for proper execution and results of the CM@Risk's Work. Failure of the CM@Risk to notify the Design Professional of these apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the City's or Separate Contractor's completed or partially completed construction is fit and proper to receive the CM@Risk's Work.
- c. The CM@Risk shall reimburse the City for costs the City incurs that are payable to a Separate Contractor because of the CM@Risk's delays, improperly timed activities or defective construction. The City shall be responsible to the CM@Risk for costs the CM@Risk incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.
- d. The CM@Risk shall promptly remedy damage that the CM@Risk wrongfully causes to completed or partially completed construction or to property of the City or Separate Contractor as provided in Section 10.2.e.
- e. The City and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the CM@Risk in Section 3.14.
- f. Should the CM@Risk wrongfully delay or cause damage to the work or property of any Separate Contractor, the CM@Risk 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 City on account of any delay or damage alleged to have been caused by the CM@Risk, the City shall notify the CM@Risk who shall defend such proceedings at the CM@Risk's expense. The City may fund the defense of such proceedings

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

- g. SHOULD ANY SUCH SEPARATE CONTRACTOR WRONGFULLY DELAYED OR DAMAGED BY THE CM@RISK OR PERSONS FOR WHOM THE CM@RISK IS RESPONSIBLE PER SECTION 6.2.f 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 CM@RISK 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 CM@RISK SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.**
- h. Should the CM@Risk be caused damage by any City's Separate Contractor(s)'s work, by reason of such City's Separate Contractor's failure to perform properly under its contract with the City, no action will lie against the City, and the City shall have no liability therefor, but the CM@Risk may assert its claims for damages directly against such City's Separate Contractor and the City shall reasonably assist the CM@Risk by assign such rights to CM@Risk, unless otherwise prohibited under Texas law.
- i. Inasmuch as the completion of the building within the prescribed time is dependent very largely upon the close and active cooperation of all those engaged therein, it is, therefore expressly understood and agreed that each contractor shall lay out and install its work at such time(s) and in such manner as to not delay or interfere with the carrying forward of the work of the other contractors.
- j. Where the work of one contractor directly affects the conditions of the work of another contractor including, as examples only, and not limited to, providing shoring for backfilling, providing protective covering for painting, providing adequate bracing of door jambs, etc., the contractor performing the work which will adversely affect another contractor's work shall be responsible for providing adequate protection based upon methods used to perform its work.

Section 6.3 City's Right to Clean Up

If a dispute arises among the CM@Risk, Separate Contractors, or the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the City may clean up and the Design Professional will allocate the cost among those responsible, which allocation shall be final.

Article 7. CHANGES IN THE WORK

Section 7.1 General

- a. 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.
- b. A Change Order shall be based upon agreement among the City, CM@Risk, and Design Professional. A Construction Change Directive requires agreement by the City and Design

Professional and may or may not be agreed to by the CM@Risk. An order for a minor change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time and reasonably inferable from the intent of the Contract Documents may be issued by the Design Professional alone.

- c. Changes in the Work shall be performed under applicable provisions of the Contract Documents. The CM@Risk shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 or as otherwise provided herein, a change in the Contract Price 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 City 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.

Section 7.2 Change Orders

- a. A Change Order is a written instrument prepared by the Design Professional and signed by the City, CM@Risk, and Design Professional stating their agreement upon all of the following:
 - .1 The change in the Work;
 - .2 The amount of the adjustment, if any, in the Contract Price; and
 - .3 The extent of the adjustment, if any, in the Contract Time.
- b. Methods used in determining adjustments to the Contract Price may include those listed in Sections 7.3.c, 7.3.g and 7.3.j.
- c. 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 Price and the construction schedule.
- d. Change Orders Requiring City Council Approval
The Contract Price may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Denton City Council is required if a Change Order involves a decrease or an increase of \$50,000.00 or more. The original Contract Price of each Guaranteed Maximum Price Package also may not be increased under this Section 7.2 by more than twenty-five percent (25.0%) over the entire duration of the Project. The original Contract Price of each Guaranteed Maximum Price Package may not be increased by more than twenty-five percent (25%) over the entire duration of the Project for any reason; nor may the original Contract Price of each Guaranteed Maximum Price Package be decreased by more than twenty-five percent (25%) without the consent of the CM@Risk, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the CM@Risk 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.

Section 7.3 Construction Change Directives

- a. A Construction Change Directive is a written order prepared by the Design Professional and signed by the City and Design Professional, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both. The City 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 Price and Contract Time being adjusted accordingly.
- b. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- c. If the Construction Change Directive provides for an adjustment to the Contract Price, 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 fee; or
 - .4 As provided in Section 7.3.d.
- d. If the CM@Risk does not respond promptly or disagrees with the method for adjustment in the Contract Price, the Design Professional shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Price, an amount for overhead and profit calculated using the sum of the actual costs allowed in Sections 7.3.d.1 through 7.3.d.5, and using the percentages as set forth in Section 7.3.1 below. In such case, and also under Section 7.3.c, the CM@Risk shall keep and present, in such form as the Design Professional 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.d shall be limited to the following:
 - .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Design Professional;
 - .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 CM@Risk or others;
 - .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
 - .5 Additional, verifiable payroll and subsistence costs incurred by the CM@Risk, Subcontractor, and Sub-subcontractor of field personnel directly attributable to the change.
- e. If the CM@Risk disagrees with the adjustment in the Contract Time, the CM@Risk may make a Claim in accordance with applicable provisions of Article 15.
- f. Upon receipt of a Construction Change Directive, the CM@Risk shall promptly proceed with the change in the Work involved and advise the Design Professional of the CM@Risk's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or Contract Time.

- g. A Construction Change Directive signed by the CM@Risk indicates the CM@Risk's agreement therewith, including adjustment in Contract Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- h. The amount of credit to be allowed by the CM@Risk to the City for a deletion or change that results in a net decrease in the Contract Price shall be actual net cost as confirmed by the Design Professional. 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.
- i. Pending final determination of the total cost of a Construction Change Directive to the City, the CM@Risk may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Design Professional will make an interim recommendation for purposes of monthly certification for payment for those costs and certify for payment the amount that the Design Professional recommends, in the Design Professional's professional judgment, to be reasonably justified. The Design Professional's interim recommendation of cost shall adjust the Contract Price 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.
- j. When the City and CM@Risk agree with a recommendation made by the Design Professional concerning the adjustments in the Contract Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Design Professional will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.
- k. If the City and CM@Risk 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 Design Professional for determination. The Design Professional may consult with the City in connection with such determination either at the direction of the City or at the Design Professional's discretion. If the CM@Risk does not ultimately agree with the Design Professional's determination, the CM@Risk may assert a Claim in accordance with Article 15.
- l. In Subparagraph 7.3.d, the allowance for the combined total of onsite and offsite overhead and profit included in the total cost to the City shall be based on the following schedule:
 - .1 For the CM@Risk, for Work performed by the CM@Risk's own forces, fee percentage of the Cost of Work stated in Section 5.1.a of the Agreement plus actual direct jobsite costs associated with the additional work, if any;
 - .2 For the CM@Risk, for Work performed by the CM@Risk's Subcontractor, fee percentage of the Cost of Work stated in the Agreement, if any, plus actual direct jobsite costs associated with the additional work, if any;
 - .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;
 - .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
 - .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.d;
 - .6 Under no circumstance shall costs of the CM@Risk's supervisory, management, administrative or other office personnel, regardless of where

stationed, be paid as cost of the Work under 7.3.d Conversely, the CM@Risk shall be compensated for their labor within the overhead and profit percentage specified in this Section 7.3.1;

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

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

.9 Overtime, when specifically authorized by the City and not as a requirement for the CM@Risk to fulfill its obligations under this Agreement, shall be paid for by the City 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 City for overtime.

Section 7.4 Minor Changes in the Work

The Design Professional may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Price or an extension of the Contract Time. The Design Professional's order for minor changes shall be in writing. If the CM@Risk believes that the proposed minor change in the Work will affect the Contract Price or Contract Time, the CM@Risk shall notify the Design Professional and shall not proceed to implement the change in the Work. If the CM@Risk performs the Work set forth in the Design Professional's order for a minor change without prior notice to the Design Professional that such change will affect the Contract Price or Contract Time, the CM@Risk waives any adjustment to the Contract Price or extension of the Contract Time.

Section 7.5 Supporting Information

Notwithstanding the above, requests for an adjustment in the Contract Price 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 City and Design Professional. The CM@Risk shall also comply with all provisions of Articles 8 and 15 with respect to Claims. The required information shall be provided by the CM@Risk in less than twenty-one (21) days from the CM@Risk's request for an adjustment in the Contract Price 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 City or Design Professional.

Article 8. TIME

Section 8.1 Definitions

- a. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- b. 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 CM@Risk or of persons or entities for whom the CM@Risk is responsible.

- c. The date of Substantial Completion is the date certified by the Design Professional in accordance with Section 9.8.
- d. The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

Section 8.2 Progress and Completion

- a. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the CM@Risk confirms that the Contract Time is a reasonable period for performing the Work.
- b. The CM@Risk shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 10 of the Agreement to be furnished by the CM@Risk and City. 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 City, the CM@Risk shall notify the City in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of any additional necessary documents.
- c. Attention is directed to the fact that the Work is urgently needed by the City; for this reason it shall be agreed that the CM@Risk will substantially complete all Work under the Contract within the time established in the Contract Documents and the most recently approved CM@Risk’s Project Schedule. The CM@Risk 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 CM@Risk’s Project Schedule.
- d. The CM@Risk 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 City in writing.
- e. The CM@Risk 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 CM@Risk as well as the respective Separate Contractors.
- f. The CM@Risk shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.
- g. The CM@Risk shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

Section 8.3 Delays and Extensions of Time

- a. If the CM@Risk is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the City or Design Professional, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, implementation of Federal law or policies, unusual delay in transportation, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.f.ii, or other causes beyond the CM@Risk’s control; (4) by delay authorized by the City pending mediation; or (5) by other causes

that the Design Professional recommends may, justify delay, then the Contract Time may be extended for such reasonable time as the City may determine.

- b. Claims relating to time shall be made in accordance with applicable provisions of Article 15.
- c. This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.
- d. Any claims for extension of time shall be made in writing to the City and Design Professional 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 CM@Risk 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 CM@Risk 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.
- e. 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 City and CM@Risk for the Project area.
- f. In allowing delays for weather, the City will be entitled to consider weather conditions prevailing throughout the entire Contract period. The City and CM@Risk will together reconcile actual working days lost and gained over the entire Contract period every ninety (90) days. The CM@Risk shall then adjust the schedule activities accordingly for both the CM@Risk's weather float reserves and City's float reserves where those activities are carried in the CM@Risk's Project Schedule (if any). 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.
- g. 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 CM@Risk'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.

Section 8.4 CM@Risk's Obligations After Delay

- a. If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or CM@Risk's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the City after consultation with the Design Professional that the Work will not be completed within the Contract Time or in accordance with the CM@Risk's Construction Schedule, due to delays caused by the CM@Risk or its subcontractors, the CM@Risk 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 City or Design Professional, as required to substantially eliminate, in the judgment of the City, the backlog of CM@Risk's Work on the Project:
 - .1 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on Site, and crafts as necessary;
 - .2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;

- .3 Reschedule activities to achieve maximum practical concurrence of accomplishment; and
 - .4 Do whatever else is reasonably required by the City or Design Professional.
- b. These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the CM@Risk's compliance with the CM@Risk's Construction Schedule.
- c. In the event of a delay, the City Design Professional may also require the CM@Risk to immediately submit a Proposed Recovery Schedule. If the Proposed Recovery Schedule is not satisfactory, the Design Professional may unilaterally establish a new Proposed Recovery Schedule acceptable to the City; issue it as a Construction Change Directive; and the CM@Risk shall comply therewith. The City may also require the CM@Risk to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the City, or Design Professional.
- d. Failure of the CM@Risk to substantially comply with the requirements of this Section 8.4 shall be considered grounds for a determination by the City, after consultation with the Design Professional, 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 CM@Risk's Construction Schedule.
- e. Likewise, in the event the progress of the Project falls behind the predictions of the Master Project Schedule through no fault of the CM@Risk, the City or Design Professional may request, and the CM@Risk may agree to take one or more of the Extraordinary Measures, with the City bearing the cost for such measures by Change Order.
- f. The CM@Risk shall not be entitled to an adjustment in the Contract Price in connection with Extraordinary Measures required by the City under or pursuant to this Section 8.4, except as specifically noted otherwise in Section 8.4.e.

Section 8.5 City's Rights After Delay

- a. In the event that any CM@Risk 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 CM@Risk's Project Schedule, the City or the Design Professional shall have the right to impose any or all of the following options:
 - .1 Require the CM@Risk to substantiate the capability to get back on schedule within ten (10) business days;
 - .2 Require the CM@Risk to take some or all of the Extraordinary Measures, and do whatever else is required by the City or Design Professional until CM@Risk confirms, to the satisfaction of the City and Design Professional, the progress of the Work is in compliance and congruence with the most recently approved CM@Risk's Construction Schedule, such measures being at no extra cost to City and Design Professional;
 - .3 Withhold progress payment, or portions thereof, until such time as the CM@Risk is in compliance with the most recently approved CM@Risk's Project Schedule; and
 - .4 Contact or visit the factory, plant or distribution center whose production

or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at CM@Risk's expense.

Section 8.6 Liquidated Damages

- a. Omitted.
- b. Omitted.
- c. Omitted.
- d. Permitting the CM@Risk 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 City of any of its rights under the Contract. The CM@Risk acknowledges the City 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 Price for such early completion are hereby waived by the CM@Risk.

Article 9. PAYMENTS AND COMPLETION

Section 9.1 Contract Price

- a. The Contract Price is stated in the Agreement and, is the maximum amount payable by the City to the CM@Risk for performance of the Work under the Contract Documents. The Contract Price may only be increased pursuant to a Change Order signed by the City. Completion of the Work is a condition precedent to City's obligation to pay the full Contract Price.
- b. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the City or CM@Risk, the applicable unit prices shall be equitably adjusted.

Section 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum or the Cost of the Work, the CM@Risk shall meet with the Design Professional, at the Preconstruction Conference with a proposed Schedule of Values. The CM@Risk's Schedule of Values will be reviewed by the City and Design Professional in the context of the CM@Risk's proposed Construction Management Plan, including, but not limited to, the CM@Risk'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 CM@Risk's Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to the CM@Risk's and Subcontractor's contract amount(s). The Schedule of Values shall allocate the entire Contract Price 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 City and Design Professional may require. This Schedule of Values, unless objected to by the City or Design Professional, shall be used as a basis for reviewing the CM@Risk's Applications for Payment.

Section 9.3 Applications for Payment

- a. At least ten days before the date established for each progress payment, the CM@Risk shall submit to the Design Professional an itemized "Application for Payment" prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the CM@Risk's right to payment that the City or Design Professional require, such as copies of requisitions, and

releases and waivers of liens from Subcontractors and suppliers and shall reflect retainage if provided for in the Contract Documents. The Application for Payment shall be notarized and include other documentation as reasonably required by the City; submitted electronically.

- i. As provided in Section 7.3.i, 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 recommendations of the Design Professional, but not yet included in Change Orders.
- ii. Applications for Payment shall not include requests for payment for portions of the Work for which the CM@Risk does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the CM@Risk intends to pay.
- iii. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the City and Design Professional and in compliance with all applicable statutes:

.1 A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the CM@Risk 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 CM@Risk from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;

.2 Duly executed statutory conditional waivers of mechanics' and material suppliers' lien for progress payments with teach payment application; and appropriate statutory unconditional waivers of mechanics' and material suppliers' liens for progress payments; and appropriate statutory unconditional waivers for final payments from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors establishing payment or satisfaction of payment of all amounts requested by the CM@Risk on behalf of such entities or persons in any previous Application for Payment;

.3 An updated CM@Risk's Construction Schedule per Section 4.4 of the Agreement clearly showing the actual progress of the Work for each activity against the Work previously scheduled to be completed during the period, and against targeted activities' previously approved completion dates; and

.4 With every Application for Payment, CM@Risk will submit an affidavit stating that the CM@Risk has complied with the requirements of Chapter 2258, Texas Government Code. The parties hereto agree that any electronic copy of such affidavit shall be treated as an original for all intents and purposes;

.4 If required by the City's title insurer, if any, the CM@Risk shall execute a personal gap undertaking in form and substance satisfactory to such title insurer; and.

.5 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 Design Professional, and shall include, at a minimum, an updated monthly CM@Risk'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 Design Professional.

- b. 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 City, 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 CM@Risk with procedures satisfactory to the City to establish the stored materials and equipment which must be properly tagged as to material and job identification; must be available for inspection by the Design Professional; and such requests for payment must be accompanied by documentary evidence, 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 City'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 City;
 - .2 Specifically marked for use on the Project; and
 - .3 Segregated from other materials at the storage facility.
- c. The CM@Risk warrants that title to all Work covered by an Application for Payment will pass to the City either by incorporation in the construction or upon the receipt of payment by the CM@Risk, whichever occurs first. The CM@Risk 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 City shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the CM@Risk, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.
- d. **THE CM@RISK FURTHER EXPRESSLY UNDERTAKES TO DEFEND THE INDEMNITEES, AT THE CM@RISK'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 CM@RISK, 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.d). THE CM@RISK 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.**

Section 9.4 Certificates for Payment

- a. The Design Professional will, within seven (7) days after receipt of the CM@Risk's Application for Payment, either (1) issue to the City a "Certificate for Payment" in the full amount of the Application for Payment, with a copy to the CM@Risk; or (2) issue to the City a Certificate for

Payment for such amount as the Design Professional recommends is properly due, and notify the CM@Risk and City of the Design Professional's reasons for withholding certification in part as provided in Section 9.5.a; or (3) withhold certification of the entire Application for Payment, and notify the CM@Risk and City of the Design Professional's reason for withholding certification in whole as provided in Section 9.5.a.

- b. The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the City, based on the Design Professional's evaluation of the Work and the data in the Application for Payment, that, to the best of the Design Professional's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the CM@Risk is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Design Professional. However, the issuance of a Certificate for Payment will not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the City to substantiate the CM@Risk's right to payment; or (4) made examination to ascertain how or for what purpose the CM@Risk has used money previously paid on account of the Contract Price.
- c. Certification will be issued for ninety-five percent (95%) of the amount requested by the CM@Risk and approved by the Design Professional to be properly due until the CM@Risk is ninety-five percent (95%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that, should the CM@Risk at any time fail to keep current with the approved progress schedule, fail to assure payment to Subcontractors, Sub-subcontractors and suppliers as required hereunder; or fail to promptly and diligently correct Work that does not comply with the Contract Documents, certification of ninety-five percent (95%) shall automatically again become effective and shall apply as long as the CM@Risk lags behind such progress or fails to assure such payment.

Section 9.5 Decisions to Withhold Certification

- a. The Design Professional may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City, if in the Design Professional's opinion the representations to the City required by Section 9.4.b cannot be made. If the Design Professional is unable to certify payment in the amount of the Application for Payment, the Design Professional will notify the CM@Risk and City as provided in Section 9.4.a. If the CM@Risk and Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Certificate for Payment for the amount for which the Design Professional is able to make such representations to the City. The Design Professional 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 Design Professional's opinion to protect the City from loss for which the CM@Risk is responsible, including loss resulting from acts and omissions described in Section 3.3.b, 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 City is provided by the CM@Risk;
 - .3 failure of the CM@Risk to make 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 Price;
 - .5 damage to the City or a Separate Contractor;
 - .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - .7 repeated failure to carry out the Work in accordance with the Contract Documents;
 - .8 CM@Risk's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;
 - .9 failure to fully execute the Contract with all associated documents as required;
 - .10 bond claims, or liens, filed for any portion of the Work; or
 - .11 failure of the CM@Risk to comply with any provisions of the Contract Documents, including without limitation Section 8.4.
- b. Omitted.
 - c. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld less all associated damages, costs and expenses, suffered or accrued by the City or Design Professional. In the event the Design Professional nullifies a previously issued Project Certificate for Payment, and the City has, prior to such nullification, paid thereon, the CM@Risk shall promptly reimburse to the City amounts the latter had previously paid pursuant to the nullified project Certificate for Payment. Alternately, the City 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 City and Design Professional have been paid by the CM@Risk.
 - d. If the Design Professional withholds certification for payment under Section 9.5.a.3, the City may, at its sole option, issue joint checks to the CM@Risk and to any Subcontractor or supplier to whom the CM@Risk failed to make payment for Work properly performed or material or equipment suitably delivered. If the City makes payments by joint check, the City shall notify the Design Professional and the CM@Risk shall reflect such payment on its next Application for Payment.
 - e. The CM@Risk shall not stop work or terminate the Contract if the Design Professional 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.

Section 9.6 Progress Payments

- a. After the Design Professional has issued a Certificate for Payment, the City shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Design Professional.

- b. The CM@Risk shall pay each Subcontractor, Sub-subcontractor and supplier, no later than ten (10) days after receipt of payment from the City the amount to which the Subcontractor, Sub-subcontractor and supplier is entitled, reflecting percentages actually retained from payments to the CM@Risk on account of the Subcontractor's, Sub-subcontractor's and supplier's portion of the Work, unless otherwise allowed by the provisions of the subcontract or by law. The CM@Risk shall notify City in advance and in writing of any payment(s) to be withheld from any Subcontractor. The CM@Risk shall, by appropriate agreement with each Subcontractor, Sub-subcontractor and supplier, require each to make payments to their Sub-subcontractors and suppliers in a similar manner.
- c. The Design Professional will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the CM@Risk and action taken thereon by the Design Professional and City on account of portions of the Work done by such Subcontractor.
- d. The City has the right to request written evidence from the CM@Risk that the CM@Risk has properly paid Subcontractors and suppliers amounts paid by the City to the CM@Risk for subcontracted Work. If the CM@Risk fails to furnish such evidence within seven (7) days, the City shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the City nor Design Professional shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.
- e. The CM@Risk's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.b, 9.6.c and 9.6.d.
- f. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of any Work.
- g. The CM@Risk shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the City unless allowed by the terms and conditions of the subcontract as stated in the Contract Documents or by law. The CM@Risk shall notify City in advance and in writing of any payment(s) to be withheld from any Subcontractor. Sums withheld by the City from the CM@Risk for deficiencies solely attributable to the CM@Risk shall not be grounds for the CM@Risk to withhold sums due to any Subcontractor. All sums paid to the CM@Risk for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the CM@Risk for payment to those persons to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the CM@Risk for Work properly performed by Subcontractors and suppliers shall be held by the CM@Risk for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the CM@Risk for which payment was made by the City. However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the CM@Risk, shall create any fiduciary liability or tort liability on the part of the CM@Risk for breach of trust or shall entitle any person or entity to an award of punitive damages against the CM@Risk for breach of the requirements of this provision.
- h. **PROVIDED THE CITY HAS FULFILLED ITS PAYMENT OBLIGATIONS UNDER THE CONTRACT DOCUMENTS, THE CM@RISK SHALL DEFEND AND INDEMNIFY THE CITY FROM ALL LOSS, LIABILITY, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES AND LITIGATION EXPENSES, ARISING OUT OF ANY LIEN CLAIM OR OTHER CLAIM FOR PAYMENT BY ANY SUBCONTRACTOR**

OR SUPPLIER OF ANY TIER. UPON RECEIPT OF NOTICE OF A LIEN CLAIM OR OTHER CLAIM FOR PAYMENT, THE CITY SHALL NOTIFY THE CM@RISK. IF APPROVED BY THE APPLICABLE COURT, WHEN REQUIRED, THE CM@RISK MAY SUBSTITUTE A SURETY BOND FOR THE PROPERTY AGAINST WHICH THE LIEN OR OTHER CLAIM FOR PAYMENT HAS BEEN ASSERTED.

- i. To the extent CM@Risk has received payment in accordance with the terms of this Agreement, the CM@Risk agrees to keep the Work and the Site of the Project and all project bonds free and clear of all bond claim and verified claims related to labor and materials furnished in connection with the Work.
- j. If the City is entitled to reimbursement or payment from the CM@Risk under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the City. Notwithstanding anything contained in the Contract Documents to the contrary, if the CM@Risk fails to promptly make any payment due the City, or if the City incurs any costs and expenses to cure any default of the CM@Risk or to correct defective Work, the City shall have an absolute right to offset such amount against the Contract Price and may, at the City's sole discretion, elect either to (i) deduct an amount equal to that which the City is entitled from any payment then or thereafter due the CM@Risk from the City, or (ii) issue a written notice to the CM@Risk reducing the Contract Price by an amount equal to that which the City is entitled.

Section 9.7 Failure of Payment

If the Design Professional does not issue a Certificate for Payment, through no fault of the CM@Risk, within seven (7) days after receipt of the CM@Risk's Application for Payment, or if the City does not pay the CM@Risk within the date established in the Contract Documents, the amount certified by the Design Professional, then the CM@Risk may, upon seven (7) additional days' written notice to the City and Design Professional, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Price shall be increased by the amount of the CM@Risk's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

Section 9.8 Substantial Completion

- a. "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 City can occupy or utilize the Work for its intended use, all major systems are operational, and all safety features are completed and City'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 City. In addition to the other requirements of the Contract Documents, and without limitation, the CM@Risk 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 CM@Risk shall be deemed to have achieved Substantial Completion.
- b. When the CM@Risk considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the CM@Risk shall prepare and submit to the Design Professional a comprehensive list of items to be completed or corrected prior to final payment. The CM@Risk 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 CM@Risk to complete all Work in accordance with the Contract Documents. The CM@Risk will also provide the Design Professional a comprehensive list of all claims previously and properly made in writing and identified by the CM@Risk as unsettled at the time of Substantial Completion.

- c. Upon receipt of the CM@Risk's list, the Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's inspection discloses any item, whether or not included on the CM@Risk's list, which is not sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the CM@Risk shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Design Professional. In such case, the CM@Risk shall then submit a request for another inspection by the Design Professional to determine Substantial Completion.
- d. When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a "Certificate of Substantial Completion" that shall establish the date of Substantial Completion; establish responsibilities of the City and CM@Risk for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the CM@Risk shall finish all items on the list accompanying the Certificate of Substantial Completion. 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.
- e. The Certificate of Substantial Completion shall be submitted to the City and CM@Risk for their written acceptance of responsibilities assigned to them in the Certificate of Substantial Completion. Upon such acceptance, the City shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
- f. The CM@Risk's acceptance of payment per Section 9.8.e shall constitute a waiver for all purposes of all claims or causes of action by the CM@Risk against the City and the Design Professional, except those previously and properly made in writing and identified in the list provided by the CM@Risk as unsettled at the time of Substantial Completion per Sections 9.8.b.

Section 9.9 Partial Occupancy or Use

- a. The City 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 CM@Risk, as such occupancy or use is consented to by the insurer, if required, 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 City and CM@Risk 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 CM@Risk considers a portion substantially complete, the CM@Risk shall prepare and submit a list to the Design Professional as provided under Section 9.8.b. Consent of the CM@Risk 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 City and CM@Risk or, if no agreement is reached, by decision of the City.

- b. Immediately prior to such partial occupancy or use, the City, CM@Risk, and Design Professional 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.
- c. 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.

Section 9.10 Final Completion and Final Payment

- a. Upon receipt of the CM@Risk's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional will promptly make such inspection. When the Design Professional finds the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professional will promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the CM@Risk and noted in the final Certificate for Payment is due and payable. The Design Professional's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.b as precedent to the CM@Risk's being entitled to final payment have been fulfilled. All warranties and guarantees required under Exhibit V to the Agreement or otherwise required pursuant to the Contract Documents shall be assembled and delivered by the CM@Risk to the Design Professional as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Design Professional until all warranties and guarantees have been received and accepted by the City. "Final Completion" occurs when all the conditions of this Section and the Contract Documents are met as set forth herein.
- b. Neither final payment nor any remaining retained percentage shall become due until the CM@Risk submits to the Design Professional and City; (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or City's property might be responsible or encumbered (less amounts withheld by the City) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect; (3) a written statement satisfactory to the City that the insurance will cover the period required by the Contract Documents; (4) consent of surety to final payment; (5) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City; (6) certification by the CM@Risk that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the CM@Risk against the City arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the As Builts maintained by the CM@Risk pursuant to the Contract Documents and delivered to the City or Design Professional are complete and accurate in all respects; and (7) evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including, but not limited to, (i) instruction of the City's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the City with keying schedule (master, submaster, and special keys); (iii) delivery to the City of the CM@Risk's warranties as set forth in the Contract Documents and each written warranty and

assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Design Professional's review and delivery to the City; (iv) delivery to the City of printed operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the City of the As Builts; (vi) delivery to the City of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the City of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the CM@Risk. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the City before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the City, the CM@Risk may furnish a bond satisfactory to the City to indemnify the City against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the CM@Risk shall refund to the City all money that the City may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and attorneys' fees.

- i. In addition to items listed in 9.10.b to be submitted before final payment will be made or remaining retainage released, CM@Risk shall deliver a permanent certificate of occupancy from local authorities having jurisdiction.
- c. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the CM@Risk or by issuance of Change Orders affecting final completion, and the Design Professional so confirms, the City shall, upon application by the CM@Risk and certification by the Design Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CM@Risk to the Design Professional 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.
- d. The making of final payment shall constitute a waiver of Claims by the City except those arising from
 - .1 bond claims, Claims, liquidated damages, security interests, or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the Contract Documents;
 - .3 terms of special warranties required by the Contract Documents;
 - .4 audits performed by the City, if permitted by the Contract Documents, after final payment; or
 - .5 gross negligence, willful misconduct, or fraudulent concealment in connection with the performance of the Contract.

- e. Application for and acceptance of final payment by the CM@Risk, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee against the City or Design Professional except those previously made in writing and identified by that payee arising after the waiver given at Substantial Completion payment described in Sections 9.8.b and 9.8.f.
- f. In addition to any other damages, failure of the CM@Risk to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the CM@Risk being responsible for excess Design Professional's and other City's consultant(s)' fees beyond their original scope of services required to achieve final completion ("Excess Fees"). Excess Fees will be deducted from the amount due the CM@Risk.

Article 10. PROTECTION OF PERSONS AND PROPERTY

Section 10.1 Safety Precautions and Programs

The CM@Risk shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. CM@Risk's and all Subcontractors' Safety Programs shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations.

Section 10.2 Safety of Persons and Property

- a. The CM@Risk 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 CM@Risk, a Subcontractor, or a Sub-subcontractor; and
 - .3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- b. The CM@Risk 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.
- c. The CM@Risk shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The CM@Risk shall also be responsible, at the CM@Risk'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 CM@Risk.
- d. When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the CM@Risk shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and the CM@Risk shall give the City and the Design Professional reasonable advance written notice of such planned activities.
- e. The CM@Risk 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.a.2

and 10.2.a.3 caused in whole or in part by the CM@Risk, 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 CM@Risk is responsible under Sections 10.2.a.2 and 10.2.a.3. The CM@Risk may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the City or Design Professional 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 CM@Risk. The foregoing obligations of the CM@Risk are in addition to the CM@Risk's obligations under Article 11 of the Contract.

- f. The CM@Risk shall designate a responsible member of the CM@Risk's organization at the Site whose duty shall be the prevention of accidents. This person shall be the CM@Risk's superintendent unless otherwise designated by the CM@Risk in writing to the City and Design Professional.
- g. The CM@Risk shall not permit any part of the construction or Site to be loaded so as to cause damage or create an unsafe condition.
- h. Injury or Damage to Person or Property
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.
- i. The CM@Risk shall immediately report in writing to the City and Design Professional 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 City and the Design Professional.

Section 10.3 Hazardous Materials and Substances

- a. 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 CM@Risk is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the CM@Risk 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 CM@Risk, the CM@Risk shall, upon recognizing the condition, immediately stop Work in the affected area and notify the City and Design Professional of the condition in writing.

.1 For the purposes of this section, the following terms have the below meanings (however, each definition should be read as broadly as possible to incorporate similar hazardous materials or substances:

Asbestos: any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

Petroleum: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

Hazardous Waste: any solid waste listed as hazardous or which possesses one or more hazardous characteristics.

- b. Upon receipt of the CM@Risk's written notice, the City shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the CM@Risk 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 City shall furnish in writing to the CM@Risk and Design Professional the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The CM@Risk and the Design Professional will promptly reply to the City in writing stating whether or not either has reasonable objection to the persons or entities proposed by the City. If either the CM@Risk or Design Professional has an objection to a person or entity proposed by the City, the City shall propose another to whom the CM@Risk and the Design Professional 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 City and CM@Risk. By Change Order duly processed and approved, the Contract Time shall be extended appropriately, and the Contract Price shall be increased by the amount of the CM@Risk's reasonable additional costs of shutdown, delay, and 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 City have any responsibility for any substance or material that is brought to the Project Site by the CM@Risk, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The CM@Risk 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.
- c. Omitted.
- d. The City shall not be responsible under this Section 10.3 for hazardous materials or substances the CM@Risk brings to the Site unless such materials or substances are required by the Contract Documents. The City shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the CM@Risk's fault or negligence in the use and handling of such materials or substances.
- e. Omitted.
- f. **THE CM@RISK SHALL INDEMNIFY THE CITY FOR THE COST AND EXPENSE THE CITY INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CM@RISK BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CM@RISK FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.a, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE CITY'S FAULT OR NEGLIGENCE.**

Section 10.4 Emergencies

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

Section 10.5 Site Visits

Anyone other than the City's designated representatives, the Design Professional, the Design Professional's consultants, and the City's other consultants visiting the job site who is not employed by a CM@Risk shall be required to register with the CM@Risk's site office before proceeding onto the job site.

Article 11. Omitted.

Article 12. UNCOVERING AND CORRECTION OF WORK

Section 12.1 Uncovering of Work

- a. If a portion of the Work is covered contrary to the Design Professional's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Design Professional, be uncovered for the Design Professional's examination and be replaced at the CM@Risk's expense without change in the Contract Time.
- b. If a portion of the Work has been covered that the Design Professional has not specifically requested to examine prior to its being covered, the Design Professional may request to see such Work and it shall be uncovered by the CM@Risk. If such Work is in accordance with the Contract Documents, the CM@Risk shall be entitled to an equitable adjustment to the Contract Price and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the CM@Risk's expense.

Section 12.2 Correction of Work

- a. Before Substantial Completion

The CM@Risk shall promptly correct Work rejected by the Design Professional or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, specifically including but not limited to additional testing and inspections, the cost of uncovering and replacement; 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 CM@Risk and the Project, and restore Work by the CM@Risk and others necessarily damaged in the course of rectifying the non-complying conditions; as well as compensation for the Design Professional's services and expenses made necessary thereby, shall be at the CM@Risk's expense.

 - i. If prior to the date of Substantial Completion the CM@Risk, 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 CM@Risk shall cause such item to be restored to "like new" condition at no expense to the City. In addition, the CM@Risk shall promptly

remedy damage and loss arising in conjunction with the Project caused in whole or in part by the CM@Risk, 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 CM@Risk is otherwise responsible.

- b. After Substantial Completion
 - i. In addition to the CM@Risk's obligations under Exhibit V, if, within two years 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.a, or by terms of any applicable special warranty required by the Contract Documents, or within such longer period of time as may be prescribed by law, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the CM@Risk shall correct it promptly after receipt of notice from the City to do so, unless the City has previously given the CM@Risk a written acceptance of such condition. The City shall give such notice promptly after discovery of the condition. If the condition is reasonably discoverable, during the two-year period for correction of Work, and the City fails to notify the CM@Risk and give the CM@Risk an opportunity to make the correction, the City waives the rights to require correction by the CM@Risk and to make a claim for breach of warranty. If the CM@Risk fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the City or Design Professional, the City may correct it in accordance with Section 2.13, and charge the reasonable costs to the CM@Risk.
 - ii. The two-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 CM@Risk pursuant to this Section 12.2, but only with respect to the corrected portions of the Work.
 - iii. Omitted.
- c. Omitted.
- d. The CM@Risk shall bear the cost of correcting destroyed or damaged construction of the City or Separate Contractors, whether completed or partially completed, caused by the CM@Risk'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 CM@Risk and others necessarily damaged in the course of rectifying the non-complying conditions.
- e. Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the CM@Risk has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.b relates only to the specific obligation of the CM@Risk 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 CM@Risk's liability with respect to the CM@Risk's obligations other than specifically to correct the Work.
- f. The CM@Risk's obligations under this Section 12.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract.

Section 12.3 Acceptance of Nonconforming Work

If the City prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the Contract Price 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 City subsequent to accepting such non-conforming Work, the CM@Risk shall pay the City for the reduction in the Contact Sum occasioned by such acceptance.

Article 13. MISCELLANEOUS PROVISIONS

Section 13.1 Omitted.

Section 13.2 Omitted.

Section 13.3 Rights and Remedies

- a. 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.
- b. No action or failure to act by the City, Design Professional, or CM@Risk shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

Section 13.4 Quality Management Tests and Inspections

- a. 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 CM@Risk shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The CM@Risk shall give the Design Professional timely notice of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. The City shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The City shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. As required by the provisions of Texas Government Code, Section 2269.058(a), as amended, the City shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the City. To the extent that any of the provisions of this Section 13.4 or other provisions of this Agreement conflict with any of the provisions of Section 2269.058(a), as amended, such conflict is unintentional, and the provisions of the Texas Government Code shall control.
- b. If the Design Professional, City, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.a, the Design Professional will, upon written authorization from the City, instruct the CM@Risk to make

arrangements for such additional testing, inspection, or approval, by an entity acceptable to the City, and the CM@Risk shall give timely notice to the Design Professional of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. Such costs, except as provided in Section 13.4.c, shall be at the City's expense.

- c. If such procedures for testing, inspection, or approval under Sections 13.4.a and 13.4.b reveal failure of the portions of the Work to comply with requirements established by the Contract Documents ("Failed Work"), all costs made necessary by the Failed Work, including those of repeated procedures and compensation for the Design Professional's services and expenses and all costs specified in Section 12.2 shall be at the CM@Risk's expense. The CM@Risk also agrees all costs of testing, inspection, and approval services required for the correction of the Failed Work and the cost of such similar services related to remedial operations performed to the Failed Work shall be borne by the CM@Risk.
- d. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the CM@Risk and promptly delivered to the Design Professional.
- e. If the Design Professional is to observe tests, inspections, or approvals required by the Contract Documents, the Design Professional will do so promptly and, where practicable, at the normal place of testing.
- f. It is the intent of the Construction Documents to require the CM@Risk to control the quality of the Work using the processes specified in the CM@Risk's Quality Management, Commissioning, and Turnover Plan contained within the most recent Construction Management Plan approved by the City and Design Professional. 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 CM@Risk's Construction Schedule.
- g. The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the CM@Risk'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 City's review and Design Professional's approval of such plan(s) does not relieve the CM@Risk in any way of this responsibility.
- h. The CM@Risk shall be in charge of scheduling; re-scheduling (when required); and confirming adequate distribution of reports and other findings from all testing and inspections of the Work. This responsibility includes, but is not limited to, scheduling the testing services of a certified testing laboratory which, by statute shall be contracted to and paid for by the City. The certified testing laboratory shall be acceptable to the Design Professional; and shall perform the tests as called for in the Contract Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:
 - .1 The frequency and type of Quality Control testing shall be established by the CM@Risk and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Contract Documents. The type and amount of testing required by the Contract Documents shall be seen as the minimums required, and shall be increased, if in the opinion of the CM@Risk, more testing is needed to meet the requirements of the CM@Risk.
 - .2 The CM@Risk shall concurrently provide the Design Professional copies

of all test results it receives within three (3) business days of receipt of same.

.3 The City shall provide such Quality Assurance testing as it and the Design Professional mutually agree to be adequate for their own needs. The City 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 City, or lack thereof shall in no manner affect the responsibilities of the CM@Risk or Design Professional under this Agreement.

- i. The CM@Risk 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 CM@Risk decides another trade or the CM@Risk should take the lead. The Design Professional shall be informed of the meetings at least seven (7) days in advance, and the appropriate Design Professional's consultants should be invited to attend by the CM@Risk, as supplemented and coordinated by the Design Professional.
- j. The CM@Risk's Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes and CM@Risk will review, in detail, the steps for completing testing of all building systems with the City and Design Professional. This plan shall be coordinated with and shall be made part of the CM@Risk's Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate City's and Design Professional's consultant(s), representatives of the City, and at its option, either or both the Design Professional.
- k. 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 CM@Risk's Quality Management, Commissioning and Turnover Plan, it shall be the responsibility of the CM@Risk, Subcontractor or Sub-subcontractor installing such equipment to operate it for a period of time satisfactory to the City prior to acceptance and before the start of warranty. The duration of such operation shall be as the City, City's consultant(s), Design Professional's consultant(s), City's employees and other City's representatives (the "Turnover Team") shall reasonably require for proper testing of the respective system and thorough instruction of the City's operating personnel.
- l. All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the City's operating personnel on each system's operations and maintenance shall be provided by the CM@Risk, 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 CM@Risk, who shall show their dates in the CM@Risk's Construction Schedule at least sixty (60) days prior to occurrence. The CM@Risk shall schedule the Turnover Meetings at times reasonably convenient for the City's consultant(s), Design Professional's consultant(s), City's employees and other City's representatives that the City and Design Professional agree are necessary to attend for each system. The Design Professional may attend such Turnover Meetings at its discretion.

- m. The CM@Risk shall provide a digital video record to the City, with copies to the Design Professional of all meetings for the purpose of City 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.
- n. The CM@Risk shall prepare a digital video record of the project for the City with copies to the Design Professional at such stages as shall be indicated by the Design Professional 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 CM@Risk on Site; and other construction issues as the Design Professional may reasonably require from time to time.
- o. The CM@Risk 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 CM@Risk shall notify the Design Professional in writing immediately upon completion of this marking, and the Design Professional will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the City. The Design Professional will then give permission for removal in writing to the CM@Risk. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

Section 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as set forth in the provisions of Texas Government Code, Chapter 2251, as amended, or its successor statute.

Section 13.6 Time Limits on Claims

The City and CM@Risk shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work.

Section 13.7 Omitted.

Section 13.8 Measurement

Before ordering any material or doing any Work, the CM@Risk 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 Design Professional for consideration before proceeding with the Work. The CM@Risk shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the City and Design Professional 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.

Section 13.9 Expediting Materials

The CM@Risk 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 Design Professional evidence that such orders have been placed in

accordance with the CM@Risk's Construction Schedule.

Section 13.10 Addressing the City's Additional Needs and Concerns

- a. Notwithstanding the above, the City has a unique set of stakeholders and organizational structure that creates special challenges the CM@Risk must completely and successfully address to the satisfaction of the City and Design Professional 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 CM@Risk shall provide the superintendent once per month for a scheduled meeting with the City for a progress update on the project if requested by the City. A walk-through of the Site may be held as a part of this meeting, which shall be scheduled by mutual agreement during regular business hours.
 - .2 The CM@Risk may be required to provide the superintendent for one meeting per month with the Design Professional for the purpose of assisting the City 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 City.
 - .3 In addition to the meetings required to complete the Project, it is anticipated the City may request tours from time to time of the Project and the Site. The CM@Risk shall indicate in writing when such activity will be permitted and when the Site is off limits. These requirements shall be coordinated through the City.

Section 13.11 Additional Provisions

- a. 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 Denton City, 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.
- b. 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.
- c. All exhibits referred to in the Contract Documents are, by reference, incorporated herein for all purposes.
- d. 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.
- e. Any specific requirement in this Contract that require responsibilities or obligations of the CM@Risk 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 CM@Risk'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.

- f. 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 City. No person is authorized on behalf of City to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the CM@Risk's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the CM@Risk shall be limited to the specific material restated in the written document signed by City and shall not relieve CM@Risk of any other of the duties and obligations under the Contract Documents.
- g. The CM@Risk 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 City from liens and claims of lien if permitted or required by applicable law. CM@Risk 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.
- h. The CM@Risk shall provide City with copies of all notices received by CM@Risk from Subcontractors, Sub-subcontractors, and/or suppliers to CM@Risk.
- i. The City 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 City for this public works project. CM@Risk shall confirm that the City is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the City.
- j. City 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 City to CM@Risk subject to the terms and conditions of the Contract Documents. In the event that City approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by CM@Risk, (other than that contemplated by the Contract Documents under any remedy-granting provision), City 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 City's governing body.
- k. In the event the City is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the CM@Risk shall notify the City and Design Professional 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.
- l. The CM@Risk shall, in addition to compliance with the requirements of Section 3.7.f and without limitation, not knowingly employ or contract with an illegal alien to perform any of the Work under this Agreement. The CM@Risk 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 CM@Risk that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.
 - i. The CM@Risk shall comply with any reasonable request of the Texas Workforce Commission made in the course of an investigation pursuant to state law.
 - ii. In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Contract Document the City may be entitled to for a breach of the Agreement, if the City terminates this Agreement, in whole or in part, due to CM@Risk's breach of the obligations set forth above in this Section 13.11.l CM@Risk shall be liable for actual and consequential damages to the City.

- m. 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 City under Texas law.
- n. 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 City. The City does not waive its immunities or right to object to or contest such a lien.

Article 14. Omitted.

Article 15. CLAIMS AND DISPUTES

Section 15.1 Claims

a. Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the City and CM@Risk arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.a does not require the City to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

b. Time Limits on Claims

The City and CM@Risk shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the dispute resolution method selected in the Agreement and within the period specified by applicable law.

c. Notice of Claims

Claims by either the City or CM@Risk must be initiated by written notice to the other party with a copy sent to the Design Professional, 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 Design Professional and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

i. Claims Made After Final Payment

After final payment, Claims made by the CM@Risk that have not otherwise been waived pursuant to this Contract, must be initiated within one hundred and eighty (180) days from the date of final payment by written notice to the City as a condition precedent to the CM@Risk's right to sue on the Contract.

- ii. Claims by either the City or CM@Risk, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.b, shall be initiated by notice to the other party.

d. Continuing Contract Performance

- i. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 9 of the Contract, the CM@Risk shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract Documents.
- e. Claims for Additional Cost
If the CM@Risk wishes to make a Claim for an increase in the Contract Price, notice as provided in Section 15.1.c shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Damages available to the CM@Risk are limited to those set forth in the Texas Local Government Code, Subchapter I, Section 271.153 or its successor statute(s).
- f. Claims for Additional Time
 - i. If the CM@Risk wishes to make a Claim for an increase in the Contract Time, the CM@Risk shall provide written notice as required by Sections 8.3.d. and 8.3.e.
 - ii. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in accordance with Section 8.3.e.
- g. Waiver of Claims for Consequential Damages
The CM@Risk and City 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 City 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 CM@Risk 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 9 of the Contract. Nothing contained in this Section 15.1.g shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Section 15.2 Omitted.

Section 15.3 Mediation

- a. Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to precedent to filing suit in a state district court having competent jurisdiction per the Contract Documents. If a statute of limitations is at issue, then suit may be filed by either party to toll the statute, but the suit shall then be stayed pending completion of the agreed mediation. If the parties cannot agree on a mediator, then the court may appoint one upon application of either party.
- b. The parties shall endeavor to resolve their Claims by mediation. A request for mediation, shall be made in writing, delivered to the other party to the Contract.
- c. Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the

dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings.

- d. The parties shall share the mediator's fee equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Written agreement(s) reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

Tons and under.....	\$ 32.35	13.10

IRON0263-005 06/01/2025		
	Rates	Fringes
IRONWORKER (ORNAMENTAL AND STRUCTURAL).....	\$ 29.64	8.43

PLUM0100-008 11/01/2024		
	Rates	Fringes
HVAC MECHANIC (HVAC Unit Installation Only).....	\$ 39.76	14.04

SUTX2014-019 07/21/2014		
	Rates	Fringes
BRICKLAYER.....	\$ 19.89	0.00
CARPENTER, Excludes Drywall Hanging, Form Work, and Metal Stud Installation.....	\$ 19.25	0.00
CAULKER.....	\$ 16.63	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 12.93	0.00
DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 15.42	0.00
ELECTRICIAN (Alarm Installation Only).....	\$ 18.83	3.32
ELECTRICIAN (Communication Technician Only).....	\$ 19.98	3.64
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 15.80	2.18
ELECTRICIAN, Excludes Low Voltage Wiring and Installation of Alarms/Sound and Communication Systems.....	\$ 18.82	0.83
FORM WORKER.....	\$ 12.13	0.00
GLAZIER.....	\$ 16.55	3.13
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine).....	\$ 10.04	2.31
INSTALLER - SIDING (METAL/ALUMINUM/VINYL).....	\$ 14.74	0.00
INSTALLER - SIGN.....	\$ 15.61	0.00
INSULATOR - BATT.....	\$ 13.00	0.00
IRONWORKER, REINFORCING.....	\$ 14.02	0.00
LABORER: Common or General.....	\$ 11.76	0.00

LABORER: Mason Tender - Brick...	\$ 10.54	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.75	0.00
LABORER: Pipelayer.....	\$ 13.00	0.35
LABORER: Plaster Tender.....	\$ 12.22	0.00
LABORER: Roof Tearoff.....	\$ 11.28	0.00
LABORER: Landscape and Irrigation.....	\$ 12.50	0.48
LATHER.....	\$ 16.00	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 12.83	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 15.69	0.50
OPERATOR: Forklift.....	\$ 13.21	0.81
OPERATOR: Grader/Blade.....	\$ 12.48	0.00
OPERATOR: Loader.....	\$ 13.46	0.85
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 18.44	0.00
OPERATOR: Roller.....	\$ 15.04	0.00
PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping.....	\$ 13.21	2.33
PAINTER: Drywall Finishing/Taping Only.....	\$ 13.76	2.84
PIPEFITTER, Excludes HVAC Pipe Installation.....	\$ 22.98	6.35
PLASTERER.....	\$ 15.75	0.00
PLUMBER (HVAC Pipe Installation Only).....	\$ 22.16	5.46
PLUMBER, Excludes HVAC Pipe Installation.....	\$ 20.84	4.74
ROOFER.....	\$ 17.19	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 20.88	5.19
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 24.88	5.97

SPRINKLER FITTER (Fire Sprinklers).....	\$ 22.94	0.00
TILE FINISHER.....	\$ 11.22	0.00
TILE SETTER.....	\$ 14.25	0.00
TRUCK DRIVER: 1/Single Axle Truck.....	\$ 16.40	0.81
TRUCK DRIVER: Dump Truck.....	\$ 12.39	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00	4.11

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

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

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

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

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

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

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

WAGE DETERMINATION APPEALS PROCESS

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

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

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

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator

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

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

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

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

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END OF GENERAL DECISION

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EXHIBIT V – WARRANTY (VERTICAL PROJECTS VERSION)

V.1 Warranty

V.1.1 The CM@Risk warrants to the City and Design Professional that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The CM@Risk further warrants that the Work will conform 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 CM@Risk's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the CM@Risk, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Design Professional, the CM@Risk shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **THE CM@RISK SHALL DEFEND AND HOLD THE CITY HARMLESS AGAINST ANY CLAIM, DEMAND, LOSS, OR DAMAGE BY ANY BREACH OF THIS WARRANTY, AND CM@RISK ACKNOWLEDGES IT SHALL NOT LIMIT SUCH WARRANTY BY ANY OTHER PROVISION OF THIS AGREEMENT.**

V.1.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the City and shall commence in accordance with Section 9.8.4.

V.1.3 When written warranties are specified, the document shall include the following information:

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

V.1.4 The following minimum warranty terms shall be incorporated:

.1 Duration shall be two years 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 City, including, without limitation, repair or replacement of other work disturbed by, or because of, repair or replacement; and

.4 The warranty period of two year, or as otherwise specified, shall recommence upon the identification and completion by CM@Risk and acceptance by City of any warranty claim during the initial two-year (2) warranty period.

V.1.5 Warranties which are provided by a manufacturer for its product shall be received by the CM@Risk, filled out and filed with the manufacturer or other appropriate entity in coordination with the City. Certificates or registration stubs shall be included with the record documents submitted for the City upon completion of the Work. The City shall administrate manufacturer's warranties/guarantees after expiration of the CM@Risk's warranty.

V.1.6 Temporary or trial usage by the City 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 Design Professional and City shall not be construed as evidence of the Design Professional's or the City's acceptance of same, or the commencement of any warranty periods.

V.1.7 The City has the privilege of such temporary or trial usage, for such reasonable time as the City, or the Design Professional deem proper. The CM@Risk 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.

V.1.8 The CM@Risk may, without cost to the City, make such trial usage. However, trials shall only be conducted with the Design Professional'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 City.

V.1.9 The CM@Risk agrees to assign to the City 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.

V.1.10 If necessary as a matter of law, the CM@Risk may retain the right to enforce directly any such manufacturers' warranties during the two (2) year period following the date of Substantial Completion.

EXHIBIT W – USE of the SITE, DELIVERY & STORAGE

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

W.1 The CM@Risk shall coordinate the CM@Risk's operations with, and secure the approval of, the City before using any portion of the site.

W.2 The CM@Risk shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto, which includes, but is not limited to, the all the following duties and acknowledgements:

- .1 The CM@Risk 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 CM@Risk 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 City, have an adverse effect on the quality of life or productivity for Project stakeholders, the City's current operations, or the City's employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the City;
- .4 The CM@Risk 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 City. Repeat offenses will cause the City or Design Professional to require, through the CM@Risk, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site;
- .5 The CM@Risk 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 CM@Risk, 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 CM@Risk shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use; and
- .7 The CM@Risk 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 CM@Risk 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.

W.3 The CM@Risk 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 CM@Risk shall inform the City, Design Professional, Program Manager and any officials referenced in Section W.5 in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to City's and Design Professional's approval, such approval not to be unreasonably withheld;
- .3 The City shall be responsible for storm related debris and snow removal to the limits of the construction site only so far that the CM@Risk will have access to the entrance to the construction area; and
- .4 Storm related debris and 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 CM@Risk.

W.4 During the performance of the Work, the CM@Risk, 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 City;
- .2 Perform the Work at such times of the day and days of the week as may be designated by the City; and
- .3 Accept that these entrances and times may be reviewed and changed from time to time by the City.

W.5 The CM@Risk 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 City to proceed has been given to the CM@Risk. If the utility service must be interrupted, the CM@Risk shall, at CM@Risk'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.

W.6 The CM@Risk 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 CM@Risk's expense.

W.7 Notwithstanding any other provision herein, the CM@Risk shall take all necessary

measures to store materials on site for which payment has been requested by the CM@Risk or been made by the City so that they shall not deteriorate, be damaged or be stolen, which includes, but is not limited to, all the following:

- .1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the CM@Risk;
- .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 CM@Risk;
- .3 The CM@Risk shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the City; and
- .4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.

W.8 The CM@Risk shall not deliver any materials to the site which are not to be installed by same CM@Risk without fifteen (15) day's advance notice in writing to the City of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the CM@Risk and a representative of the City, who shall agree, and the CM@Risk 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 CM@Risk has accepted responsibility for insurance and ongoing protection per the terms of this Agreement for such material until it is released to a third party authorized in writing by the City to receive it.

EXHIBIT X – COST of the WORK

X.1 Costs to Be Reimbursed

X.1.1 The term Cost of the Work shall mean costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections X.1 through X.7.

X.1.2 Where, pursuant to the Contract Documents, any cost is subject to the City's prior approval, the CM@Risk shall obtain such approval in writing prior to incurring the cost.

X.1.3 Costs shall be at rates not higher than the competitive prices paid at the place of the Project, except with prior approval of the City.

X.2 Labor Costs

X.2.1 Wages for labor in the direct employ of the CM@Risk in the performance of the Work at the rates set forth in the GMP.

X.2.1.1 Pursuant to Chapter 2258, Texas Government Code, all contractors and any Subcontractor involved in the construction of a public work project shall pay not less than the prevailing rates as per diem wages in the locality at the time of construction to all laborers, workmen and mechanics employed by them in the execution of this contract. CM@Risk shall assure that these requirements are met for the Project and shall insure that every contract or subcontract relating to the Work requires, on behalf of City, that the prevailing wage rates be paid.

X2.1.2 The CM@Risk shall be provided an applicable Department of Labor Wage Rate Determination for use on the Project required by Chapter 2258.022, Texas Government Code. In the event the City does not provide this Labor Wage Rate Determination, the CM@Risk shall request it in writing in a timely manner, so as not to delay the CM@Risk's initial subcontractor procurement process during preconstruction. The CM@Risk shall, if requested by the City, assist the City in conducting a survey of the wages paid, by labor class, on projects of a similar type in a similar location.

X.2.2 Wages or salaries of the CM@Risk's supervisory and administrative personnel when stationed at the site and performing Work, with the City's prior approval.

X.2.2.1 Charges for CM@Risk's personnel, when stationed at the field office and engaged exclusively in the performance of the Work, or other personnel as CM@Risk and City may mutually agree, as provided and set forth in the GMP.

X.2.3 Wages and salaries of the CM@Risk's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

X.2.4 Costs paid or incurred by the CM@Risk, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, but not merit bonuses or profit-sharing provided such costs are based on wages and salaries included in the Cost of the Work under Sections X.2.1 through X.2.3. Charges for such costs shall not exceed the CM@Risk's actual cost and, as a result, when computing amounts chargeable for such costs CM@Risk 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.

X.2.5 The rates set forth in the GMP shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Change Order.

X.2.6 Notwithstanding the rates shown in the GMP to be used by the CM@Risk for progress billings, the City shall have the right to audit the CM@Risk's actual labor costs, burdens, and related expenditures before final payment, and adjust the City's payment to the CM@Risk for variations found accordingly.

X.3 Subcontract Costs

Payments made by the CM@Risk to Subcontractors in accordance with the requirements of the subcontracts properly entered into under this Agreement.

X.4 Costs of Materials and Equipment Incorporated in the Completed Construction

X.4.1 Costs, including temporary storage and transportation of materials and equipment incorporated, or to be incorporated, in the completed construction.

X.4.2 Costs of materials described in the preceding Section X.4.1 in excess of those actually installed but required to provide allowance for waste and for spoilage. Unused excess materials, if any, shall be properly stored at the site, or in accordance with the City's instructions, provided to the City at the completion of the Work or, at the City's option, shall be sold by the CM@Risk. Any amounts realized from such sales shall be credited to the City as a deduction from the Cost of the Work. CM@Risk shall use its best efforts and judgment to avoid purchasing excess materials without the prior approval of the City.

X.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

X.5.1 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. Any such items used but not consumed, which were paid for by the City, shall become property of the City and shall be delivered to the City upon completion of the Work in accordance with instructions furnished by the City. If the City elects, however, the CM@Risk shall purchase any items from the City at a purchase price equal to the original cost charged to the City, 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 City and the CM@Risk. Upon demand by the City, the CM@Risk shall furnish the City with any information and documentation necessary to verify the period of time for which items were used in connection with the Work.

X.5.2 Rental charges of all necessary machinery and equipment, exclusive of hand tools, not used at the site of the Work, whether rented from the CM@Risk 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 in the GMP, attached hereto and made part hereof. In the absence of any appropriate rental amount set forth in the GMP, rental charges shall be consistent with those generally prevailing in the location of the Project. The CM@Risk shall obtain bids for all machinery and equipment to be rented from no less than three (3) responsible suppliers other than the CM@Risk itself, or an Affiliate as defined herein. The City shall, with the advice of the CM@Risk and CM@Risk, determine which bid is to be accepted. In no event shall the CM@Risk 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 CM@Risk shall pay any excess rental charges. CM@Risk shall disclose to the City and CM@Risk if any rental arrangements include a lease to purchase component as a result of which rental payments chargeable to City as costs are applied, in whole or in part, to CM@Risk's acquisition of such rented equipment, in which event the rental rate otherwise provided for shall be reduced by fifty percent (50%).

X.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

X.5.4 Costs of the CM@Risk's site office, including reproduction costs, electronic communications and data connections at the site, postal and parcel express delivery charges, documented petty cash expenses of the site office as well as general office equipment and supplies.

X.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the City's prior approval, when stored and maintained in compliance with the Contract Documents.

X.6 Miscellaneous Costs

X.6.1 That portion of insurance and bond premiums that can be directly attributed to and required by this Agreement, provided, however, that such costs shall not be included in the Cost of the Work for purposes of calculating the CM@Risk's fee. Expenses shall be substantiated by documentation in form of substance satisfactory to City. Such premiums shall be adjusted at the Final Acceptance of the Work to reflect the final Contract Price.

X.6.2 Sales, use, or similar taxes, imposed by a governmental authority, which are related to the Work and for which the CM@Risk is liable.

X.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the CM@Risk is required by the Contract Documents to pay.

X.6.4 Fees of testing laboratories for tests required by the Contract Documents; except those related to nonconforming Work other than that which payment is permitted under the Contract Documents.

X.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents, and provided such royalties, fees, and other costs are not excluded by provisions of the Contract Documents.

X.6.6 Costs of document reproductions and delivery charges.

X.6.7 That portion of the reasonable expenses of the CM@Risk's personnel incurred while traveling in discharge of duties connected with the Work, when in compliance with Exhibit Y – General Conditions Costs.

X.6.8 The cost of travel more than 100 miles from the site by; and commercial lodging, rental housing and meals for the CM@Risk's supervisory personnel properly and reasonably incurred in the performance of the Work is "Travel and Subsistence". Travel and Subsistence incurred in

accordance with the CM@Risk's written personnel policy for actual and verifiable relocation and temporary living expenses of personnel required for the Work, in case it is necessary to relocate such personnel from locations further than one hundred (100) miles from the site, when approved by the City in advance and in writing, and not in excess of the line item amount shown for this purpose in the GMP.

X.7 Other Costs and Emergencies

X.7.1 Other costs incurred in the performance of the Work, with the City's prior written approval.

X.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, to the extent not (1) caused by the CM@Risk, a subcontractor, or anyone for whom either is responsible, or (2) capable of being prevented through timely notice of an unsafe condition to the City.

X.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the CM@Risk, Subcontractors, or suppliers, provided that such damaged or nonconforming Work resulted from causes other than the fault, negligence, or neglect of the CM@Risk or its subcontractors, vendors or suppliers in whole or in part, or, failure of CM@Risk or its subcontractors, vendors or suppliers to comply with all of the requirements of the Contract Documents or the failure of the CM@Risk'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 recoverable by the CM@Risk from insurance, Subcontractors or suppliers.

X.7.4 The losses included in Section X.7.3, may include settlements made with the prior written consent and approval of City. No such losses and expenses shall be included in the Cost of the Work for the purpose of determining CM@Risk's Fee unless such loss requires substantial reconstruction and CM@Risk is placed in charge thereof. In such event, CM@Risk 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 CM@Risk or failure of CM@Risk to comply with all of the requirements of the Contract Documents; or (ii) incidental reconstruction, which for purposes of this Section X.7.4 is hereby deemed to mean any reconstruction involving a cost of less than One Thousand Dollars (\$ 1,000).

X.9 Costs Not to Be Reimbursed

X.9.1 The Cost of the Work shall not include (unless otherwise specifically stated in the GMP) the items listed below:

- .1** Salaries and other compensation of the CM@Risk's personnel stationed at the CM@Risk's principal office or offices other than the site office, except as specifically provided in Section X.2, or as may be provided in the GMP;
- .2** Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the CM@Risk or paid to any Subcontractor or vendor, unless the City has provided prior approval;
- .3** Expenses of the CM@Risk's principal office and offices other than the site office;
- .4** Overhead and general expenses, except as may be expressly included in Sections X.1 to X.7;
- .5** Rental costs of machinery and equipment, except as specifically provided herein;
- .6** The CM@Risk's capital expenses, including interest on the CM@Risk's capital employed for the Work;

- .7 Except as provided in Section X.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the CM@Risk, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .8 Costs incurred in the performance of Preconstruction Phase Services (unless specifically stated in the GMP);
- .9 Any cost not specifically and expressly described in Sections X.1 to X.7;
- .10 Costs, other than costs included in Change Orders approved by the City, that would cause the Guaranteed Maximum Price to be exceeded;
- .11 Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems relating to accounting in CM@Risk 's office and even if at the site, except as specifically identified herein;
- .12 Interest on CM@Risk 's capital or on money borrowed by CM@Risk, including the capital employed by CM@Risk in the performance of the Work;
- .13 Amounts required to be paid by CM@Risk for Federal and/or State income, franchise taxes or other business taxes, but not including any applicable sales taxes;
- .14 Legal, accounting, or other similar professional services provided by or to CM@Risk, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with City, the Design Professional or any other person or entity relating to the Project or otherwise;
- .15 Sales, entertainment, and meal expenses;
- .16 Employee vehicle expenses, including fuel above the "Travel & Subsistence" not-to-exceed amount;
- .17 General Conditions, Weather Protection and Travel and Subsistence in excess of the line items shown in the GMP;
- .18 Costs related to CM@Risk's indemnification obligations;
- .19 The cost of Travel and Subsistence not in compliance with the requirements of Section X.6.12; and
- .20 Costs for insurance through a captive insurer owned or controlled by the CM@Risk.

X.10 Discounts

X.10.1 Cash discounts obtained on payments made by the CM@Risk shall accrue to the City if: (1) before making the payment, the CM@Risk included the amount to be paid, less such discount, in an Application for Payment and received payment from the City; or (2) the City has deposited funds with the CM@Risk with which to make payments. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the CM@Risk shall make provisions so that they can be secured. The CM@Risk 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 City 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 City in accordance with the requirements of this Section X.8.10.

X.10.2 Amounts that accrue to the City in accordance with the provisions of Section X.8.10 shall be credited to the City as a deduction from the Cost of the Work.

EXHIBIT Y – GENERAL CONDITIONS COSTS (VERTICAL PROJECTS VERSION)

The General Conditions Costs are a firm fixed lump sum amount included as a Cost of the Work and that will include bonds and insurance premiums, except builder's risk insurance which will be billed as a reimbursable job cost expense at actual cost, based on the full contract price for construction.

Commented [EG1]: Leave as cost reimbursable, want to talk through it with vendor.
Commented [EG2R1]: City will accept changes.

These General Conditions Costs include, but are not limited to the following types of costs for the CM@Risk during the construction phase: payroll costs for project manager or construction manager for Work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for other management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); administrative office personnel; costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses; telephone services at the site; costs of liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the CM@Risk or Subcontractors; and fees for licenses; and field staff vehicle allowances, field staff phones, courier and postage and contractor association fees

Any costs which comprise the Cost of Work, and reimbursable under Exhibit X – Cost of the Work which are also set forth in the detailed general conditions estimate included within each Approved GMP, shall not exceed the total amount shown in aggregate herein for such expenditures

- Y.1 CM@Risk'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 CM@Risk'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 CM@Risk and documented to the satisfaction of the City.
- Y.2 Notwithstanding the above, the CM@Risk 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 CM@Risk's administration and deliverables normally required on similar projects. The CM@Risk will not be additionally compensated above the amount shown in General Conditions for preparing or processing these documents.
- Y.3 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.
- Y.4 Intentionally left blank.
- Y.5 The actual costs for 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 City as savings below the Guaranteed Maximum Price.
- Y.6 The CM@Risk shall, without limitation keep such separate and distinct records as are required for the CM@Risk to easily validate the accuracy of the CM@Risk's billing for the costs of General Conditions, Weather Protection, and Travel and Subsistence.

Y.7 In the event the CM@Risk 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 CM@Risk's responsibilities to control under this Agreement; or the City or CM@Risk believes such line items should be lowered based on better circumstances for performing the Work than originally anticipated by the City and CM@Risk, the Guaranteed Maximum Price shall then be adjusted as provided in the Contract Documents for changes in the Work.

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1 Name of vendor who has a business relationship with local governmental entity.

Steele & Freeman, Inc.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

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

Yes No

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

Yes No

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

Yes No

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

4 I have no Conflict of Interest to disclose.

5 DocuSigned by:
Michael Freeman

4/28/2026

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: 97979910-892A-48DC-A34C-3D6FDF4F4CDC

Status: Sent

Subject: Please DocuSign: City Council Contract 8558 GMP 1 - Construction Agreement - Animal Svc Expansion

Source Envelope:

Document Pages: 161

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Erica Garcia

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US & Canada)

erica.garcia@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

Holder: Erica Garcia

Location: DocuSign

4/22/2026 8:45:15 AM

erica.garcia@cityofdenton.com

Signer Events

Signature

Timestamp

Erica Garcia

Completed

Sent: 4/22/2026 8:49:55 AM

erica.garcia@cityofdenton.com

Viewed: 4/22/2026 8:50:04 AM

Senior Buyer

Signed: 4/22/2026 8:51:08 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Lori Hewell

Initial

Sent: 4/22/2026 8:51:12 AM

lori.hewell@cityofdenton.com

Viewed: 4/22/2026 2:24:32 PM

Purchasing Manager

Signed: 4/22/2026 2:25:29 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Leah Bush

Signed by:

3A6254145BDA469...

Sent: 4/22/2026 2:25:34 PM

leah.bush@cityofdenton.com

Viewed: 4/28/2026 9:05:19 AM

Assistant City Attorney

Signed: 4/28/2026 1:39:39 PM

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.104

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Michael Freeman

DocuSigned by:

0AB7C48B8A0D4A4...

Sent: 4/28/2026 1:39:43 PM

mfreeman@steelefreeman.com

Viewed: 4/28/2026 1:53:31 PM

Chief Executive Officer

Signed: 4/28/2026 3:07:46 PM

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 12.154.32.162


Electronic Record and Signature Disclosure:

Accepted: 4/28/2026 1:53:31 PM

ID: 0fd098d8-f4d9-4144-9dcc-13d5ef5d321c

Signer Events	Signature	Timestamp
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Seth Garcia
seth.garcia@cityofdenton.com
Director of Capital Projects
Security Level: Email, Account Authentication (None)

Signed by:

A13701F6BC954FC...
Signature Adoption: Pre-selected Style
Using IP Address: 47.190.47.120
Signed using mobile

Sent: 4/28/2026 3:07:49 PM
Viewed: 4/28/2026 3:11:03 PM
Signed: 4/28/2026 3:12:15 PM

Electronic Record and Signature Disclosure:
Accepted: 4/28/2026 3:11:03 PM
ID: 382d12b0-89c5-4155-8175-c975d3ae6997

Cheyenne Defee
cheyenne.defee@cityofdenton.com
Procurement Administration Supervisor
City of Denton
Security Level: Email, Account Authentication (None)

Sent: 4/28/2026 3:12:18 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Cassey Ogden
Cassey.Ogden@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Ingrid Rex
Ingrid.Rex@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee
cheyenne.defee@cityofdenton.com
Procurement Administration Supervisor
City of Denton
Security Level: Email, Account Authentication (None)

COPIED

Sent: 4/22/2026 8:51:12 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Gretna Jones
gretna.jones@cityofdenton.com
Legal Secretary
City of Denton
Security Level: Email, Account Authentication (None)

COPIED

Sent: 4/28/2026 3:12:18 PM
Viewed: 4/28/2026 3:16:41 PM

Carbon Copy Events	Status	Timestamp
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Kristine Stewart
kristine.stewart@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 3/31/2026 9:20:33 AM
ID: 8cd3299c-dd6e-4aab-b407-f3802ba3b721

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	4/22/2026 8:49:55 AM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

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Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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