

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH GAGE & CADE CONSTRUCTION, LLC, FOR THE PUBLIC DISPOSAL FACILITY REPAIRS FOR THE SOLID WASTE AND RECYCLING DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8915 – AWARDED TO GAGE & CADE CONSTRUCTION, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$579,952.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the Public Disposal Facility Repairs for the Solid Waste and Recycling 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 competitive sealed 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 competitive sealed proposal for materials, equipment, supplies, or services shown in the “Competitive Sealed 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 competitive sealed proposal.

<u>CSP</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8915	Gage & Cade Construction, LLC	\$579,952.00

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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, 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.

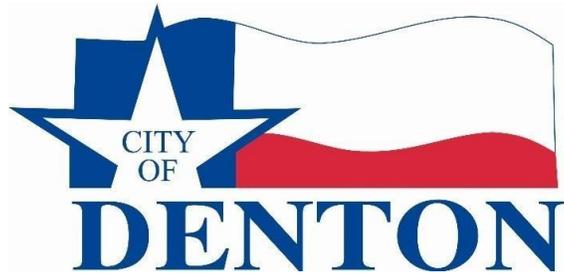
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
INGRID REX, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush



## DocuSign City Council Transmittal Coversheet

FILE	8915
File Name	PUBLIC DISPOSAL FACILITY REPAIRS
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**STIPULATED SUM VERTICAL CONSTRUCTION CONTRACT**

**BY AND BETWEEN**

**CITY OF DENTON**

**AND**

**GAGE & CADE CONSTRUCTION, LLC**

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## STIPULATED SUM VERTICAL CONSTRUCTION CONTRACT

This Stipulated Sum Vertical Construction Contract (this “Agreement”) made as of the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ (the “Effective Date”) between City of Denton, a Texas home rule municipal corporation located at 215 East McKinney Street Denton, Texas 76201 (the “Owner” or “City”) and Gage & Cade Construction, LLC at 1107 County Road 264, Bertram, TX 78605 (the “Contractor”) for the following Project:

CSP #8915 PUBLIC DISPOSAL FACILITY REPAIRS

The Owner and Contractor agree as follows:

### Article 1. THE CONTRACT DOCUMENTS

Section 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in the above table of contents, documents issued as part of the solicitation for the Project, this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. In the event any provision contained in this Agreement conflicts with any provision contained in the Contract Documents, the more stringent provision for the Contractor, as interpreted by the Owner, shall govern.

Section 1.2 If, and to the extent of, any inconsistency, ambiguity, discrepancy or error in the Contract Documents (referred to collectively in this Section 1.2 as discrepancy), the Contractor shall immediately seek clarification from Biggs & Mathews Environmental, Inc. (the “Design Professional” or “Architect” or “Engineer” as reference may be made in the Contract Documents) and notify the Owner and Contractor that clarification has been requested. In the event that the Design Professional fails to clarify such discrepancy, within a reasonable time under the circumstances, the Contractor shall proceed with the Work without the clarification based on written permission from the Owner, and give precedence to the Contract Documents in the following descending order of priority:

- a. Modifications issued after execution of the Owner-Contractor Agreement, including all exhibits not specifically referenced in this Section 1.2;
- b. the Owner-Contractor Agreement;

- c. Addenda issued prior to the execution of the Owner-Contractor Agreement, with the Addenda bearing the latest date taking precedence;
- d. the General Conditions of the Contract for Construction;
- e. Exhibit "B" - Drawings and Specifications;

## Article 2. THE WORK OF THIS CONTRACT

Section 2.1 The Contractor shall in a good workmanlike manner, fully execute the Work described in, and reasonably inferable by the Contractor as necessary to provide the results intended by fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others: and the Contractor at its sole cost, risk, and expense shall construct, equip, provide purchase, pay for, and furnish all of the Work in accordance with such Contract Documents. and governmental codes and regulations as they apply to performance of the Work.

Section 2.2 An Index of Drawings and Specifications which have been furnished to the Contractor as of the date of this Agreement is set forth in Exhibit "B" – Drawings and Specifications.

Section 2.3 The Contractor shall not be entitled to any adjustments in the Contract Sum or the Contract Time as a result of any action, or failure to act, in connection with any work or other services performed by the Contractor, or any entity affiliated with the Contractor, for portions of the Project other than the Work, such as, without limitation, other projects for this Owner or nearby the Project site, whether such work or other services are performed under contract with the Owner or an independent third party.

Section 2.4 The Contractor shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements unless such modifications are accepted by the Owner in a Change Order or Construction Change Directive. The Contractor shall not be entitled to receive any additional fees as a result of any modification requests or recommendations submitted by the Contractor.

Section 2.5 The Contractor shall furnish only skilled and properly trained staff for the performance of the Work. The key members of the Contractor's staff shall be persons agreed upon with the Owner and Contractor and identified in Exhibit "C" – Key Personnel, which is attached hereto and incorporated herein for all purposes.

- a. Such key members of the Contractor's staff shall not be changed without the written consent of the Owner and Contractor, unless such person becomes unable to perform any required duties due to death, disability or termination of employment with the

Contractor. If a key member is no longer capable of performing in the capacity described in Exhibit "C" – Key Personnel, the Owner, Design Professional, and the Contractor shall agree on a mutually acceptable substitute.

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

### Article 3.      DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Section 3.1      The construction of the Work to be performed under this Contract shall be commenced within three (3) calendar days after receipt of a building permit and Owner's Notice to Proceed.

Issuance of a Notice to Proceed for construction of the Work is subject to Owners acceptance of the Contractor's proposed Construction Management Plan, and receipt of a building permit.

The Contractor shall notify the Owner in writing, with confirmation of receipt, not less than three (3) business days before commencing the Work on the Project site to permit timely filing of mortgages, mechanics' liens, and other security interests.

Section 3.2      The Contract Time shall be measured from the date of Notice to Proceed.

#### Section 3.3 Substantial Completion

- a. Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute the Work and shall achieve Substantial Completion of the entire Work by 90 days.
- b. If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, shall be as specified in Section 8.6 of Exhibit A - General Conditions for the Contract for Construction.

#### Section 3.4 Final Completion

- a. Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute the Work and shall achieve final completion of the entire Work by 120 days.

- b. If the Contractor fails to achieve final completion as provided in this Section 3.3, liquidated damages, shall be as specified in Section 8.6 of Exhibit A - General Conditions for the Contract for Construction.

#### Article 4.      CONTRACT SUM

Section 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be five hundred fifty-two thousand three hundred thirty-five Dollars (\$552,335.00), subject to additions and deductions as provided in the Contract Documents. At the sole option of the City, five (5) percent contingency in the amount of twenty-seven thousand six hundred seventeen Dollars (\$27,617.00) may be used for a total not-to-exceed amount of five hundred seventy-nine thousand nine hundred fifty-two Dollars (\$579,952.00).

#### Section 4.2 Alternates

- a. Alternates, if any, included in the Contract Sum:

See Exhibit "D" – Alternates-none

- b. Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Provided, however, that the Contractor shall furnish the Owner with no less than fourteen (14) days prior written notice of the date upon which any of the alternatives set forth in Exhibit "D" – Alternates, must be accepted by the Owner in order for the Contractor to perform the Work covered by such alternates for the price(s) set forth therein; and without any adjustment to a Contractual Milestone date, the Contractor's Construction Schedule or the Contract Time. Upon acceptance, the Owner shall issue a Modification to this Agreement.

See Exhibit "D" – Alternates-none

#### Section 4.3 Allowances, if any, included in the Contract Sum:

See Exhibit "E" – Allowances-none

Section 4.4 Unit prices, if any are set forth in Exhibit "F" – Unit Costs, and such unit prices are considered complete and include all materials, equipment, labor, delivery, installation, overhead, and profit; and any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

See Exhibit “F” – Unit Costs

Section 4.5 Liquidated damages, if any:

See Exhibit A - General Conditions for the Contract for Construction

Section 4.6 Other:

Section 4.7 By executing this Agreement and furnishing the Owner with both Exhibit “E” – Allowances and Exhibit “G” – Initial Schedule of Values, the Contractor represents and warrants that the Contract Documents, materials, and information furnished by the Contractor as of the date of this Agreement, and the ongoing discussions and meetings between the Contractor and the Owner and Design Professional have described the scope, construction requirements and design intent for the Work in detail sufficient to enable the Contractor to firmly establish the Contract Sum and the Contract Time. The Contractor shall not be permitted to claim any adjustment in either the Contract Sum or Contract Time prior to Notice to Proceed in connections with the completion of the Work except as described in the Contract Documents.

## Article 5. PAYMENTS

Section 5.1 Progress Payments

- a. Based upon Applications for Payment including all supporting documentation required by the Owner and submitted to the Design Professional and Owner by the Contractor; its review by the Design Professional and Owner; and Certificates for Payment issued by the Design Professional and Certificates for Payment issued by the Design Professional, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.
- b. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
- c. Provided that a certifiable Application for Payment is approved by the Design Professional not later than the «twenty-fifth (25th) » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « thirtieth (30th) » day of the « following » month. If a certifiable Application for Payment is received by the Design Professional after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « thirty » (« 30 ») calendar days after the Design Professional approves the Application for Payment.
- d. Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor and approved in advance by the Owner and Design Professional in accordance with the Contract Documents and the Construction Management Plan. The schedule of values shall allocate the entire Contract Sum among

the various portions of the Work and be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner and Design Professional may require. This schedule of values, unless objected to by the Owner or Design Professional, shall be used as a basis for reviewing the Contractor's Applications for Payment.

- e. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
- f. In accordance with Exhibit A - General Conditions for the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
  - i. The amount of each progress payment shall first include:
    - .1 That portion of the Contract Sum properly allocable to completed Work;
    - .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
    - .3 That portion of Construction Change Directives that the Design Professional determines, in the Design Professional's professional judgment, to be reasonably justified.
  - ii. The amount of each progress payment shall then be reduced by:
    - .1 The aggregate of any amounts previously paid by the Owner;
    - .2 The amount, if any, for Work that remains uncorrected and for which the Contractor or Design Professional has previously withheld or nullified a Certificate for Payment as provided in Article 9 of Exhibit A - General Conditions for the Contract for Construction;
    - .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
    - .4 For Work performed or defects discovered since the last payment application, any amount for which the Design Professional may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of Exhibit A - General Conditions for the Contract for Construction; and
    - .5 Retainage withheld pursuant to Section 5.1.g.
    - .6
- g. Retainage
  - i. For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

« Five Percent (5.0%) »

- h. Omitted.
- i. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
- j. Each Application for Payment shall, without limitation, conform with the requirements of Exhibit A - General Conditions for the Contract for Construction, as amended.
- k. In taking action on the Contractor's Applications for Payment, the Owner and Design Professional shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Owner or Design Professional have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with this Section 5.1.k or other supporting data; that the Owner or Design Professional have made exhaustive or continuous on-site inspections; or that the Owner or Design Professional have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.
- l. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site, and even with such approval the Contractor shall follow the procedures in the Contract Documents for such payments.
- m. In addition to other required items, the final Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Texas all in a form acceptable to the Owner:
  - .1 A current sworn statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contract has entered into subcontracts; the amount of each such subcontract; the amount requested for any Subcontractor or material supplier in the Application for Payment; and the amount to be paid to the Contractor from such final payment;
  - .2 A current, duly executed waiver of mechanics' and material suppliers' liens from the Contractor conditional upon establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment;
  - .3 A current Subcontractor's lien waiver for the current period, conditional only on payment from the Contractor, and duly executed, acknowledged sworn statement showing all Sub-subcontractors and material suppliers with whom the

Subcontractor has entered into sub-subcontracts, the amount of each such sub-subcontract, the amount requested for any Sub-subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Sub-subcontractor from such final payment to the Subcontractor;

.4 A current, duly executed unconditional final waiver of mechanics' and material suppliers' liens from the Contractor and all Subcontractors and, when deemed appropriate by the Owner and Design Professional, from material suppliers and Sub-subcontractors establishing payment or satisfaction of payments of all amounts requested by the Contractor on behalf of such entities or persons in any previous Applications for Payment;

.5 A final certificate of occupancy issued by the appropriate governmental body in which the project is located;

.6 All maintenance and operating manuals;

.7 Digitally marked, fully accessible electronic files (not "plot files" or "PDFs") of both field record drawings and specifications reflecting "as-built" conditions;

.8 Digitally marked, accurately dimensioned, and fully accessible electronic files (not "plot files" or "PDFs") of drawings reflecting the location of any concealed utilities, mechanical or electrical systems, and components;

.9 any special guarantees or warranties required by the Contract Documents;

.10 assignments of all guarantees and warranties from subcontractors, vendors, suppliers, or manufacturers;

.11 a list of the primary contact names, email addresses, physical addresses, and telephone numbers of all Subcontractors and any other persons providing guarantees and warranties;

.12 all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner, or the Design Professional; and

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

## Section 5.2 Final Payment

a. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of Exhibit A - General Conditions for the Contract for Construction, and to satisfy other requirements, if any, which necessarily survive beyond final payment; and

.2 a final Certificate for Payment has been issued by the Design Professional; and.

.3 the Contractor has provided, and the Owner has accepted as correct, all the information and documents required under Section 5.1.m above; and

.4 a complete release of all claims arising out of, related to or connected with Contractor's performance of the respective Phase under this Agreement, and any claims of Subcontractors, subject to any claims reserved in accordance with the terms of the General Conditions and an affidavit that so far as Contractor has knowledge or information, the release includes and covers all materials and services over which Contractor has control for which a claim could be filed, subject to any claims reserved in accordance with the terms of the General Conditions.

- b. The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Design Professional's final Certificate for Payment and the Contractor has provided Owner with all required documentation.

#### Section 5.3 Interest

Payments are due and payable within thirty (30) days of the date the Owner receives the Construction Manager's approvable invoice, unless a different date for payment is provided under this Agreement. Amounts unpaid shall bear interest at the legal rate allowed by Texas Government Code Ch. 2251.

### Article 6. DISPUTE RESOLUTION

#### Section 6.1 Initial Decision Maker

The Owner will serve as the Initial Decision Maker pursuant to Article 15 of Exhibit A - General Conditions for the Contract for Construction.

#### Section 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation or other alternative dispute resolution method as mutually agreed by the parties ("ADR") pursuant to Article 15 of Exhibit A - General Conditions for the Contract for Construction, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

### Article 7. TERMINATION OR SUSPENSION

Section 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of Exhibit A - General Conditions for the Contract for Construction, as amended.

If the Contract is terminated for the Owner's convenience in accordance with Article 14 of Exhibit A - General Conditions for the Contract for Construction, then the Owner shall pay the

Contractor a compensation calculated in the manner as specified in Section 14.4.c of Exhibit A - General Conditions for the Contract for Construction, as amended.

Section 7.2 The Work may be suspended by the Owner as provided in Article 14 of Exhibit A - General Conditions for the Contract for Construction, as amended.

Section 7.3 In the event of such termination by the Owner, the amount to be paid to the Contractor shall not exceed the amount the Contractor would have been entitled to receive under Article 5 above.

Section 7.4 In no event shall the Contractor be entitled to receive "Lost Opportunity Costs", defined as unabsorbed overhead costs or unrealized profit on this Work, future work for this Owner, other owner(s), other work, foregone opportunities for the Contractor, or other costs not directly and verifiably associated with services actually performed or Work successfully completed under this Agreement.

#### Article 8. MISCELLANEOUS PROVISIONS

Section 8.1 All references in this Agreement to Exhibit A, shall mean the Exhibit A - General Conditions for the Contract for Construction, as modified and amended by the parties hereto. Where reference is made in this Agreement to a provision of another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

Section 8.2 The Owner's representative:

City of Denton  
Arturo Garcia  
Project Manager  
901B Texas Street  
Denton, Texas 76209  
(940) 349-8021  
arturo.garcia@cityofdenton.com

Section 8.3 The Contractor's representative:

Gage & Cade Construction, LLC  
Jason Reeves  
1107 County Road 264  
Bertram, TX 8605  
(512)379-8176  
jason@gageandcadeconstruction.com

Section 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

#### Section 8.5 Insurance and Bonds

- a. The Owner and the Contractor shall purchase and maintain insurance as set forth in Exhibit A - General Conditions for the Contract for Construction, Insurance and Bonds, and elsewhere in the Contract Documents.

Section 8.6 « Not Used. »

#### Section 8.7 Other Conditions and Services:

- a. The Contractor represents and warrants the following to the Owner (in addition to any other representation and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and final completion of the Work:
  - .1 The Contractor is financially solvent, capable of obtaining adequate insurance, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
  - .2 The Contractor is able to furnish the physical infrastructure, tools, materials, supplies, equipment and supervision, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
  - .3 The Contractor is authorized to do business in the City of Denton, and the State of Texas and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the Project;
  - .4 The Contractor's execution of this Agreement and performance thereof is within the Contractor's duly-authorized powers;
  - .5 The Contractor's duly-authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated its observations with the requirements of the Contract Documents;
  - .6 The Contractor possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of this size, complexity and nature of this particular Project and will perform the Work with the care, skill and diligence of such a contractor;

.7 The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder; and

.8 The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the proper, timely and diligent prosecution of the Work.

- b. In the event any provision contained in this Agreement conflicts with any provision contained in the Contract Documents, the more stringent provision for the Contractor, as interpreted by the Owner, shall govern.
- c. Some or all of the Owner's duties, approvals and actions required under this Agreement may be provided by third parties by mutual agreement of the Owner and such third parties. When notified in writing of the specific duties and responsibilities of such third party, the Contractor will recognize the actions and approvals of the third party as sufficient to fulfill the Owner's responsibilities under this Agreement.
- d. The Contractor shall provide sufficient supporting documentation in form and with a level of detail wholly acceptable to the Owner and Contractor to substantiate any Application for Payment, request for Change to the Contract Sum or Contract Time, and all contract Allowances provided within the Contractor's Contract Sum for this scope of work. Failure to timely provide all supporting documentation, in and of itself, may result in rejection of the Application for Payment or requested change to the Contract Sum or Contract Time, or payment for work charged to the Allowance(s).
- e. Proof of purchase and warehouse insurance naming the Owner, Contractor and Design Professional as additional insureds, together with inspection rights for the Owner, Contractor and Design Professional is to be provided for any billed materials by the Contractor for the work not physically stored at the Project site.
- f. Time limits set out in or under this Agreement are solely for the protection and benefit of the Owner and create no third-party beneficiary rights in any other party.
- g. Notices. All legal notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:

Arturo Garcia

Project Manager

City of Denton

901B Texas Street

Denton, Texas 76201

arturo.garcia@cityofdenton.com

City of Denton  
ATTN: Contract 8915; Purchasing Manager  
901B Texas Street  
Denton, Texas 76209  
purchasing@cityofdenton.com

And with a copy to City Attorney's point of contact:

City Attorney  
City of Denton  
215 East McKinney St.  
Denton, TX 76201  
legal@cityofdenton.com

If to Contractor:  
Gage & Cade Construction, LLC  
Jason Reeves  
1107 County Road 264  
Bertram, TX 8605  
(512)379-8176  
jason@gageandcadeconstruction.com

If to Design Professional:  
Biggs & Mathews Environmental, Inc.  
Gregory Adams  
1700 Robert Road, STE 100  
Mansfield, TX 76063  
(817)563-1144  
gadams@biggsandmathews.com

- h. All Exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.
- i. The numbering and captions of the sections are set forth only for convenience and reference and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
- j. The parties agree that they will execute any further instrument or instruments, and that they will perform any act or acts, which are or may become necessary to effectuate any of the terms or provisions of this Agreement.

- k. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Owner or Contractor.
- l. This Agreement has been created jointly and ambiguity cannot be construed against either party.
- m. This Agreement is and shall be subject to those provisions required of political subdivisions by the laws of the State of Texas. The Contractor understands that the Owner is a Texas home rule municipality and that the project is subject to applicable provisions of Texas law including bid requirements, bonding, and final settlement provisions.
- n. Contractor understands that certain information, including this Agreement, are public records available for public inspection and copying under the Texas Open Records Act., Texas Government Code Ch. 552, as amended, and other applicable laws.
- o. The Owner represents that there are sufficient funds available to undertake this Project.
- p. No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the governmental or sovereign immunities, rights, benefits, or protections of the Owner.
- q. Contractor warrants that the products, processes, techniques and methodologies provided by Contractor shall not infringe upon the copyright, patent or other proprietary rights of others.
- r. Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement. Contractor warrants that to the best of Contractor's knowledge, there exists no actual or potential conflict of interest, and no financial or substantial interest as may be prohibited by Texas law, the Charter, or Code of Ethics of the City of Denton between Contractor and Owner.
- s. Contractor shall comply with the disclosure and reporting requirements in Local Government Code Chapters 171 and 176, and Texas Government Code Sec. 2252.908. Under Sec. 2252.908, if City Council approval is required to award this Agreement or if this Agreement has a value of at least \$1,000,000, the City may not enter into the Agreement unless the Contractor submits a disclosure of interested parties to the City at the time the executed Agreement is presented to the City. The disclosure must be made on the form prescribed by the Texas Ethics Commission and the City is required to submit a copy of the disclosure statement to the Texas Ethics Commission not later than the 30th day after the disclosure is received by the City.
- t. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.
- u. Contractor understands and agrees that TIME IS OF THE ESSENCE.

- v. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto. Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.
- w. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

x. COMPLIANCE WITH CERTAIN STATE LAW

.1 Prohibition on Contracts with Companies Boycotting Israel. Contractor 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, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (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.

.2 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Contractor 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, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (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.

.3 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations. Contractor 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, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (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.

.4 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, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, 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.

.5 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.

.6 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. Contractor 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 Owner, that the prevailing wage rates be paid.

.7 The Contractor 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 Owner does not provide this Labor Wage Rate Determination, the Contractor shall request it in writing in a timely manner, so as not to delay the Construction Manager's initial subcontractor procurement process during preconstruction. The Construction Manager shall, if requested by the Owner, assist the Owner in conducting a survey of the wages paid, by labor class, on projects of a similar type in a similar location.

Article 9. ENUMERATION OF CONTRACT DOCUMENTS

Section 9.1 This Agreement is comprised of the following documents:

- .1 Stipulated Sum Vertical Construction Contract
- .2 Exhibit "A" – General Conditions of the Contract for Construction
- .3 Exhibit "B" – Drawings and Specifications (On File with Purchasing Manager)
  
- .4 Addenda, if any:  
See Exhibit "B" – Drawings and Specifications (On File with Purchasing Manager)  
Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.
- .5 Other Exhibits:  
Exhibit "C" – Key Personnel  
Exhibit "D" – Alternates -none  
Exhibit "E" – Allowances -none  
Exhibit "F" – Unit Costs  
Exhibit "G" – Initial Schedule of Values-none  
Exhibit "H" – Contractor's Construction Schedule  
Exhibit "I" – Escrow Agreement-none  
Exhibit "J" – Conflict of Interest Questionnaire  
Exhibit "K" – Proposal Form  
Exhibit "L" – Prevailing Wage Rates  
Exhibit "Y" – Contractor's Insurance Certificate(s) and Bonds (To be Completed after Contract Award)
  
- .6 Other documents, if any, listed below:

<>

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

**CONTRACTOR:**  
**GAGE & CADE CONTRUCTION, LLC**

DocuSigned by:  
  
 BY: \_\_\_\_\_  
A619B99E2C2448D...

**JASON REEVES**  
 TITLE Senior Vice President

**CITY:**  
**CITY OF DENTON, TEXAS**

BY: \_\_\_\_\_

**SARA HENSLEY**  
**CITY MANAGER**

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

Signed by:  
  
 \_\_\_\_\_  
C3C63BE563154A1...

**Brenda Haney**  
 \_\_\_\_\_

SIGNATURE                      PRINTED NAME

Director

TITLE  
 Solid waste & Recycling

DEPARTMENT

ATTEST:

INGRID REX, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

MACK REINWAND, CITY ATTORNEY

Signed by:  
  
 BY: \_\_\_\_\_  
2A936B08B5D7485...

Section 00 72 00  
Exhibit A – General Conditions  
for the following PROJECT:  
Public Disposal Facility Repairs

THE OWNER:

City of Denton  
215 East McKinney Street  
Denton, Texas 76201

THE DESIGN PROFESSIONAL:

Biggs & Mathews Environmental, Inc.  
1700 Robert Road, Suite 100  
Mansfield, Texas 76063

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## Article 1. GENERAL PROVISIONS

### Section 1.1 Basic Definitions

a. The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), 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. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

b. The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Design Professional or the Design Professional's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Design Professional or the Design Professional's consultants, or (4) between any persons or entities other than the Owner and the Contractor. 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 Owner and Contractor, and has been reviewed by the Owner, Contractor 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 Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, supplies, skill, supervision, transportation, support services, facilities and other resources necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the Work identified by the Contract Documents. The Work may constitute the whole or a part of the Project.

d. The Project

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

- e. **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.
- f. **The Specifications**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- g. **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.
- h. **Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions.
- i. **The Indemnitees**

The Owner, which includes the Mayor, members of the City Council, employees, agents, assigns, and other city officers, the Owner's consultants, the Design Professional, Design Professional's consultants, and the agents and employees of any of them shall hereafter be known as the "Indemnitees".
- j. **Construction Management Plan**

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

  - i. Safety and Logistics Plan;
  - ii. Contractor'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.
- k. **As-Built Documents**

The As-Built Documents are the Drawings, Specifications, and addenda thereto that may be updated by the Contractor to accurately reflect the actual Work in place, including without limitation, the incorporation of Change Orders, responses to the Contractor's requests for information, 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 Section 3.10.1.i.
- l. **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 Owner, and its accompanying numbering system. The WBS will be mutually agreed upon by the Owner and Design Professional and used by the Contractor.
- m. **Equal to (or Approved Equal)**

Products by manufacturers and information about those products other than those products specified in the Contract Documents which the Contractor 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 Owner.

n. 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.

o. 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 Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

p. Knowledge

The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor 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.

q. Proposal

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

r. Offeror

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

s. Proposal Documents

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

t. 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.

u. 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.

v. 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.

w. Business Day

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

x. Notice to Proceed

A written instrument from the Owner to the Contractor requiring the Contractor 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”).

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

.1 Any addenda and modifications to the Drawings and Specifications take precedence over any earlier Contract Documents.

.2 Should there be a conflict within the Specifications, or within the Drawings, or between the Drawings and Specification, the 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 Contractor, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. Each Contractor, Subcontractor, and Sub-subcontractor shall properly coordinate its work with that of the Owner 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 Contractor 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 Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions:

City and Engineer 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 Contractor 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 Contractor 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. Contractor 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 Contractor on Technical Data:

Contractor 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. Contractor 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 Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, 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 Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or

any Contractor 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 Contractor 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 Owner's reserved rights.

- b. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Design Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Design Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Design Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

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

#### 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. OWNER

#### Section 2.1 General

- a. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.a, the Design Professional does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.
- b. The Owner shall furnish the following information to a person, including the Design Professional or Contractor, who makes a request for information under Texas Government Code Chapter 2253, related to a payment or performance bond: (1) a certified copy of a payment bond and any attachment to the bond; (2) the public work contract for which the bond was given; and (3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.
- c. **The Owner may obtain independent review(s) of the Design Professional's Design Documents, or of any document or other materials submitted by the Contractor, by a separate architect, engineer, contractor, cost estimator or any other consultant they deem necessary and put under contract to or cause to be employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Design Professional and Contractor shall cooperate with such Owner's other consultants fully and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the Owner to obtain an independent review or imply that the Owner is in any way assuming responsibility for the work of the Design Professional and Contractor.**

#### Section 2.2 Evidence of the Owner's Financial Arrangements

- a. Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.
- b. Following commencement of the Work and within ten (10) business days of written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.b, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

- c. After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.
- d. Where the Owner has designated information furnished under this Section 2.2 as “confidential,” the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose “confidential” information, after seven (7) days’ notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose “confidential” information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information. Notwithstanding the above, all Agreements with the Owner shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.

#### Section 2.3 Information and Services Required of the Owner

- a. Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.a, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- b. The Owner 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 Owner shall employ a successor whose status under the Contract Documents shall be that of the Design Professional.
- d. The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- e. The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services.
- f. Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.b.
- g. The foregoing are, without limitation and in addition to, the other duties and responsibilities of the Owner specified in Article 6; Article 9; and Article 11.

#### Section 2.4 Owner’s Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the

Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.c nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

#### Section 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within forty-eight (48) hours from receipt of written notice from the Owner or Design Professional to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Design Professional may, at the direction of the Owner, pursuant to Section 9.5.a, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Design Professional, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

#### Section 2.6 Extent of Owner 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 Owner granted in the Contract Documents; at law; or in equity.
- b. In no event shall the Owner 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 Owner or Design Professional of the Design Documents, the Contract Documents, the Contractor's Construction Management Plan(s), the Contractor's Construction Schedule, shop drawings, submittals, meeting minutes or other Contractor's services, deliverables or activities; nor the exercising of any of the rights and authority granted the Owner or Design Professional in the Contract Documents shall in any way reduce, diminish, or otherwise affect the Contractor's responsibilities, duties and accountability to the Owner for, without limitation, the construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Contract Documents.
- c. The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project for cause but without cost to the Owner. Such requests from the Owner will be made in writing and may be done directly or indirectly through the Design Professional/Engineer 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 Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

### Article 3.      CONTRACTOR

#### Section 3.1 General

- a. The Contractor is the person or entity identified as such in the Contract or Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located, Denton County, Texas. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.
- b. The Contractor shall perform the Work in accordance with the Contract Documents.
- c. The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the 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 Contractor.

#### Section 3.2 Review of Contract Documents and Field Conditions by Contractor

- a. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner and 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 Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner and Design Professional shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.a.
- b. Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.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 Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Design Professional any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for

information in such form as the Design Professional may require. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Design Professional, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction per Section 12.2. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- c. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Design Professional any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Design Professional may require.
- d. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Design Professional issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.b or 3.2.c, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.b or 3.2.c, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.g, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or 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 Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work in accordance with the Contract Documents.
- b. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.
- c. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- d. The Contractor 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 Contractor 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 Contractor shall identify incorrect and faulty Work.
- f. The Contractor shall ensure that incorrect or faulty Work is corrected immediately.
- g. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in their

administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

#### Section 3.4 Labor and Materials

- a. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- b. The Contractor is encouraged to consider products and systems that improve the project and retain the character of the products specified, but do not alter the intent of the project. However, except in the case of minor changes in the Work authorized by the Design Professional in accordance with Sections 3.12.h or 7.4, the Contractor may make substitutions only by a formal request for substitution of products in place of those specified with the consent of the Owner, after evaluation by the 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 Contractor must submit to the Design Professional and the Owner, for each proposed substitution:

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

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

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

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

- .5 An affidavit stating that (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Design Professional;

- .6 Proposals for substitutions shall be submitted electronically to the Design Professional and the Owner’s other consultants, if any, in sufficient time to allow no less than ten (10) business days for their respective reviews;

- .7 No substitutions will be considered or allowed without the Contractor’s submittal of complete substantiating data and information as stated herein; 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 Contractor; (3) subsequent information discloses the

inability of specified products to perform properly or to fit in the designated space; (4) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (5) when, in the judgment of the Owner or the Design Professional, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations; and

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

- c. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner'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 Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

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

- a. The Contractor warrants to the Owner 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 Contractor 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 Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal

wear and tear and normal usage. If required by the Design Professional, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **THE CONTRACTOR SHALL DEFEND AND HOLD THE OWNER HARMLESS AGAINST ANY CLAIM, DEMAND, LOSS, OR DAMAGE BY ANY BREACH OF THIS WARRANTY, AND CONTRACTOR ACKNOWLEDGES IT SHALL NOT LIMIT SUCH WARRANTY BY THE PROVISIONS OF SECTION 12.2.**

- b. All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner and shall commence in accordance with Section 9.8.d.
- c. When written warranties are specified, the document shall include the following information:
  - Name and address of Project and Owner;
  - Article, materials, or systems covered;
  - Name and address of Installer;
  - Name and address of Contractor; and
  - Signature of individual authorized to sign contracts for the company issuing the warranty.
- d. The following minimum warranty terms shall be incorporated:
  - .1 Duration shall be one year or as otherwise specified, dated from the Date of Substantial Completion;
  - .2 The article, material or system is free from defective materials and workmanship;
  - .3 Costs of repair or replacement shall not accrue to the Owner, including, without limitation, repair or replacement of other work disturbed by, or because of, repair or replacement; and
  - .4 The warranty period of two years, or as otherwise specified, shall recommence upon the identification and completion by Contractor and acceptance by Owner of any warranty claim during the initial two-year (2) warranty period.
- e. Warranties which are provided by a manufacturer for its product shall be received by the Contractor, filled out and filed with the manufacturer or other appropriate entity in coordination with the Owner. Certificates or registration stubs shall be included with the record documents submitted for the Owner upon completion of the Work. The Owner shall administrate manufacturer's warranties/guarantees after expiration of the Contractor's warranty.
- f. Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Contract Documents before final completion and written acceptance by the Design Professional and Owner shall not be construed as evidence of the Design Professional's or the Owner's acceptance of same, or the commencement of any warranty periods.
- g. The Owner has the privilege of such temporary or trial usage, for such reasonable time as the Owner, or the Design Professional deem proper. The Contractor shall make no claims for damage or injury to, or breaking of, any parts of such work which may be caused by weakness or insufficiency of structural parts, or by defective materials or workmanship.
- h. The Contractor may, without cost to the Owner, 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 Owner.

- i. The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.
- j. If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one (1) year period following the date of Substantial Completion described in Section 12.2.b.

### Section 3.6 Taxes

The Contractor shall, to the extent not exempted under Section 13.11.i herein, pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. In no event shall the Owner pay the Contractor for taxes that were not properly due or for which the Owner is exempt from paying under Texas law.

### Section 3.7 Permits, Fees, Notices and Compliance with Laws

- a. Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit. The Owner shall also pay for any applicable gas, water, sewer and electrical service application fees; assessments against the property, including property tax, developmental excise and similar taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.
- b. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.
- c. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with Contract Documents, and without notice to the Design Professional that the Contract Documents are at variance with applicable laws, ordinances, rules, or regulations, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the Drawings, Specifications, or other Contract Documents, except where the Contract Documents call for Work or materials of higher standards than those required by codes or ordinances, in which case, the Contract Documents shall govern. Nothing contained in the Contract Documents shall be construed as authority for the Contractor to violate any applicable codes or ordinances in effect at the site.
- d. Concealed or Unknown Conditions  
If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the 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 Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If, 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 Owner and Contractor, 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 Sum or Contract Time be made for conditions which should have been known to the Contractor or would have been noticed by a Contractor of similar size and experience pursuant to 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 Contractor or have been performed by the Contractor or its Subcontractors; are part of the Contract Documents; or are part of the materials provided by the Contractor to be used in constructing the improvements.
- e. If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Design Professional. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.
- f. The Contractor shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including, but not limited to, all immigration, environmental and safety laws, statutes, rules, codes, orders and regulations.

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

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

.3 The Contractor shall immediately, and in any event within two (2) hours of Contractor's first notice of an event described in this Section 3.7.f notify the Owner in writing and by in-person voice communications (not voicemail) of any unscheduled inspections, raids, investigations, inquiries, visits, or audits

conducted by the USCIS, OSHA, or any other governmental agency or authority related to environmental, immigration, or employee safety issues of the Contractor, its agents, employees, its Design Professional, Subcontractors, or Sub-subcontractors;

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

.5 The Owner may, at its sole discretion, terminate this Agreement immediately if, at any time during the term of this Agreement, the Contractor violates or is in breach of any provision of this Section 3.7.f or the USCIS determines that Contractor has not complied with any of the immigration laws, statutes, rules, codes, or regulations of the United States or any applicable state laws or regulations, or any applicable local ordinances, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and any successor statutes thereto;

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

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

#### Section 3.8 Allowances

- a. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.
- b. Unless otherwise provided in the Contract Documents,
  - .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
  - .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
  - .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.b.1 and (2) changes in Contractor's costs under Section 3.8.b.2.
- c. Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### Section 3.9 Superintendent

- a. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work including, but not limited to, weekends, evenings and nights, or as otherwise reasonably and mutually agreed in writing with the Owner, until all punch list items have been completed to the satisfaction of the Design Professional. No subcontractor shall perform work on the site without the presence of the Superintendent or Assistant Superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.
- b. The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Design Professional of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or the Design Professional may notify the Contractor, stating whether the Owner 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 Contractor's proposed on-site personnel must be approved by the Design Professional and Owner. The Contractor shall not employ a proposed superintendent to whom the Owner or Design Professional has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the Contractor's on-site personnel must be preceded by written notification of the Design Professional and Owner no less than seven (7) business days before the anticipated event. Such proposed changes must be approved by the Design Professional and Owner. The Contractor shall designate a second person in charge in writing in the event the Superintendent is temporarily absent due to illness, vacation, or any other cause(s).

### Section 3.10 Contractor's Construction and Submittal Schedules

- i. Where the Contract is based on a Stipulated Sum, the Contractor, immediately after being awarded the Work, and before execution of the Agreement, shall meet at a Preconstruction Conference with the Owner for the purpose of reviewing the Contractor's proposed Construction Management Plan; assisting the Owner with further developing the Master Project Schedule; and integrating the Work of the Contractor into that of the Owner and all Separate Contractors, if any.
- ii. The Contractor's Project Schedule must include all the following:
  - .1 Use precedence format, critical path method scheduling without the use of artificial activity constraints or "negative float";
  - .2 Use software, techniques and methods satisfactory to the Owner;
  - .3 Provide an electronic and graphic representation of all activities and events that will occur during performance of the Work;
  - .4 Identify each subproject, to include, without limitation preconstruction, construction, commissioning, turnover of the Work, and Owner's occupancy;
  - .5 Set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Contractual Milestone Dates");

.6 Upon review by the Design Professional and written review and acceptance by the Owner of the Contractual Milestone Dates, the Contractor's Project Schedule shall be deemed part of the Contract Documents and provided to the Owner as a submittal;

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

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

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

- iii. The Contractor, prior to preparing the Construction Management Plan and attending the Preconstruction Conference, will have reviewed the sequences, durations, sequencing and dependencies of activities, material deliveries, and sequenced man-hour staffing to complete the Work. Work activities which have an installed value of twenty thousand dollars (\$20,000) or more will be broken down into major products or operations except where mutually agreed otherwise by Contractor and Owner, and these values cost-loaded into the Contractor's Project Schedule as deemed necessary by the Owner. Upon request by the Owner, the Contractor shall support values given for each work activity with data that will substantiate its correctness. The Owner may require the Contractor to show separate work activities and Contractual Milestones for, as examples only and without limitation: Substructure Completion; Superstructure Completion; Building Exterior Skin Completion; Interior Finishes Completion; Owner's Beneficial Occupancy, and other similar dates the Owner, at its sole discretion deems important to the Project.
- iv. In the event the Contractor does not timely provide the Contractor's Construction Management Plan with an acceptable Contractor's Project Schedule containing such elements, information, and processes in a form and with a level of detail acceptable to the Design Professional and the Owner, the Owner may, at the Owner's discretion, unilaterally generate the target Contractor's Project Schedule at the Contractor's expense, and impose such schedule, sequences, logic, and/or durations on the Contractor as it deems necessary to complete the Work, or the Owner may declare the Contractor in breach of contract. Whether or not the Owner decides to implement this option, all other contractual provisions relating to breach of contract will continue to be in full force and apply without modification. The Owner may deduct from the Contractor's Application(s) for Payment the amount paid by the Owner for generating the Contractor's Project Schedule.

- v. Upon completion of the Master Project Schedule, and acceptance by the Owner and all Separate Contractors, the Master Project Schedule shall supersede previously submitted schedules. Each updated Master Project Schedule shall supersede previous updates.
- b. The Contractor shall, at the Preconstruction Conference, and as a sub-system of its Contractor's Project Schedule, prepare an easily isolated, sorted and separately viewed submittal schedule, and thereafter update it as necessary to maintain a current submittal schedule, and shall submit such schedule(s) for the Design Professional's approval. The Design Professional's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's Construction Schedule, and (2) allow the Design Professional reasonable time to review submittals. If the Contractor fails to submit an approvable submittal schedule thirty (30) days prior to the date established for commencement of the Work, the Contractor shall not mobilize on site, or be entitled to any increase in Contract Sum or extension of Contract Time based on the delay of the Work or time required for review of submittals during the prosecution of the Work.
- c. The Contractor shall perform the Work in general accordance with the most recent Contractor's Project Schedules submitted to the Owner and Design Professional and incorporated into the approved Master Project Schedule.
- d. The Owner together with the Contractor, will monitor the Master Project Schedule, and incorporate the Contractor's updates to its portions of this overall schedule. As all Separate Contractors are also obligated to follow the Master Project Schedule and their respective schedules therein, they will be required to actively cooperate and participate in the preparation and updating of their portion of this schedule, as well as updating the overall Master Project Schedule by the Owner. The Contractor will be kept updated on all significant Master Project Schedule changes materially affecting the Contractor's Project Schedule.
- e. The Contractor will produce a Short Interval Schedule containing activities for not less than one (1) previous week and the next three (3) weeks, and which focuses on the major weekly work activities of each subsystem. At each weekly meeting this Short Interval Schedule will be reviewed by the Contractor with all affected Subcontractors and the Owner.
- f. In the event of substantial delay, if excusable under the Contract, for which extension of the Contract Time has or will be granted, the Owner will review and may require revision by the appropriate contractor(s) of affected component of the Master Project Schedule as required by the specific applicable situation(s), and with the cooperation of the Separate Contractors on the Project.
- g. The Contractor shall, at mutually agreed intervals, submit to the Owner and Design Professional a progress report stating, without limitation, labor forces mobilized and working on site; areas worked in or on; percent complete of current work activities; any potential schedule or coordination problems; material deliveries received; site visitors; and other information as required by the Owner.
- h. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Contractor's Project Schedule and shall promptly advise the Owner of any delays or potential delays. The accepted Contractor's Project Schedule shall be updated to reflect actual conditions as frequently as mutually agreed by the Contractor and Owner; but in no event less frequently than with each Application for Payment; and at other times as may be reasonably requested by the Owner or Design Professional. In the event any progress report or schedule update indicates any

actual or potential delays, the Contractor shall, using both the most currently approved Contractor's Project Schedule as a baseline for comparison, and a written narrative, propose an affirmative plan to correct the delay (hereinafter referred to as the "Proposed Recovery Schedule") which must include the following:

- .1 The Proposed Recovery Schedule will show the results of working additional shift or days, adding additional labor, and any of the other actions specified in Section 8.4, if necessary, all as described in the accompanying narrative;
  - .2 The Proposed Recovery Schedule will be reviewed by the Owner, and the Contractor will promptly and diligently make all adjustments to the Proposed Recovery Schedule reasonably requested as a result of such review.
  - .3 The Proposed Recovery Schedule shall become the most current, approved Contractor's Project Schedule upon its approval by the Owner, issuance of a Change Order for the purpose by the Design Professional; and signing of such Change Order by the Contractor, Design Professional, and Owner, in that order; and
  - .4 In no event shall any progress report, schedule update or Proposed Recovery Schedule constitute an adjustment in the Contract Time, any Contractual Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.
- i. In the event either the Owner or Design Professional determine that the performance of the Work, as of a Contractual Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation those further specified in Section 8.4.
  - j. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10 and Section 8.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Contractual Milestone Date or completion date set forth in the Contract Documents.
  - k. The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of any part of the Owner's organization or any stakeholders or invitees thereof. The Contractor shall, upon the Owner's or Design Professional's request, reschedule such portion of the Work during hours when the interference to the Owner's organization, or any stakeholders or invitees thereof, will be minimized or eliminated. Any postponement, rescheduling, or performance of the Work under this Section 3.10.k may be grounds for an extension of the Contract Time, if permitted under Section 8.3.a; and an equitable adjustment in the Contract Sum if the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents; and to the extent such rescheduling or postponement is required for the convenience of the Owner.
  - l. Documents and Samples at the Site  
The Contractor shall make available, to the Owner, 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 Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall make available to the Owner 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 Contractor in electronic format, upon reasonable request of the Owner or Design Professional and, in any event, within twenty-four (24) hours of receipt by Contractor of a request from Owner or Design Professional for such review and/or copying. The Owner 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 Owner's expense. The Owner or Design Professional may require the Contractor to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the Owner's expense.

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

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

- a. Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- b. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- c. Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.
- d. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Design Professional is subject to the limitations of Section 4.2.g. Informational submittals upon which the Design Professional is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Design Professional without action.
- e. The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Design Professional, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, after Contractor has verified the information contained within said submittals is in accordance with representations required by Section 3.12.f and in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

- f. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Design Professional that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents and (4) verified the information contained within said submittals is in accordance with all applicable Federal, state and local codes or ordinances in effect at the site.
- g. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Design Professional. Should the Contractor, Subcontractors, or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.
- h. The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Design Professional of such deviation at the time of submittal and (1) the Design Professional has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Design Professional's approval thereof.
- i. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Design Professional on previous submittals. In the absence of such notice, the Design Professional's approval of a resubmission shall not apply to such revisions.
  - i. Copies of all approved Shop Drawings, Product Data, Samples and similar submittals shall be preserved in an orderly manner and delivered by the Contractor to the Owner upon Final Completion.
- j. The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.
  - i. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor, the Owner and the Design Professional will specify all performance and design criteria that such services must satisfy in the Contract Documents. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional who shall comply with reasonable

requirements of the Owner regarding qualifications and insurance. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Professional. The Owner and the Design Professional shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Design Professional have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.j, the Design Professional will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

- ii. If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Owner and the Design Professional at the time and in the form specified by the Design Professional.

#### Section 3.13 Use of Site, Delivery and Storage

- a. The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
- b. The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner before using any portion of the site.
- c. The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto, which includes, but is not limited to, the all the following duties and acknowledgments:
  - .1 The Contractor acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract;
  - .2 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions;
  - .3 The Contractor shall be responsible for the mitigation and/or abatement of all noise, dust, fumes, traffic or other by-product of construction activity that, in the opinion of the Owner or the Design Professional, have an adverse affect on the quality of life or productivity for Project stakeholders, the Owner's current operations, or the Owner's employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the Owner and Design Professional;
  - .4 The Contractor shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the Owner and Design Professional. Repeat

offenses will cause the Owner or Design Professional to require, through the Contractor, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site;

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

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

.7 The Contractor is advised that the project site area is subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.

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

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

.2 The Contractor shall inform the Owner, Design Professional and any officials referenced in Section 3.13.f in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to Owner's and Design Professional's approval, such approval not to be unreasonably withheld;

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

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

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

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

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

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

- f. The Contractor shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Owner to proceed has been given to the Contractor. If the utility service must be interrupted, the Contractor shall, at Contractor's sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the city manager, the mayor, the city or county clerk, etc. as applicable) and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give the most effective notice to such utility users.
- g. The Contractor shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed on the job and shall properly store and protect same at the Contractor's expense.
- h. Notwithstanding any other provision herein, the Contractor shall take all necessary measures to store materials on site for which payment has been requested by the Contractor or been made by the Owner so that they shall not deteriorate, be damaged or be stolen, which includes, but is not limited to, all the following:
  - .1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor;
  - .2 Protection of construction materials and equipment stored at the Project site from fire, weather, burglary, pilferage, vandalism and mischief, damage, and all other adversity; and the care and protection of materials and Work installed in the building is solely the responsibility of the Contractor;
  - .3 The Contractor shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the Owner; and
  - .4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.
- i. The Contractor shall not deliver any materials to the site which are not to be installed by same Contractor without fifteen (15) day's advance notice in writing to the Owner of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the Contractor and a representative of the Owner, who shall agree, and the Contractor shall document such agreement in writing:
  - .1 The materials delivered are undamaged, or if damaged, such damage is documented by digital photo(s);
  - .2 They are in the quantities shown on the purchase order, invoice or bill of lading accompanying the shipment or delivery or otherwise provided;
  - .3 The storage conditions are adequate for the purposes; and
  - .4 The Contractor has accepted responsibility for insurance and ongoing protection per Section 10.2 for such material until it is released to a third party authorized in writing by the Owner to receive it.

### Section 3.14 Cutting and Patching

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

#### Section 3.15 Cleaning Up

- a. The Contractor 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 Contractor shall remove waste materials, rubbish, the Contractor'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 Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

#### Section 3.16 Access to Work

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

#### Section 3.18 Indemnification

- a. **CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES**

WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF CONTRACTOR OR ANY SUBCONTRACTORS, INVITEES, AND ANY OTHER THIRD PARTIES OR PERSONS FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE, IN ANY WAY ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT OWNER FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES FOR INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER THE CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF INDEMNITEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS AN INDEMNITY BY CONTRACTOR FOR THE BENEFIT OF THE OWNER FROM THE CONSEQUENCES OF OWNER'S NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR EMPLOYEE OF ANY OF ITS SUBCONTRACTORS.

IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF THE CONTRACTOR, ANY SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY SUB-CONTRACTOR UNDER WORKMEN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

INDEMNIFIED ITEMS SHALL INCLUDE, BUT NOT BE LIMITED TO, ATTORNEYS' FEES AND COSTS, COURT COSTS AND SETTLEMENT COSTS, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

**THE CONTRACTOR IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE DESIGN PROFESSIONAL, ANY LICENSED ENGINEER, OR AN AGENT, SERVANT, OR EMPLOYEE OF THE DESIGN PROFESSIONAL OR LICENSED ENGINEER FROM LIABILITY THAT MAY ARISE FROM DEFECTS IN THE PLANS, DESIGNS OR SPECIFICATIONS OR NEGLIGENCE ON THE PART OF THE DESIGN PROFESSIONAL OR LICENSED ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES ARISING FROM THE CONTRACT AND THE PLANS DESIGNS OR SPECIFICATIONS THAT ARE PART OF THE CONSTRUCTION CONTRACT AS SET FORTH IN CHAPTER 130 OF THE TEXAS CIVIL PRACTICE AND REMEDIES CODE.**

- b. **THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS SECTION 3.18 SHALL ALSO SPECIFICALLY INCLUDE, WITHOUT LIMITATION, ALL FINES, PENALTIES, DAMAGES, LIABILITY, SAFETY VIOLATIONS, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES), AND PUNITIVE DAMAGES, IF ANY, ARISING OUT OF, OR IN CONNECTION WITH ANY:**

**.1 VIOLATION OF OR FAILURE COMPLY WITH ANY LAW, STATUTE, ORDINANCE, RULE, REGULATION, CODE OR REQUIREMENT OF A PUBLIC AUTHORITY THAT BEARS UPON THE PERFORMANCE OF THE WORK BY THE CONTRACTOR, A SUBCONTRACTOR OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE;**

**.2 MEANS, PROCEDURES, TECHNIQUES, SAFETY PRECAUTIONS, OR SEQUENCES OF EXECUTION OR PERFORMANCE OF THE WORK; AND**

**.3 FAILURE TO SECURE AND PAY FOR PERMITS, FEES, APPROVALS, LICENSES, AND INSPECTION AS REQUIRED UNDER THE CONTRACT DOCUMENTS, OR ANY VIOLATION OF ANY PERMIT OR OTHER APPROVAL OF A PUBLIC AUTHORITY APPLICABLE TO THE WORK, BY THE CONTRACTOR, A SUBCONTRACTOR, OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE.**

- c. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS ALL OF THE INDEMNITEES SET OUT IN SECTION 3.18.a FROM AND AGAINST ANY COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY ANY OF THE INDEMNITEES IN ENFORCING ANY OF THE CONTRACTOR'S DEFENSE, INDEMNITY, AND HOLD-HARMLESS OBLIGATIONS UNDER THIS CONTRACT.**

Article 4. DESIGN PROFESSIONAL

Section 4.1 General

- a. The Design Professional is the person or entity retained by the Owner 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 Owner, Contractor, 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 an Owner'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 Owner 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 Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, as the Work progresses and when fully completed, will be in accordance with the Contract Documents. However, the 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 Contractor'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 Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Design Professional will not be responsible for the Contractor'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 Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

- i. **NEITHER THE OWNER NOR THE DESIGN PROFESSIONAL NOR THE OWNER'S OTHER CONSULTANTS SHALL BE RESPONSIBLE OR LIABLE FOR THE SAFETY PROGRAM(S) DEVELOPED BY THE CONTRACTOR 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 CONTRACTOR OR THEIR SUBCONTRACTOR(S), OR THE SUB-SUBCONTRACTOR(S) MAKE A CLAIM AGAINST THE INDEMNITEES, OR SHOULD THEY OR ANY GOVERNMENTAL ENTITY BRING ANY ACTION OR LEVY OR AND FINE OR PENALTY AGAINST THE INDEMNITEES ON ACCOUNT OF ANY SAFETY-RELATED DAMAGE OR VIOLATION OF LAW ALLEGED TO HAVE BEEN SUSTAINED, THE CONTRACTOR AGREES THAT IT WILL HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH VIOLATION, FINE, CLAIM OR SUIT, AND THAT IT WILL REIMBURSE THE INDEMNITEES THE COST OF DEFENDING SUCH SUIT,**

**AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THEREFROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.**

d. Communications

The Owner and Contractor shall include the Design Professional in all communications about the Design Professional's services or professional responsibilities. The Owner shall promptly notify the Design Professional of the substance of any direct communications between the Owner and the Contractor 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 Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

- i. Failure of Contractor to give the Owner or Design Professional written notice of Contractor's objections, within three (3) business days, to directives, instructions, interpretations, or minutes from the Owner or Design Professional, shall constitute final and conclusive consent on the part of the Contractor to such directives, instructions, interpretations, or minutes of the Owner or Design Professional.
  - ii. Any written notice from the Owner or Design Professional to the Contractor shall be sufficiently given when delivered to the last known business address of the Contractor, or to its registered or authorized agent, representative, or officer. Any written notice from the Contractor to the Owner shall be sufficiently given when personally delivered to the Owner's Office, Attn: Project Manager, or at such other address and to the attention of such person as the Owner may from time to time designate in writing.
- e. Based on the Design Professional's evaluations of the Contractor's Applications for Payment, the Design Professional will review and certify the amounts due the Contractor 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 Contractor, 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 Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The 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 Contractor

as required by the Contract Documents. The Design Professional's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 1.2, 3.2.a, 3.3, 3.5, 3.12, and 13.9. 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 Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.
- j. If the Owner 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 Owner shall notify the Contractor 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 Owner or Contractor. 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 Owner and Contractor, 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 Owner when making the Owner's determination on these issues and the Owner's decision will be final if consistent with the intent expressed in the Contract Documents. Such Owner'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 Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.
- 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 Contractor, as soon as practicable after award of the Contract, shall notify the Owner 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 Contractor whether the Owner 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 Contractor shall not contract with a proposed person or entity to whom the Owner or Design Professional has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- c. If the Owner or Design Professional has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Professional has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.
- d. The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Design Professional makes reasonable objection to such substitution.
- e. Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.
- f. The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

### Section 5.3 Subcontractual Relations

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

Professional. Each subcontract agreement shall preserve and protect the rights of the Owner, the Owner's other consultants, and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available 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 Owner shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.

- b. All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as an Exhibit, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. The Contractor's subcontractors, however, are not intended third-party beneficiaries of this Agreement by pass through, assignment, or otherwise, except as provided in the Contract Documents, and the Owner shall not be bound to Contractor's subcontract agreements.
- c. Whenever the Contractor receives payment pursuant to the Contract Documents, the Contractor shall make payments to each of its Subcontractors of any amounts actually received which were included in the Contractor's Application for Payment to the Owner for such subcontracts unless otherwise allowed to withhold payment by the terms and conditions of the subcontract or as allowed by law. The Contractor shall make such payments within ten (10) days of receipt of payment from the Owner in the same manner as the Owner is required to pay the Contractor under the Contract Documents if the Subcontractor is satisfactorily performing under its contract with the Contractor. Such payments from Owner to Contractor shall be imposed with an express trust to assure that payment is made to all Project Subcontractors, Sub-subcontractors, and suppliers. In addition to the express trust imposed upon such funds and the fiduciary duties incumbent upon the Contractor, Texas Property Code Chapter 162 shall apply.
- d. The Contractor shall monitor the Subcontractors, who shall pay all suppliers, Sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the Subcontractor any amounts actually received which were included in the Subcontractor's request for payment to the Contractor for such persons, within ten (10) days of receipt of payment from the Contractor. The construction payments made by the Contractor 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 Contractor, the Subcontractor shall also submit to the Contractor a list of the Subcontractor's suppliers, Sub-subcontractors, and laborers. The Contractor shall be relieved of the requirements of this Section regarding payment in ten (10) days and interest payments until the Subcontractor submits such list. If the Contractor fails to make timely payments to the Subcontractor as required by this Section, the Contractor shall pay the Subcontractor interest as calculated 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 Contractor 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 Contractor to the Owner, provided that
  - .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

- 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 Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct verifiable costs incurred by such Subcontractor as a result of the suspension.
- c. Upon assignment to the Owner under this Section 5.4, the Owner 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 Owner of any legal responsibility under the subcontract.
- d. Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the assignment of the Subcontractor to the Owner after suspension and termination of the Contract, as provided in this Section 5.4. This Section 5.4 shall be construed to prohibit a pass through or assignment of rights, unless authorized by the Owner in writing

#### Section 5.5 Owner Payments to Subcontractors

- a. In the event of any default hereunder by the Contractor, or in the event the Owner or Design Professional fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner 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 Contractor.
- b. Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

### Article 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

- a. The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors 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 Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.
- b. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- c. The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.
- d. Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.
- e. The Contractor 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 Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

### Section 6.2 Mutual Responsibility

- a. The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- b. If part of the Contractor's Work depends on proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Design Professional of any apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Design Professional of these apparent discrepancies or defects prior to

proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.

- c. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.
- d. The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.e.
- e. The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.
- f. Should the Contractor wrongfully delay or cause damage to the work or property of any Separate Contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such Separate Contractor sues or initiates a judicial proceeding against the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense. The Owner may fund the defense of such proceedings contemplated by this Section but, in any event, if any judgment or award against the Owner arises therefrom, the Contractor shall pay to satisfy it to the extent of Contractor's responsibility.
- g. **SHOULD ANY SUCH SEPARATE CONTRACTOR WRONGFULLY DELAYED OR DAMAGED BY THE CONTRACTOR OR PERSONS FOR WHOM THE CONTRACTOR 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 CONTRACTOR SHALL HOLD THE INDEMNITEES HARMLESS AND DEFEND THEM AGAINST ANY SUCH CLAIM OR SUIT, AND SHALL REIMBURSE TO THE INDEMNITEES THE COST INCLUDING, WITHOUT LIMITATION, REASONABLE, ADDITIONAL ATTORNEY'S FEES INCURRED DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THERE FROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.**
- h. Should the Contractor be caused damage by any Owner's Separate Contractor(s)'s work, by reason of such Owner's Separate Contractor's failure to perform properly under its contract with the Owner, no action will lie against the Owner, and the Owner shall have no liability therefor, but the Contractor may assert its claims for damages directly against such Owner's Separate Contractor and the Owner shall reasonably assist the Contractor. by assign such rights to Contractor, 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 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, or the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the 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 Owner, Contractor, and Design Professional. A Construction Change Directive requires agreement by the Owner and Design Professional and may or may not be agreed to by the Contractor. An order for a minor change in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and reasonably inferable from the intent of the Contract Documents may be issued by the Design Professional alone.
- c. Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 or as otherwise provided herein, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

#### Section 7.2 Change Orders

- a. A Change Order is a written instrument prepared by the Design Professional and signed by the Owner, Contractor, 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 Sum; and
  - .3 The extent of the adjustment, if any, in the Contract Time.

- b. Methods used in determining adjustments to the Contract Sum 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 Sum and the construction schedule.
- d. Change Orders Requiring City Council Approval  
The Contract Sum may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Denton City Council is required if a Change Order involves a decrease or an increase of \$50,000.01 or more. The original Contract Sum 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 Sum may not be increased by more than twenty-five percent (25%) over the entire duration of the Project for any reason; nor may it be decreased by more than twenty-five percent (25%) without the consent of the Contractor, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the Contractor under this Section 7.2, the additional time required to obtain City Council approval shall not be factored into any past or future claim for delays or calculated as a part of the Change Order request.

#### Section 7.3 Construction Change Directives

- a. A Construction Change Directive is a written order prepared by the Design Professional and signed by the Owner and Design Professional, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
- 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 Sum, the adjustment shall be based on one of the following methods:
  - .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
  - .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed fee; or
  - .4 As provided in Section 7.3.d.
- d. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, 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 Sum, 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 Contractor 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 Contractor or others;
  - .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
  - .5 Additional, verifiable payroll and subsistence costs incurred by the Contractor, Subcontractor, and Sub-subcontractor of field personnel directly attributable to the change.
- e. If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.
  - f. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Professional of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
  - g. A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
  - h. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the 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 Owner, the Contractor 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 Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.
  - j. When the Owner and Contractor agree with a recommendation made by the Design Professional concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the 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 Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Design Professional for determination. The Design Professional may consult with the Owner in connection with such determination either at the direction of the Owner or at the Design Professional's discretion. If the Contractor does not ultimately agree with the Design Professional's determination, the Contractor 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 Owner shall be based on the following schedule:
  - .1 For the Contractor, for Work performed by the Contractor's own forces, fee percentage of the Cost of Work stated in Section 5.1.a of the Stipulated Sum Agreement plus actual direct jobsite costs associated with the additional work, if any;
  - .2 For the Contractor, for Work performed by the Contractor's Subcontractor, fee percentage of the Cost of Work stated in the Stipulated Sum 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 Contractor'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 Contractor 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 Owner and not as a requirement for the Contractor to fulfill its obligations under this Agreement, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

#### 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 Sum or an extension of the Contract Time. The Design Professional's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Design Professional and shall not proceed to implement the change in the Work. If the Contractor 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 Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

#### Section 7.5 Supporting Information

Notwithstanding the above, requests for an adjustment in the Contract Sum or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner and Design Professional. The Contractor shall also comply with all provisions of Articles 8 and 15 with respect to claims. The required information shall be provided by the Contractor in less than twenty-one (21) days from the Contractor's request for an adjustment in the Contract Sum or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the Owner or 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 Contractor or of persons or entities for whom the Contractor 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 Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- b. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a Notice to Proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of any additional necessary documents.
- c. Attention is directed to the fact that the Work is urgently needed by the Owner; for this reason it shall be agreed that the Contractor will substantially complete all Work under the Contract within the time established in the Contract Documents and the most recently approved Contractor's

Project Schedule. The Contractor shall begin the Work on the date of commencement as defined in the Contract Documents; carry the Work forward with adequate resources; furnish, without limitation such labor, supervision, materials, facilities, and equipment; and work such hours, including night shifts, overtime operations, and Sundays and/or holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the most recently approved Contractor's Project Schedule.

- d. The Contractor shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in the Contract Documents, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the Owner in writing.
- e. The Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the Contractor as well as the respective Separate Contractors.
- f. The Contractor shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.
- g. The Contractor 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 Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner 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 Contractor's control; (4) by delay authorized by the Owner 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 Owner 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 Owner 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 Contractor shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the Contractor should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.
- 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 Owner and Contractor for the Project area.

- f. In allowing delays for weather, the Owner will be entitled to consider weather conditions prevailing throughout the entire Contract period. The Owner and Contractor will together reconcile actual working days lost and gained over the entire Contract period every ninety (90) days. The Contractor shall then adjust the schedule activities accordingly for both the Contractor's weather float reserves and Owner's float reserves where those activities are carried in the Contractor'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 Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

#### Section 8.4 Contractor's Obligations After Delay

- a. If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or Contractor's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the Owner after consultation with the Design Professional that the Work will not be completed within the Contract Time or in accordance with the Contractor's Construction Schedule, due to delays caused by the Contractor or its subcontractors, the Contractor agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the Owner or Design Professional, as required to substantially eliminate, in the judgment of the Owner, the backlog of Contractor'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 Owner 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 Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Contractor's Construction Schedule.
- c. In the event of a delay, the Owner Design Professional may also require the Contractor to immediately submit a Proposed Recovery Schedule as specified in Section 3.10.h above. If the Proposed Recovery Schedule is not satisfactory, the Design Professional may unilaterally establish a new Proposed Recovery Schedule acceptable to the Owner; issue it as a Construction Change Directive; and the Contractor shall comply therewith. The Owner may also require the Contractor to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the Owner, or Design Professional.
- d. Failure of the Contractor to substantially comply with the requirements of this Section 8.4 shall be considered grounds for a determination by the Owner, after consultation with the 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 Contractor'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 Contractor, the Owner or Design Professional may request, and the Contractor may agree to take one or more of the Extraordinary Measures, with the Owner bearing the cost for such measures by Change Order.
- f. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 8.4, except as specifically noted otherwise in Section 8.4.e.

#### Section 8.5 Owner's Rights After Delay

- a. In the event that any Contractor fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved Contractor's Project Schedule, the Owner or the Design Professional shall have the right to impose any or all of the following options:
  - .1 Require the Contractor to substantiate the capability to get back on schedule within ten (10) business days;
  - .2 Require the Contractor to take some or all of the Extraordinary Measures, and do whatever else is required by the Owner or Design Professional until Contractor confirms, to the satisfaction of the Owner and Design Professional, the progress of the Work is in compliance and congruence with the most recently approved Contractor's Construction Schedule, such measures being at no extra cost to Owner and Design Professional;
  - .3 Withhold progress payment, or portions thereof, until such time as the Contractor is in compliance with the most recently approved Contractor'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 Contractor's expense.

#### Section 8.6 Liquidated Damages

- a. Should the Contractor fail to substantially complete the Work on, or before, the original date set forth in the Contract, or on or before the revised date as granted by extensions to Contract Time, the Owner may at its sole discretion permit the Contractor to proceed, and in such case, there shall be deducted from any monies due or which may become due the Contractor, a sum as specified herein, for each and every calendar day that the Work shall remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the Owner. Liquidated damages are intended to compensate the Owner for the Contractor's failure to meet the deadlines set forth herein, and shall not excuse the Contractor from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The Contractor agrees that the sums in Section 8.6.b are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an

adequate remedy. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no termination has occurred.

- b. Contractor shall pay as liquidated damages to the Owner: the sums shown in the table below for each calendar day that expires after the date set forth in the Contract for Final Completion of the Work.

First Week Late	Second Week Late	Third & Fourth Weeks Late	Every Day After the Fourth Week Late
\$1000/day	\$1000/day	\$1000/day	\$1500/day

- c. The parties acknowledge, covenant, and agree that the daily basis and the amount set forth above for liquidated damages are reasonable because of the unique nature of the Project as a benefit to the public; the fact that inconvenience to the public will be one of the significant impacts of any failure by the Contractor to timely complete the Work; and that it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to the Owner and the public.
- d. Permitting the Contractor to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract. The Contractor acknowledges the Owner receives no benefits from early completion of the Project or the Work, therefore all rights, if any, to an early completion bonus or other increases in the Contract Sum for such early completion are hereby waived by the Contractor.

Article 9. PAYMENTS AND COMPLETION

Section 9.1 Contract Sum

- a. The Contract Sum is stated in the Agreement and, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner’s obligation to pay the full Contract Sum.
- 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 Owner or Contractor, 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 Contractor shall meet with the Design Professional, at the Preconstruction Conference with a proposed Schedule of Values as specified in Section 3.10. The Contractor’s Schedule of Values will be reviewed by the Owner and Design Professional in the context of the Contractor’s proposed Construction Management Plan, including, but not limited to, the Contractor’s Construction Schedule therein. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the Contractor’s Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to

the Contractor's and Subcontractor's contract amount(s). The Schedule of Values shall allocate the entire Contract Sum to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the Owner and Design Professional may require. This Schedule, of Values, unless objected to by the Owner or Design Professional, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### Section 9.3 Applications for Payment

- a. At least ten days before the date established for each progress payment, the Contractor 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 Contractor's right to payment that the Owner 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 Owner; 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 Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.
  - iii. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner 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 Contractor has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;
    - .2 Duly executed statutory conditional waivers of mechanics' and material suppliers' lien for progress payments with each 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 Contractor on behalf of such entities or persons in any previous Application for Payment;
    - .3 An updated Contractor's Construction Schedule per Section 3.10 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 Payment Request for the Work, contractor will submit an affidavit stating that the contractor 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 Owner's title insurer, if any, the Contractor 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 Contractor's Construction Schedule clearly and graphically comparing the actual "work-in-place" completed to the Work previously projected to be complete for the period. Failure to provide this information in the proper form may be, in and of itself, grounds for rejection of the Application for Payment, at the discretion of the 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 Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the 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 as specified, without limitation, in Sections 3.13 and 11.3, which supports the request's validity; quantity and value of materials; proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of Insurance or otherwise protects the Owner's interests. Such request shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Such materials shall be:

.1 Protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, and the Lender;

.2 Specifically marked for use on the Project; and

.3 Segregated from other materials at the storage facility.

- c. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

- d. **THE CONTRACTOR FURTHER EXPRESSLY UNDERTAKES TO DEFEND THE INDEMNITEES, AT THE CONTRACTOR'S SOLE EXPENSE, AGAINST ANY ACTIONS, LAWSUITS, OR PROCEEDINGS BROUGHT AGAINST THE INDEMNITEES AS A RESULT OF LIENS OR VERIFIED CLAIMS FILED AGAINST THE WORK, THE SITE OF ANY OF THE WORK, THE PROJECT SITE AND ANY IMPROVEMENTS THEREON, PAYMENTS DUE THE CONTRACTOR, THE PROJECT BOND OR ANY PORTION OF THE PROPERTY OF ANY OF THE INDEMNITEES (REFERRED TO COLLECTIVELY AS "LIENS OR VERIFIED CLAIMS" IN THIS SECTION 9.3.d). THE CONTRACTOR HEREBY AGREES TO INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH LIENS OR VERIFIED CLAIMS AND AGREES TO PAY ANY JUDGMENT OR LIENS OR VERIFIED CLAIMS RESULTING FROM ANY SUCH ACTIONS, LAWSUITS, OR PROCEEDINGS.**

Section 9.4 Certificates for Payment

- a. The Design Professional will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Design Professional recommends is properly due, and notify the Contractor and Owner 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 Contractor and Owner 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 Owner, 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 Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the 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 Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- c. Certification will be issued for ninety-five percent (95%) of the amount requested by the Contractor and approved by the Design Professional to be properly due until the Contractor is ninety-five percent (95%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that, should the Contractor at any time fail to keep current with the approved progress schedule, fail to assure payment to Subcontractors, Sub-

subcontractors and suppliers as required hereunder; or 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 Contractor 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 Owner, if in the Design Professional's opinion the representations to the Owner required by Section 9.4.b cannot be made. If the Design Professional is unable to certify payment in the amount of the Application, the Design Professional will notify the Contractor and Owner as provided in Section 9.4.a. If the Contractor 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 Owner. 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 Owner from loss for which the Contractor 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 Owner is provided by the Contractor;
  - .3 failure of the Contractor 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 Sum;
  - .5 damage to the Owner or a Separate Contractor;
  - .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - .7 repeated failure to carry out the Work in accordance with the Contract Documents;
  - .8 Contractor's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;
  - .9 failure to fully execute the Contract with all associated documents as required;
  - .10 bond claims, or liens, filed for any portion of the Work; or
  - .11 failure of the Contractor to comply with any provisions of the Contract Documents, including without limitation Section 8.4.
- 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 Owner or Design Professional. In the event the Design Professional nullifies a previously

issued Project Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Contractor shall promptly reimburse to the Owner amounts the latter had previously paid pursuant to the nullified project Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until and unless the reasons for nullification of the previously issued project Certificate for Payment have been remedied and all associated damages, costs, and expenses of Owner and Design Professional have been paid by the Contractor.

- d. If the Design Professional withholds certification for payment under Section 9.5.a.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Design Professional and the Contractor shall reflect such payment on its next Application for Payment.
- e. The Contractor 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 Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Design Professional.
- b. The Contractor shall pay each Subcontractor, Sub-subcontractor and supplier, no later than ten (10) days after receipt of payment from the Owner the amount to which the Subcontractor, Sub-subcontractor and supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's, Sub-subcontractor's and supplier's portion of the Work, unless otherwise allowed by the provisions of the subcontract or by law. The Contractor shall notify Owner in advance and in writing of any payment(s) to be withheld from any Subcontractor. The Contractor 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 Contractor and action taken thereon by the Design Professional and Owner on account of portions of the Work done by such Subcontractor.
- d. The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor 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 Contractor'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 Owner shall not constitute acceptance of any Work.
- g. The Contractor shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner unless allowed by the terms and conditions of the subcontract as stated in Section 5.3.C of the Agreement or by law. The Contractor shall notify Owner in advance and in writing of any payment(s) to be withheld from any Subcontractor. Sums withheld by the Owner from the Contractor for deficiencies solely attributable to the Contractor shall not be grounds for the Contractor to withhold sums due to any Subcontractor. All sums paid to the Contractor for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the Contractor for payment to those persons to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.
- h. **PROVIDED THE OWNER HAS FULFILLED ITS PAYMENT OBLIGATIONS UNDER THE CONTRACT DOCUMENTS, THE CONTRACTOR SHALL DEFEND AND INDEMNIFY THE OWNER FROM ALL LOSS, LIABILITY, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES AND LITIGATION EXPENSES, ARISING OUT OF ANY LIEN CLAIM OR OTHER CLAIM FOR PAYMENT BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER. UPON RECEIPT OF NOTICE OF A LIEN CLAIM OR OTHER CLAIM FOR PAYMENT, THE OWNER SHALL NOTIFY THE CONTRACTOR. IF APPROVED BY THE APPLICABLE COURT, WHEN REQUIRED, THE CONTRACTOR MAY SUBSTITUTE A SURETY BOND FOR THE PROPERTY AGAINST WHICH THE LIEN OR OTHER CLAIM FOR PAYMENT HAS BEEN ASSERTED.**
- i. To the extent Contractor has received payment in accordance with the terms of this Agreement, the Contractor agrees to keep the Work and the site of the Project and all project bonds free and clear of all bond claim and verified claims related to labor and materials furnished in connection with the Work.
- j. If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, at the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

### Section 9.7 Failure of Payment

If the Design Professional does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within the date established in the Contract Documents, the amount certified by the Design Professional, then the Contractor may, upon seven (7) additional days' written notice to the Owner 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 Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### 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 Owner can occupy or utilize the Work for its intended use, all major systems are operational, and all safety features are completed and Owner's receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the Owner. In addition to the other requirements of the Contract Documents, and without limitation, the Contractor must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the Contractor shall be deemed to have achieved Substantial Completion.
- b. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Professional a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor will also provide the Design Professional a comprehensive list of all claims previously and properly made in writing and identified by the Contractor as unsettled at the time of Substantial Completion.
- c. Upon receipt of the Contractor'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 Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Design Professional. In such case, the Contractor 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 Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

- e. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
- f. The Contractor'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 Contractor against the Owner and the Design Professional, except those previously and properly made in writing and identified in the list provided by the Contractor as unsettled at the time of Substantial Completion per Sections 9.8.b.

#### Section 9.9 Partial Occupancy or Use

- a. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, as such occupancy or use is consented to by the insurer and required under Section 11.3 provided it is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Professional as provided under Section 9.8.b. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Owner.
- b. Immediately prior to such partial occupancy or use, the Owner, Contractor, 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 Contractor'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 Contractor and noted in the final Certificate 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 Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under Section 3.5 or otherwise required pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the 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 Owner. "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 Contractor submits to the Design Professional and Owner; (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) 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 Owner that the insurance will cover the period required by the Contract Documents; (4) consent of surety to final payment; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract for Construction, to the extent and in such form as may be designated by the Owner and Owner's lender; (6) certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner 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 Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner 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 Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor'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 Owner; (iv) delivery to the Owner 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 Owner of the Record Drawings; (vi) delivery to the Owner 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 Owner 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 Contractor. 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 Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor may furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the

Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and 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, Contractor 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 Contractor or by issuance of Change Orders affecting final completion, and the Design Professional so confirms, the Owner shall, upon application by the Contractor 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 Contractor 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 Owner 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 Owner, 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 Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee against the Owner 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 Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor being responsible for excess Design Professional's and other Owner'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 Contractor.

## Article 10. PROTECTION OF PERSONS AND PROPERTY

### Section 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor'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 Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to all of the following:
  - .1 employees on the Work and other persons who may be affected thereby;
  - .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, 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 Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.
- c. The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.
- d. When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and the Contractor shall give the Owner and the Design Professional reasonable advance written notice of such planned activities.
- e. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.a.2 and 10.2.a.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.a.2 and 10.2.a.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or 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 Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.
- f. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Design Professional.
- g. The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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 Contractor shall immediately report in writing to the Owner 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 Owner 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 Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and 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 Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and 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 Contractor and the Design Professional will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Design Professional has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor 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 Owner and Contractor. By Change Order duly processed and approved, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, both as specified in Article 7. The term "rendered harmless" shall be interpreted to mean, without limitation that levels of hazardous materials, including, but not limited to, asbestos and polychlorinated biphenyls, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

- c. Omitted.
- d. The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.
- e. Omitted.
- f. **THE CONTRACTOR SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.a, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE OWNER'S FAULT OR NEGLIGENCE.**

#### Section 10.4 Emergencies

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

#### Section 10.5 Site Visits

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

Article 11. INSURANCE AND BONDS

Section 11.1 Contractor's Liability Insurance

- a. The Contractor shall purchase and maintain in a company or companies lawfully authorized to do business in Texas and as further qualified in Paragraph 11.6, such insurance as will protect the Contractor and the Indemnitees from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
  - .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed; including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;
  - .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees; or persons or entities exempt by statute from the requirements of Section 11.1.a.1, but required by the Contract Documents to provide the insurance required by that Section;
  - .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
  - .4 Claims for damages insured by usual personal injury liability coverage;
  - .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
  - .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle, including pollution clean-up if hauling hazardous materials; and
  - .7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than ten (10) years following final payment.
  - .8 Claims for damages to the Work, and/or materials and equipment used/stored at the Work, as may be covered under any Builder's Risk insurance policy.
- b. The Contractor's Commercial General Liability Insurance should be written on ISO Form CG 00 01 10 01 or its equivalent and provide the following:
  - .1 Premises/operations (Including X-C-U coverages);
  - .2 Independent contractors;
  - .3 Products and completed operations with a per project aggregate limit, which coverage shall be maintained for a period of ten (10) years from the date of the Final Payment;
  - .4 Personal injury (libel, slander, false arrest) liability with employment exclusion deleted;

- .5 Blanket Contractual, including, but not limited to, a specified provision for the Contractor's obligations under Section 3.18 of the Contract Documents;
  - .6 Broad form property damage including, but not limited to, completed operations;
  - .7 Primary and Non-Contributory endorsement in favor of Indemnitees; and
  - .8 Contain a Waiver of Subrogation in favor of Indemnitees.
- c. Professional Errors and Omissions Liability Insurance is required for all licensed and certified professionals, including, but not limited to, contractors, engineers, Design Professionals, design-build and design professionals as follows:
  - .1 The retroactive date preceding the date of the contract; and
  - .2 An extended reporting period of three (3) years past substantial completion.
- d. Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.
- e. The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in this Article 11, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work; and for such duration as required in the Contract Documents; policies of insurance issued by a responsible carriers acceptable to the Owner, and in form and substance satisfactory to the Owner, that afford the coverages set forth in the Schedule of Insurance, attached to the Contract and made a part of it as Exhibit "YX" – Contractor's Insurance Certificate(s). All such insurance shall be written on an occurrence basis, with the sole exception of Professional Errors and Omissions Liability Insurance. In the event professional liability coverage is not available on "an occurrence" basis, a "claims made" basis policy with effective and retroactive dates prior to the effective date of the Contract Documents and an extended reporting period of at least three (3) years beyond Substantial Completion or as otherwise required by the Contract Documents, whichever is greater, may be substituted with the written consent and approval of the Owner and Design Professional. The Contractor's completed operations coverage shall be maintained until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.
- f. The Contractor agrees to deliver to the Design Professional, for transmittal to the Owner with a copy to the Design Professional within ten (10) days of the date of the Owner-Contractor Agreement and prior to bringing any equipment or personnel onto the site of the Work or the Project site, and thereafter upon renewal or replacement of each required policy of insurance, certified copies of all required insurance policies procured by the Contractor under or pursuant to this Article 11 or, with the written consent of the Owner and Design Professional, Certificates of

Insurance in form and substance satisfactory to the Owner and Design Professional evidencing the required coverages with limits not less than those specified in Section 11.1.k below and all endorsements as required in Article 11 herein. The coverage afforded under any insurance policy obtained under or pursuant to this Section 11.1 shall be primary to any valid and collectible insurance carried separately by any of the Indemnitees. Furthermore, all policies and Certificates of Insurance shall expressly provide that no less than thirty (30) days prior written notice (ten (10) days for non-payment of premium) shall be given the Design Professional and Owner in the event of material alteration, cancellation, nonrenewal or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.b and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.e. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

- g. Certificates of Insurance with the following or similar wording are not acceptable: "Failure to notify the certificate holder shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."
- h. In no event shall any failure of the Design Professional to receive certified copies or certificates of policies required under Paragraph 11.1.f or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the Contractor's obligations to obtain insurance pursuant to this Article 11.
- i. When any required insurance, due to the attainment of normal expiration date or renewal date, shall expire, the Contractor shall furnish to the Design Professional Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy forty-five (45) days prior to renewal date. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differ in any way from the previous policy, the Contractor shall also furnish the Design Professional with a certified copy of the renewal or replacement policy unless the Owner provide the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and Design Professional and written by carriers acceptable to the Owner and Design Professional.
- j. Any Aggregate limit under the Contractor's liability insurance, shall by endorsement, apply to this Project separately.
- k. The Contractor shall notify the Owner and Design Professional in writing of any reduction in collectible limits (aggregate limits) by an amount in excess of Fifty Thousand Dollars (\$50,000), and the Contractor shall promptly procure, at no expense to the Owner, such additional coverage as necessary to restore the valid and collectible limits of such insurance to that required under the Contract Documents.
- l. The Contractor shall cause each Subcontractor to procure insurance congruent with the Contractor's insurance requirements as specified in the Contract Documents and satisfactory to the Owner and Design Professional and name each of the Indemnitees as additional insureds under the Subcontractor's commercial general liability, automobile and umbrella excess liability

policies. The additional insured endorsement included on the Subcontractor's commercial general liability policy shall state that coverage is afforded the additional insureds with respect to claims arising out of all on-going and completed operations performed by or on behalf of the Contractor. Each policy shall contain a Waiver of Subrogation in favor of the Indemnities, provide for forty-five (45) day notice of cancellation or non-renewal, and be primary without contribution if the additional insureds have other insurance that is applicable to the loss. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

- m. The Indemnitees shall also be shown as "Additional Insureds" on the property, commercial general liability, automobile liability and umbrella (excess) liability policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided listing the Indemnities as Additional Insureds, using ISO forms CG2010, CG2037, CA0070, CA0032 or their equivalents, and approved as to form by Owner.
- n. A "waiver of subrogation" clause in favor of the Owner will be attached to the workers compensation, commercial general liability, umbrella (excess) liability, automobile and the any applicable property insurance policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided showing waivers of subrogation in favor of the Indemnities using ISO forms CG2404, CA0070, CA0032, WC0003 or their equivalents, and approved as to form by Owner.
- o. The Owner reserves the right to review the insurance requirements during the effective period of its Agreement with the Contractor, and provide a written request for the Contractor to make any reasonable and commercially available adjustments to insurance coverages and/or limits when deemed reasonably prudent by the Owner based upon its unilateral interpretation of changes in statutory law, court decisions or the Owner's potential increase in exposure to loss.
- p. Neither Contractor, Subcontractor, Sub-subcontractor, nor any of their insurance carrier's liability obligations shall be limited to the minimum limits of coverage of insurance maintained or required to be maintained by the Contract Documents.

#### Section 11.2 Owner's Liability Insurance

- a. The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### Section 11.3 Property Insurance

- a. The Contractor shall purchase and maintain "builder's risk" property insurance, or comparable coverage, for the full replacement cost value thereof, for (i) the Work that is to be done, (ii) all insurable items of Work, title to which has been acquired by Owner in accordance with the Contract Documents and (iii) all materials to be incorporated in the Work, if such materials are in or upon the Premises, or in transit to Premises, whether or not title has been acquired by Owner. Such insurance shall not cover any property owned, leased, or otherwise used in connection with the Work by Contractor, Contractor's subcontractors or the agents or employees of them, that is not forming a permanent part of the Project. This insurance shall include the interests of Owner, Contractor, and Subcontractors and shall provide coverage against loss for "direct physical damage" (previously known as "all risk" coverage) including, but not limited to, without

duplication of coverage, fire, extended coverage, vandalism and malicious mischief, theft, collapse, earthquake, flood, sprinkler leakage, windstorm, testing and startup, temporary buildings and debris removal including demolition and increased cost of construction occasioned by enforcement of any applicable legal requirements.

- b. Any coverage related to the builder's risk property insurance maintained by Contractor for time including delay in opening and/or extra expenses shall inure to the benefit of Owner only. Owner shall be the only party insured under such policy, with the sole exception that the Contractor may be entitled to payment of its fee and general conditions associated with the reconstruction, less any deductible.
- c. The Contractor's insurance shall cover against loss for "direct physical damage" (previously known as "all risk" coverage) with sufficient limits to protect the full replacement cost value of the Work.
- d. If by the terms of the property insurance there is a deductible amount, in the event of a loss covered by such insurance, Contractor shall be responsible for all deductibles per occurrence which shall be considered a Cost of the Work for all insurable items of Work and materials to be incorporated in the Work, title to which has not been acquired by Owner in accordance with the Contract Documents. Except for Contractor's deductible risk, Owner is bearing all risk of loss to the Property for which Owner, Contractor, and others have an insurable or financial interest during construction, and, in the event of a loss to the property during construction, Owner agrees to rely solely to the proceeds of the Builder's Risk Insurance which Owner Contractor has agreed to furnish.
- e. To the extent permitted by law, Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) Owner's Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. Owner or Contractor, as appropriate, shall require of Owner's Separate Contractors, if any, and the subcontractors, sub-subcontractors, agents, and employees of any of them, by written appropriate agreement, similar waivers each in favor of other parties enumerated herein.
- f. To the degree allowed by the insurer, Owner and Contractor shall each have its policies endorsed to provide for a waiver of the right of subrogation against the other respective party.
- g. Any loss insured pursuant to this Section 11.3 Property Insurance is to be adjusted by Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. Contractor shall pay each Subcontractor a just share of any insurance monies received by Contractor, and by appropriate written agreement, shall require each Subcontractor to make payments to its Sub-subcontractors in similar manner.
- h. Upon request, Owner shall make available for inspection by Contractor a copy of all policies to be furnished by Owner.

#### Section 11.4 Performance, Maintenance, and Payment Bond

- a. The Contractor must furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Such bonds shall be issued in an amount equal to the total Contract Sum by a surety company licensed in the state where the

Project is located, with a current A.M. Best rating of at least A- X, included on the U.S. Treasury Department's listing of approved sureties, and acceptable to the Owner and Design Professional, or as expressly agreed otherwise by the Owner and Design Professional in writing.

.1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment and shall satisfy the requirements Texas Government Code Chapters 2253 and 2269.

.2 The Performance Bond, Maintenance Bond, and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.

.3 Every Bond under this Section 11.4.a must display the Surety's Bond Number and a rider including the following provisions, which shall be attached to each Bond:

- a) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents;
  - b) Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived; and
  - c) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.
- b. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.
  - c. The Bond Form shall be in a form provided by the Owner.
  - d. Additional Performance, Maintenance, and Payment Bonds may be recommended by the Design Professional and required by the Owner, at the Owner's sole discretion, from any Subcontractor. The Owner will pay such actual, additional expenditures as Cost of the Work using the process specified in Article 7 for Changes in the Work. All such bonds shall be in form and substance satisfactory to the Owner and Design Professional.
  - e. The Contractor shall deliver the required bonds to the Owner no later than three (3) business days following the date of the Agreement is entered into, or if the Work is to be commenced prior to the date the Agreement is entered into, in response to a notification of award. The Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.
  - f. The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

#### Section 11.5 Adjustment and Settlement of Insured Loss

- a. 11.5.1 Omitted.
- b. Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have fourteen (14) days from receipt of notice to object to the proposed settlement or

allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

#### Section 11.6 Insurance Companies

All insurance coverage procured by the Contractor shall be provided by insurance companies having current policyholder ratings no lower than “A- X” by A.M. Best and acceptable by the Owner and Design Professional, or as expressly agreed otherwise by the Owner, Contractor and Owner in writing. Such companies must be licensed to do business in the State of Texas.

#### Section 11.7 Failure to Purchase Insurance

If one or more of the Indemnitees, or the Contractor is damaged by the failure of either the Owner or the Contractor to purchase or maintain the insurance required under this Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys’ fees and court and settlement expenses) properly attributable to the failure.

#### Section 11.8 Insurance Limits Required

The following insurance limits are the minimums to be carried by the Design Professional, the Design Professional’s consultants, the Owner’s other consultants, the Contractor, and the Subcontractors, Sub-subcontractors, and suppliers, unless higher limits are required by their respective Agreements or Texas law (in which case those limits shall control):

- .1 Automobile Liability  
*\$1,000,000 Combined Single Limit*
- .2 Commercial General Liability  
*\$1,000,000 Aggregate, Per Occurrence and Personal Injury*  
*\$2,000,000 General Aggregate*  
*\$2,000,000 Products/Completed Operations Aggregate*  
*\$1,000,000 Personal and Advertising Injury*  
*\$500,000 Fire Damage*  
*\$5,000 Medical Payments*
- .3 Worker’s Compensation  
Statutory Limits  
*\$1,000,000 Employers Liability*
- .4 Umbrella or Excess Liability  
*\$10,000,000 Per Occurrence*
- .5 Contractor’s Environmental Impairment/Pollution coverage  
*\$1,000,000 Occurrence or Claim*

*\$2,000,000 Policy Aggregate*

.6 Builder's Risk (where applicable)

*100% of the total value of the work*

- a. Limits for primary policies may differ from those shown when Umbrella or Excess Liability insurance is provided, as long as all coverage is equal to or greater than the minimum limits required herein.

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 Contractor'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 Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

Section 12.2 Correction of Work

- a. Before Substantial Completion

The Contractor 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 Contractor and the Project, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions; as well as compensation for the Design Professional's services and expenses made necessary thereby, shall be at the Contractor's expense.

- i. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable or for which the Contractor is otherwise responsible.

b. After Substantial Completion

- i. In addition to the Contractor's obligations under Section 3.5, 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 Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the condition is reasonably discoverable, during the **two-year** period for correction of Work, and the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Design Professional, the Owner may correct it in accordance with Section 2.5, and charge the reasonable costs to the Contractor.
  - 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 Contractor pursuant to this Section 12.2, but only with respect to the corrected portions of the Work.
  - iii. Omitted.
- c. Omitted.
- d. The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. These costs specifically include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office overhead, and other expenditures necessitated to rectify the non-complying conditions, protect adjacent Work, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions.
- e. Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.b relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- f. The Contractor's obligations under this Section 12.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract.

Section 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. In the event final payment has been made by the Owner subsequent to accepting such non-conforming Work, the Contractor shall pay the Owner for the reduction in the Contract Sum occasioned by such acceptance.

### Article 13. MISCELLANEOUS PROVISIONS

#### Section 13.1 Governing Law

The Contract shall be governed by the laws of the state of Texas. Venue on any dispute arising out of this Contract shall be in Denton County, Texas, which is the place where the Project is located and where performance is primarily to occur.

#### Section 13.2 Successors and Assigns

- a. The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.b, neither party to the Contract shall assign the Contract, or any rights under the contract, in whole or in part without the written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
- b. The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.
- c. **Written Notice**  
Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

#### 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 Owner, Design Professional, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

#### 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 Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the 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 Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. As required by the provisions of Texas Government Code, Section 2269.058(a), the Owner shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the Owner. 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) such conflict is unintentional, and the provisions of the Texas Government Code shall control.

- b. If the Design Professional, Owner, 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 Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the 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 Owner'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 Contractor's expense. The Contractor 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 Contractor.
- d. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the 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 Contractor to control the quality of the Work using the processes specified in the Contractor's Quality Management, Commissioning, and Turnover Plan contained within the most recent Construction Management Plan approved by the Owner and 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 Contractor's Construction Schedule.

- g. The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the Contractor's, as is the obligation to provide the Work and a complete and functional project per the Contract Documents. Notwithstanding anything herein, or in subsequently approved Quality Management, Commissioning and Turnover Plans, the Owner's review and Design Professional's approval of such plan(s) does not relieve the Contractor in any way of this responsibility.
- h. The Contractor 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 Owner. 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 Contractor and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Contract Documents. The type and amount of testing required by the Contract Documents shall be seen as the minimums required, and shall be increased, if in the opinion of the Contractor, more testing is needed to meet the requirements of the Contractor.
  - .2 The Contractor shall concurrently provide the Design Professional copies of all test results it receives within three (3) business days of receipt of same.
  - .3 The Owner shall provide such Quality Assurance testing as it and the Design Professional mutually agree to be adequate for their own needs. The Owner shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the Owner, or lack thereof shall in no manner affect the responsibilities of the Contractor or Design Professional under this Agreement.
- i. The Contractor shall facilitate and conduct weekly (or more frequent if necessary) meetings on site for the coordination of all mechanical, electrical and special systems installation activities and possible interference(s) above ceilings, in mechanical rooms, etc. The mechanical trades shall typically have preference in the event of conflicts, and therefore the mechanical contractor's coordinator will usually lead each meeting, unless the Contractor decides another trade or the Contractor should take the lead. The 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 Contractor, as supplemented and coordinated by the Design Professional.
- j. The Contractor's Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes and Contractor will review, in detail, the steps for completing testing of all building systems with the Owner and Design Professional. This plan shall be coordinated with and shall be made part of the Contractor's Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate Owner's and Design Professional's consultant(s), representatives of the Owner, 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 Contractor's Quality Management, Commissioning and Turnover Plan, it shall be the responsibility of the Contractor, Subcontractor or Sub-subcontractor installing such equipment to operate it for a period of time satisfactory to the Owner prior to acceptance and before the start of Warranty. The duration of such operation shall be as the Owner, Owner's consultant(s), Design Professional's consultant(s), Owner's employees and other Owner's representatives (the Turnover Team) shall reasonably require for proper testing of the respective system and thorough instruction of the Owner's operating personnel.
- l. All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the Owner's operating personnel on each system's operations and maintenance shall be provided by the Contractor, Subcontractor or Sub-subcontractor responsible for providing and installing the equipment. Such tests and instruction shall be in meetings held solely for this purpose (the Turnover Meetings), which shall be coordinated and managed by the Contractor, who shall show their dates in the Contractor's Construction Schedule at least sixty (60) days prior to occurrence. The Contractor shall schedule the Turnover Meetings at times reasonably convenient for the Owner's consultant(s), Design Professional's consultant(s), Owner's employees and other Owner's representatives that the Owner and Design Professional agree are necessary to attend for each system. The Design Professional may attend such Turnover Meetings at its discretion.
- m. The Contractor shall provide a digital video record to the Owner, with copies to the Design Professional of all meetings for the purpose of Owner operational staff instruction or training; as well as commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.
- n. The Contractor shall prepare a digital video record of the project for the Owner 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 Contractor on site; and other construction issues as the Design Professional may reasonably require from time to time.
- o. The Contractor shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Contractor shall notify the 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 Owner. The Design Professional will then give permission for removal in writing to the Contractor. 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 or its successor statute.

#### Section 13.6 Time Limits on Claims

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

#### Section 13.8 Measurement

Before ordering any material or doing any Work, the Contractor shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Design Professional for consideration before proceeding with the Work. The Contractor shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the Owner and 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 Contractor shall immediately, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work, and shall submit to the Design Professional evidence that such orders have been placed in accordance with the Contractor's Construction Schedule.

#### Section 13.10 Addressing the Owner's Additional Needs and Concerns

- a. Notwithstanding the above, the Owner has a unique set of stakeholders and organizational structure that creates special challenges the Contractor must completely and successfully address to the satisfaction of the Owner and 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 Contractor shall provide the Superintendent once per month for a scheduled meeting with the Owner for a progress update on the project if requested by the Owner. A walk-through of the site may be held as a part of this meeting, which shall be scheduled by mutual agreement during regular business hours.

- .2 The Contractor may be required to provide the Superintendent for one meeting per month with the Design Professional for the purpose of assisting the Owner in preparing City Council agenda items and assisting City staff in preparing presentations to the City Council for the benefit of the public. The actual preparation and submission of the City Council of any agenda or work session item shall be performed by the Owner.

- .3 In addition to the meetings required to complete the Project, it is anticipated the Owner may request tours from time to time of the project and the site. The Contractor shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Owner.

### 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 Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Contract Documents or the applicable subcontract.
- 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 Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific material restated in the written document signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.
- g. The Contractor shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.
- h. The Contractor shall provide Owner with copies of all notices received by Contractor from Subcontractors, Sub-subcontractors, and/or suppliers to Contractor.
- i. The Owner is a Texas home-rule municipality and as such is generally exempt from taxation under Texas law, which may include the purchase of items, materials, or supplies purchased on behalf of the Owner for this public works project. Contractor shall confirm that the Owner is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the Owner.
- j. Owner affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by Owner to Contractor subject to the terms and conditions of the Contract Documents. In the event that Owner approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by Contractor, (other than that contemplated by

the Contract Documents under any remedy-granting provision), Owner will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the Owner's governing body.

- k. In the event the Owner is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the Contractor shall notify the Owner and 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 Contractor 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 Contractor shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (ii) fails to certify to the Contractor that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.
  - i. The Contractor 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 Owner may be entitled to for a breach of the Agreement, if the Owner terminates this Agreement, in whole or in part, due to Contractor's breach of the obligations set forth above in this Section 13.11.1 Contractor shall be liable for actual and consequential damages to the Owner.
- 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 Owner 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 Owner. The Owner does not waive its immunities or right to object to or contest such a lien.

#### Article 14.      TERMINATION OR SUSPENSION OF THE CONTRACT

##### Section 14.1 Termination by the Contractor

- a. The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:
  - .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
  - .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.
- b. The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100

percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

- c. If one of the reasons described in Section 14.1.a or 14.1.b exists, the Contractor may, upon seven (7) days' notice to the Owner and Design Professional, terminate the Contract and recover from the Owner payment for Work executed, including other costs allowed by the law.
- d. If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Design Professional, terminate the Contract and recover from the Owner as provided in Section 14.1.c.

#### Section 14.2 Termination by the Owner for Cause

- a. The Owner may terminate the Contract if the Contractor:
  - .1 refuses or fails to supply enough properly skilled workers or proper materials;
  - .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
  - .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
  - .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
  - .5 contractor becomes insolvent or makes a general assignment for the benefit of its creditors.
- b. When any of the reasons described in Section 14.2.a exist, and upon certification by the Design Professional that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
  - .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
  - .2 Accept assignment of subcontracts pursuant to Section 5.4; and
  - .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.
- c. When the Owner terminates the Contract for one of the reasons stated in Section 14.2.a, the Contractor shall not be entitled to receive further payment.
- d. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's, Design Professional's consultants', and Owner's other consultants' services and expenses made necessary thereby, and other damages incurred by

the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

- i. The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

#### Section 14.3 Suspension by the Owner for Convenience

- a. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.
- b. The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.a. Adjustment of the Contract Sum shall be as specified in Article 7. No adjustment shall be made to the extent:
  - .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
  - .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### Section 14.4 Termination by the Owner for Convenience

- a. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.
- b. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
  - .1 cease operations as directed by the Owner in the notice;
  - .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
  - .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- c. Upon such termination for the Owner's convenience, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Contract Documents and Owner's further instructions. **The Contractor waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, lost opportunity costs, and potential and actual unabsorbed overhead costs.** The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims that the Owner has against the Contractor under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract.

## Article 15.      CLAIMS AND DISPUTES

### 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 Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.a does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

b. Time Limits on Claims

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

c. Notice of Claims

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Design Professional, if the Design Professional is not serving as the Initial Decision Maker.; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the 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 Contractor 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 Owner as a condition precedent to the Contractor's right to sue on the Contract.

ii. Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.b, shall be initiated by notice to the other party. In such event, no recommendation by the Initial Decision Maker is required.

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 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

ii. The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance

with this Article 15. The Design Professional will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

e. Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.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 Contractor 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 Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor 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 Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.g shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Section 15.2 Initial Decision

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.

EXHIBIT C



KEY PERSONNEL RESUME FORM

Offerors may attach an organizational chart (maximum of 1 page) as supporting documentation. Please list the key team members that will be assigned to the Project. The Offeror should, at a minimum, provide personnel experience for the Project Manager, Superintendent, and the Foreman/Foremen. Past experience projects should demonstrate experience in the categories listed in 12.2.2.7 of Section 00 21 16 – Instructions to Offerors.

NAME: Garrett Glover  
JOB TITLE: Project manager

LICENSES AND CERTIFICATIONS: OSHA 30, First Aid Certified

TOTAL YEARS OF EXPERINCE: 10 + years

TOTAL YEARS WITH CURRENT FIRM: 2 years

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES. IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM:

Managing all aspects of a project that is given to him. Making sure that everything runs smoothly with the job and that it is getting done in a timely manner. Some of those jobs include:

- McCoy's Reload Phase II - \$3.67 million
- Huntsville - Governors Ranch - \$11.5 million
- San Marcos townhomes - \$507 thousand

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: Copunt Rosenberg - 5%

NAME: Dayton Harrell  
JOB TITLE: General Superintendent

LICENSES AND CERTIFICATIONS: OSHA 10

TOTAL YEARS OF EXPERINCE: 5 years

TOTAL YEARS WITH CURRENT FIRM: 5 years

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM: Overlooks

Many of our current projects and ensures that everything runs smoothly, while dealing with daily operations involving transportation of equipment and certain crews.

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE

OF TIME ALLOCATED FOR EACH: PEC Liberty Hill WH expansion - 20%

NAME: Jason Reeves  
JOB TITLE: vice President

LICENSES AND CERTIFICATIONS: OSHA 30

TOTAL YEARS OF EXPERINCE: 5 years

TOTAL YEARS WITH CURRENT FIRM: 4 years

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM: Dealing

directly w: the the customer and fulfilling their needs for each project. Also, helping out the estimating team. Some projects include:

- Lampasas Business Park - \$2.7 million

- Brushy Mountain - \$4.6 Million
- Blessing Ranch - \$750 Thousand

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: N/A

NAME: Kenny Warr  
 JOB TITLE: President / Owner

LICENSES AND CERTIFICATIONS: OSHA 10

TOTAL YEARS OF EXPERIENCE: 27 Years

TOTAL YEARS WITH CURRENT FIRM: 10 Years

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM: Previously the VP of operations and CO-founder of Sprint Energy. Now is President and owner of Gage & Code Construction, and managing daily operations.

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: N/A

**NAME:** zach cason  
**JOB TITLE:** Project Manager

**LICENSES AND CERTIFICATIONS:** OSHA 30

**TOTAL YEARS OF EXPERINCE:** 10 years

**TOTAL YEARS WITH CURRENT FIRM:** 2 years

**RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.**

**IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM:** Managing

all aspects of a project that is given to him. Making sure that everything runs smoothly with the job and that it is getting done in a timely manner. His previous employment was with pro dirt Services where he was vice president of construction. He managed the day to day operations of all estimating personell, site work crews, utility crews, and Comenercial site work.

**LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE**

**OF TIME ALLOCATED FOR EACH:** City of Round Rock - south creek

channel - 20%

EXHIBIT D

Alternates

NONE

EXHIBIT E  
ALLOWANCES

None

EXHIBIT F



### SECTION 00 42 44 - UNIT PRICE PROPOSAL FORM - CSP

City of Denton - Solid Waste & Recycling

901-B Texas Street

Denton, TX 76209

<Purchasing Agent>/Purchasing Dept.

From: *Arturo Garcia*

PROJ.: **Public Disposal Facility Repairs**

RFP:  
ENG  
PMO:

**OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL**

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
1	01-70-00	Mobilization/ Demobilization	LS	1	\$ 55,035.00	\$ 55,035.00
2	02-41-13	Demolition	LS	1	\$ 65,000.00	\$ 65,000.00
3	30-30-00	Temporary Shoring	LS	1	\$ 30,000.00	\$ 30,000.00
4	32-11-33	Cement Treated Base	CY	41	\$ 300.00	\$ 12,300.00
5	03-30-00	Cast-in-place Concrete	LS	1	\$ 160,000.00	\$ 160,000.00
6	13-00-00	Metal Chutes	LS	1	\$ 220,000.00	\$ 220,000.00
7	34-80-00	Metal Litter Fence Poles	LS	1	\$ 10,000.00	\$ 10,000.00
8						\$ -
9						\$ -
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29						\$ -
30						\$ -
TOTAL BASE PROPOSAL:						\$552,335.00

Alternate Proposal

1A					\$ -	\$ -
2A					\$ -	\$ -
3A					\$ -	\$ -
TOTAL ALT. Proposal:						\$0.00

**TOTAL BASE PLUS ALTERNATE PROPOSAL: \$552,335.00**

<b>Public Disposal Facility Repairs</b>	<b>TOTAL PROPOSAL: \$552,335.00</b>
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EXHIBIT G  
INITIAL SCHEDULE OF VALUES

NONE

# EXHIBIT H

ID	Task Mode	Task Name	Duration	Start	Finish	Gantt Chart																											
						February 2026														March 2026							April 2026						
1		<b>Public Disposal Facility Repair</b>	<b>51 days</b>	<b>Mon 2/2/26</b>	<b>Mon 4/13/26</b>	[Gantt bar for Task 1]																											
2		Mobilization	1 day	Mon 2/2/26	Mon 2/2/26	[Gantt bar for Task 2]																											
3		Temporary Shoring	3 days	Tue 2/3/26	Thu 2/5/26	[Gantt bar for Task 3]																											
4		Demolition	10 days	Fri 2/6/26	Thu 2/19/26	[Gantt bar for Task 4]																											
5		Cement Treated Base	3 days	Tue 3/3/26	Thu 3/5/26	[Gantt bar for Task 5]																											
6		Cast in Place Concrete	15 days	Fri 2/20/26	Thu 3/12/26	[Gantt bar for Task 6]																											
7		Metal Chutes	20 days	Fri 3/13/26	Thu 4/9/26	[Gantt bar for Task 7]																											
8		Metal Litter Fence Poles	2 days	Fri 4/10/26	Mon 4/13/26	[Gantt bar for Task 8]																											

Project: schedule  
Date: Tue 12/2/25

Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			

EXHIBIT I  
ESCROW AGREEMENT

NONE



EXHIBIT K

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**SECTION 00 41 01**  
**PROPOSAL FORM - CSP**

TO: City of Denton  
c/o: Purchasing Division  
901-B Texas Street  
Denton, Texas 76209

FOR: CSP 8915 – Public Disposal Facility Repairs

**1 Enter into Agreement**

The undersigned Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with City in the form included in the Proposal Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Unit Price Proposal and within the Contract Time indicated in this Proposal and in accordance with the other terms and conditions of the Contract Documents.

**2 OFFEROR Acknowledgements and Certification**

- 2.1 In submitting this Proposal, Offeror accepts all of the terms and conditions of the INVITATION TO OFFERORS and INSTRUCTIONS TO OFFERORS, including without limitation those dealing with the disposition of Offeror’s Bond.
- 2.2 Offeror is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.
- 2.3 Offeror certifies that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- 2.4 Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal.
- 2.5 Offeror has not solicited or induced any individual or entity to refrain from proposing.
- 2.6 Offeror has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Agreement. For the purposes of this Paragraph:
  - a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process.
  - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process to the detriment of City (b) to establish proposal prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.
  - c. "collusive practice" means a scheme or arrangement between two or more Offerors, with or without the knowledge of City, a purpose of which is to establish proposal prices at artificial, non-competitive levels.
  - d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

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2.7 The Offeror acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

**3 Time of Completion**

3.1 The Work will be Substantially Complete as defined in the General Conditions within 90 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.2 The Work will be complete for Final Acceptance within 120 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 8 of the General Conditions.

3.3 Offeror accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable), Substantial Completion, and Final Acceptance within the times specified in the Agreement.

**4 Attached to this Proposal**

4.1 The following documents are attached to and made a part of this Proposal:

- a. Section 00 35 14 – Conflict of Interest Affidavit – CSP
- b. Section 00 41 01 – This Proposal Form – CSP
- c. **Section 00 42 44 – Unit Price Proposal Form – CSP – Excel Electronic Copy (either included in the hard copy Proposal, or submitted via Ionwave)**
- d. Section 00 43 14 – Required Offeror’s Bond – CSP, issued by a surety meeting the requirements of Paragraph 11.4 of the General Conditions.
- e. Section 00 43 38 – Proposed Subcontractors Form – CSP
- f. Section 00 43 39 – Vendor Compliance to State Law Non-Resident Offeror – CSP
- g. Section 00 45 14 – Safety Record Questionnaire – CSP
- h. Section 00 45 27 – Contractor Compliance with Workers Compensation Law – CSP
- i. Section 00 45 44 – Corporate Resolution of Authorized Signatories – CSP
- j. Any additional documents required by Paragraph 12 of Section 00 21 16 – Instructions to Offerors

**5 Total Proposal Amount**

5.1 Offeror will complete the Work in accordance with the Contract Documents for the following proposal amount. In the space provided below, please enter the total proposed amount for this project. This figure will be read publicly by the City at the proposal opening.

5.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

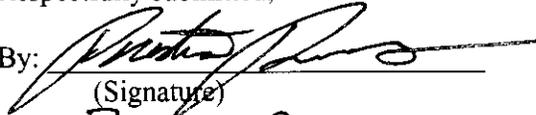
Total Proposal Amount:         \$ 552,335.00

1 **6 Proposal Submittal**

2  
3 6.1 It is understood by Offeror that submission of the total proposal amount is only one of the  
4 factors for the City's evaluation process, and that any award of contract will be based on  
5 the complete evaluation of the Proposal and Offeror by City under the terms provided in  
6 the Instructions to Offerors or any validly issued amendments or addenda.

7  
8 6.2 This Proposal is submitted on January 7<sup>th</sup>, 2026 by the entity  
9 named below.

10  
11  
12 Respectfully submitted,

13  
14 By:   
15 (Signature)

16  
17 Preston Reeves  
18 (Printed Name)

19  
20 Title: Estimator

21  
22 Company: Gage and Cade Construction

23  
24 Address: 1107 CR 264  
25 Bertram, TX 78605

26  
27 State of Incorporation: TX

28  
29 Email: preston@gageandcadeconstruction.com

30  
31 Phone: 572-734-5869

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	PR
Addenda No. 2:	PR
Addenda No. 3:	
Addenda No. 4:	
Addenda No. 5:	

32 **END OF SECTION**

"General Decision Number: TX20250243 03/14/2025

Superseded General Decision Number: TX20240243

State: Texas

Construction Type: Building

County: Denton County in Texas.

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

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

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$17.75 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.</li> </ul>
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. 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 that contract in 2025.</li> </ul>

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

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

Modification Number	Publication Date
0	01/03/2025
1	03/14/2025

ASBE0021-011 06/01/2023

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)....	\$ 31.32	7.52

\* BOIL0074-003 01/01/2025

	Rates	Fringes
BOILERMAKER.....	\$ 33.17	24.92

CARP1421-002 10/01/2023

	Rates	Fringes
MILLWRIGHT.....	\$ 32.02	11.27

\* ELEV0021-006 01/01/2025

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 51.93	38.435+a+b

FOOTNOTES:

A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

B. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR (1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 32.35	13.10

IRON0263-005 06/01/2024

	Rates	Fringes
IRONWORKER (ORNAMENTAL AND STRUCTURAL).....	\$ 28.64	7.93

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

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

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

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

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

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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.

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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"

**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.**

GAGE & CADE CONSTRUCTION, LLC

**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:

*Jason Reeves*

1/12/2026

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 3<sup>rd</sup> 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: 36C11A82-F5AD-4ABD-96EA-846F34496760  
Subject: Please DocuSign: City Council Contract 8915 Public Disposal Facility Repairs  
Source Envelope:  
Document Pages: 127  
Certificate Pages: 6  
AutoNav: Enabled  
Envelopeld Stamping: Enabled  
Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:  
Crystal Westbrook  
901B Texas Street  
Denton, TX 76209  
crystal.westbrook@cityofdenton.com  
IP Address: 198.49.140.10

## Record Tracking

Status: Original  
1/8/2026 8:12:50 AM  
Holder: Crystal Westbrook  
crystal.westbrook@cityofdenton.com  
Location: DocuSign

## Signer Events

Crystal Westbrook  
crystal.westbrook@cityofdenton.com  
Senior Buyer  
City of Denton  
Security Level: Email, Account Authentication  
(None)

## Signature

**Completed**  
  
Using IP Address: 198.49.140.10

## Timestamp

Sent: 1/8/2026 8:30:53 AM  
Viewed: 1/8/2026 8:31:02 AM  
Signed: 1/8/2026 8:34:44 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell  
lori.hewell@cityofdenton.com  
Purchasing Manager  
City of Denton  
Security Level: Email, Account Authentication  
(None)

  
Signature Adoption: Pre-selected Style  
Using IP Address: 198.49.140.10

Sent: 1/8/2026 8:34:47 AM  
Viewed: 1/8/2026 9:57:24 AM  
Signed: 1/8/2026 9:59:39 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Leah Bush  
leah.bush@cityofdenton.com  
Security Level: Email, Account Authentication  
(None)

  
Signature Adoption: Pre-selected Style  
Using IP Address: 198.49.140.10

Sent: 1/8/2026 10:21:18 AM  
Viewed: 1/9/2026 5:02:14 PM  
Signed: 1/12/2026 9:40:58 AM

**Electronic Record and Signature Disclosure:**  
Accepted: 1/9/2026 5:02:14 PM  
ID: e5b807d2-e5fa-4042-a056-b43997ed051e

Jason Reeves  
jason@gageandcadeconstruction.com  
Senior Vice President  
Security Level: Email, Account Authentication  
(None)

  
Signature Adoption: Pre-selected Style  
Using IP Address: 162.251.9.31

Sent: 1/12/2026 9:41:01 AM  
Viewed: 1/12/2026 9:42:50 AM  
Signed: 1/12/2026 9:43:49 AM

**Electronic Record and Signature Disclosure:**  
Accepted: 1/12/2026 9:42:50 AM  
ID: 3d1c833c-f923-48f8-a5f3-842bee4d0d2a



Carbon Copy Events	Status	Timestamp
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**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)



Sent: 1/12/2026 10:07:34 AM  
Viewed: 1/12/2026 3:43:08 PM

**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

Arturo Garcia  
Arturo.Garcia@cityofdenton.com  
Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Accepted: 8/6/2025 10:00:39 AM  
ID: df46fb8c-c5d0-4710-a20b-1eba9b4b97ce

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	1/8/2026 8:30:53 AM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**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"> <li>•Allow per session cookies</li> <li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li> </ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.