ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH BEAN ELECTRICAL, LLC, EAR TELECOMMUNICATIONS LLC DBA EAR TC, DURABLE SPECIALTIES, INC., AND MASTEC NORTH AMERICA, INC., FOR TRAFFIC SIGNAL CONSTRUCTION SERVICES FOR THE TRAFFIC DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8801 – AWARDED TO BEAN ELECTRICAL, LLC., EAR TELECOMMUNICATIONS LLC DBA EAR TC, DURABLE SPECIALTIES, INC., AND MASTEC NORTH AMERICA, INC. FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF $7,100,000.00).

WHEREAS, Bean Electrical, LLC, EAR Telecommunications LLC dba EAR TC, Durable Specialties, Inc., and MasTec North America, Inc., the professional services providers (the "Provider") set forth in this ordinance, are being selected as the most highly qualified on the basis of their demonstrated competence and qualifications to perform the proposed professional services; and

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

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is authorized to enter into the service contracts attached hereto with Bean Electrical, LLC, EAR Telecommunications LLC dba EAR TC, Durable Specialties, Inc., and MasTec North America, Inc., for traffic signal construction services for the Traffic Department.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton, Texas 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 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

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

	Aye	**Nay**	**Abstain**	**Absent**
Mayor Gerard Hudspeth:	_____	_____	_____	_____
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 _____, 2025.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

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Docusign City Council Transmittal Coversheet

RFQ	8801
File Name	Prequalification for Traffic Signal Construction- Bean Electric
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

DS
LH

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CONTRACT BY AND BETWEEN CITY OF DENTON, TEXAS AND BEAN ELECTRICAL, LLC (CONTRACT 8801)

THIS CONTRACT is made and entered into this date _____, by and between **Bean Electrical, LLC** a Texas Limited Liability Company, whose address is 821 E. Enon Fort Worth, TX 76140 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide products and/or services in accordance with the City's document RFQ 8801 – Prequalification for Traffic Signal Construction Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFQ 8801 **(Exhibit "B" on File at the Office of the Purchasing Agent);**
(c) General Provisions – Standard Terms and Conditions **(Exhibit "C");**
(d) Payment and Performance Bond Requirements **(Exhibit "D");**
(e) Insurance Requirements **(Exhibit "E");**
(f) Certificate of Interested Parties Electronic Filing **(Exhibit "F");**
(g) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "G");**

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

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.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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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.

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.

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.

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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR

Signed by:
BY: Bobby Webb
AUTHORIZED SIGNATURE

Printed Name: Bobby Webb

Title: Regional President

8175617400
PHONE NUMBER

bobby.webb@lumin8.com
EMAIL ADDRESS

2025-1327571
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
BY: Marcella Lunn
4B070831B4AA438...

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

Signed by:
Scott McDonlald
SIGNATURE

Scott McDonlald
PRINTED NAME

Director
TITLE

Development Services
DEPARTMENT

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Exhibit A
Special Terms and Conditions

1. Total Contract Amount
Bean Electrical, LLC is pre-qualified for RFQ 8801 – Traffic Signal Construction Services. All pre-qualified contractors will be issued a Request for Cost that defines the scope of work, project material list, and project timeline dates. The pre-qualified contractors will have (5) days to respond to such Request for Cost. Thereafter, the City will select the pre-qualified contractor with the lowest price and ability to meet the City's timeline schedule requirements. If a response to the Request for Cost request is not received in the applicable time period, such pre-qualified contractor will be disqualified from that Request for Cost. The cumulative contract total for all awarded projects to all pre-qualified contractors for contract 8801 shall not exceed $7,100,000.

2. Contract Terms
The contract term will be three (3) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. Performance Liquidated Damages
Contractor recognizes that time is of the essence of this Agreement and that City will suffer financial loss if the Work is not completed within the times specified in each task order, plus any extension thereof allowed in accordance with Article 8.3 of the General Provisions. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City one thousand dollars ($1,000) for each day that expires after the time specified in each task order for Final Acceptance until the City issues the Final Letter of Acceptance.

4. Post Award Additional Requirements
Pre-Construction Meeting: Prior to commencement of the services, the City and the Contractor will conduct a pre-construction meeting to review the overall scope, schedule, deliverables, planning process, and to ensure that all relevant parties to the project are introduced.

List of Subcontractors: Prior to commencement of the services, the respondent awarded the task order will submit to the City for approval a list of all Subcontractors, and/or his major Subcontractors, proposed to use. This list will include each Subcontractor's correct name, mailing address and phone number.

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Contractor's Superintendent: The Contractor shall submit the name and qualifications of the person designated as Project Superintendent within ten (10) days of the receipt of the Notice of Award Letter.

Environmental Hazards: There are no known safety or environmental hazards existing on the project site at the time of issue of this solicitation. The City does not warrant or guarantee against the possibility that safety or environmental hazards or potential hazards may exist at the City's facilities. The Contractor shall be responsible for identifying any hazardous conditions and notifying the City verbally of such conditions as soon as possible after discovery and shall follow up in writing within 10 days of such discovery. The costs for necessary investigations or any potential corrective actions will be negotiated between the City and the Contractor.

Contractor Standards of Performance: The contractor shall prosecute the work diligently with skilled craftsmen and with state-of-the-art methods to complete the work within the time stated in the Request for Cost or such time extensions as may be granted.

Monthly Reports: The Contractor awarded the task order shall provide to the City of Denton, detailed reports of daily work conditions, daily man power availability, equipment problems, and work accomplished on a monthly basis.

Safety: All contractors to the City of Denton are required to ensure absolute safety standards are applied and enforced. The City of Denton will not be responsible for individual contractor safety, and the awarded contractor shall not hold the City of Denton responsible. Known hazards shall immediately be reported to the Project Manager and all safety precautions shall be taken to prevent potential safety issues from occurring.

5. Disposal of Material

All costs associated with the removal of trash and debris, including but not limited to rental of special equipment, open top containers, dumpsters, and trailers as well as payment of landfill fees, must be included in the unit pricing.

a) The City of Denton is the EXCLUSIVE provider of Solid Waste Services for the City of Denton. Consistent with the City of Denton Code of Ordinances: Ord. No. 23-386
   a. All Waste must be transported to the City of Denton Landfill (1527 S Mayhill Rd., Denton TX) for Disposal
   b. Contractor must use Contractor Employees and haul materials in contractor-owned equipment, should they wish to haul material themselves for disposal at the City of Denton Landfill.
   c. Should the Contractor choose to use a third party to supply and haul containers to the landfill, the Contractor MUST contract with the City of Denton, Solid Waste and Recycling Department to provide equipment and services. Cost may be found online at https://tx-denton.civicplus.com/DocumentCenter/View/4255/Fiscal-Year-2024---2025-Solid-Waste-Rate-Ordinance?bidId=
   d. Service requests are made to the City of Denton Customer Service by calling 940-349-8400.

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EXHIBIT C
GENERAL PROVISIONS- TERMS AND CONDITIONS FOR FACILITY CONSTRUCTION SERVICES

Invoices, Payments, and Releases

1. INVOICES AND PAYMENT PROCESSING:

Payment processing: The City review, inspection, and processing procedures for invoices ordinarily require thirty (30) days after receipt of invoices, materials, or services. Proposals which call for payment before thirty (30) days from receipt of invoice, or cash discounts given on such payment, will be considered only if, in the opinion of the Purchasing Manager, the review, inspection, and processing procedures can be completed as specified. It is the intention of the City of Denton to make payment within thirty (30) days after receipt of valid invoices for which items or services have been received unless unusual circumstances arise. The thirty (30) day processing period for invoices will begin on the date the invoice is received or the date the items or services are received, **whichever date is later**.

Direct deposit for payments: Prime Contractors are encouraged to arrange for receiving payments through direct deposit. Information regarding direct deposit payments is available from the City of Denton Purchasing website: www.dentonpurchasing.com.

Invoices: Invoices shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299 with a copy to the attention of Pritam Deshmukh, City of Denton Traffic Department emailed to pritam.deshmukh@cityofdenton.com. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.** Invoices for partial payments on construction projects should normally be presented for payment within the first five (5) days of the month, and submitted on the Pay Application Form.

2. TAX EXEMPTION:

The City of Denton qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. Any Prime Contractor performing work under this Contract for the City of Denton may purchase materials and supplies and rent or lease equipment sales tax free. This is accomplished by issuing exemption certificates to suppliers. Certificates must comply with State Comptroller's ruling #95-0.07 and #95-0.09.

3. PAYMENTS TO CONTRACTORS:

A. Upon presentation of valid invoices, which should be within the first week of each month, the Owner shall make partial payments to the Prime Contractor for construction accomplished during the preceding calendar month on the basis of completed construction certified to by the Prime Contractor and approved by the Owner and Architect/Engineer solely for the purposes of payment. Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety-five percent (95%) of each payment request approved during the construction of the project shall be paid by the Owner to the Prime Contractor prior to completion of the Project. Upon the approval by the Owner of the Prime Contractor's "Final Invoice for Payment" showing the total cost of the construction performed, the Owner shall make payment to the Prime Contractor of all

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amounts to which the Prime Contractor shall be entitled there under which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of completion of construction of the Project, as specified in the Final Invoice for Payment, unless withheld because of the fault of the Prime Contractor.

B. The Prime Contractor shall be paid on the basis of the percentage of the work actually completed for each construction item. The total amount paid for periodic billings shall not exceed the maximum Contract price for the construction of the project as set forth in the Contract, unless such excess shall have been approved in writing by the Purchasing Agent as part of a change order.

C. No payment shall be due while the Prime Contractor is in default in respect of any of the provisions of this Contract, and the Owner may withhold from the Prime Contractor the amount of any claim by any third party against either the Prime Contractor or the Owner based upon an alleged failure of the Prime Contractor to perform the work hereunder in accordance with the provisions of this Contract. This includes, without limitation, the alleged failure of the Prime Contractor to make payments to subcontractors.

4. RELEASE OF LIENS AND CERTIFICATE OF CONTRACTOR:

Upon award of the Contract, the Prime Contractor shall inform the Owner of the subcontractors and material sources that will be used. Upon the completion by the Prime Contractor of the construction of the Project, but prior to final payment to the Prime Contractor, the Prime Contractor shall deliver to the Owner releases of all liens, and of rights to claim any lien, from all manufacturers, materialmen and subcontractors furnishing services or materials for the Project, to the effect that all materials or services used on or for the Project have been paid for and indicating that the Owner is fully released from all such claims.

5. PAYMENTS TO MATERIALMEN AND SUBCONTRACTORS:

The Prime Contractor shall pay each materialman, and each subcontractor, if any, not later than five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Contractor for and on account of materials furnished or construction performed by each materialman or each subcontractor.

6. REMEDIES:

A. Completion of Prime Contractor's Default
If default shall be made by the Prime Contractor or by any subcontractor in the performance of any of the terms of this proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Prime Contractor and the Surety or Sureties upon the Prime Contractor's bond or bonds a written notice requiring the Prime Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Prime Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner and/or Architect/Engineer shall be made by the Prime Contractor or its Surety or Sureties, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Prime Contractor, and the Prime Contractor and its Surety or Sureties shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Prime Contractor or any

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of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Prime Contractor may have against third persons in connection with this Contract and for such purpose the Prime Contractor does hereby assign, transfer and set over unto the Owner all such rights claims and demands.

B. Cumulative Remedies

Every right or remedy herein conferred upon or reserved to the Owner shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election. Provided, however, that the provisions of the **REMEDIES SECTION** shall be the exclusive measure of damages for failure by the Prime Contractor to complete the construction of the Project within the time herein agreed upon.

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CITY OF DENTON GENERAL CONDITIONS FOR CONSTRUCTION
ARTICLE 1 GENERAL PROVISIONS

GENERAL DEFINITIONS

1.1 THE FOLLOWING DEFINITIONS APPLY THROUGHOUT THESE GENERAL CONDITIONS AND TO THE OTHER CONTRACT DOCUMENTS:

a) THE CONTRACT DOCUMENTS

The Contract Documents consist of the formal Building Construction Services Agreement between the Owner and the Prime Contractor, these General Conditions and other supplementary conditions included by special provisions or addenda, drawings, specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract, and Amendments issued after execution of the Contract. For purposes of these General Conditions, an Amendment is:

(1) a written Supplemental Agreement to the Contract signed by authorized representatives of both parties;

(2) a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1(b) and Subparagraph 7.1(e); or

(3) a written order for a minor change in the Work issued by the Architect/Engineer as described in Paragraph 7.3.

The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Prime Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Prime Contractor.

b) THE CONTRACT

The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and made a part of the formal Building Construction Services Agreement between the Owner and the Prime Contractor by reference in this Paragraph and Paragraph 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Prime Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

(1) between the Architect/Engineer and Prime Contractor;

(2) between the Owner and a Subcontractor or -subcontractor; or

(3) between any persons or entities other than the Owner and Prime Contractor.

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The Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect/Engineer's duties.

c) THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Prime Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Prime Contractor is responsible, to fulfill the Prime Contractor's obligations. The Work may constitute the whole or a part of the Project.

d) THE PROJECT

The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

e) THE DRAWINGS

The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, 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, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

g) THE PROJECT MANUAL

The Project Manual is the volume or volumes which contain the bidding requirements, sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

h) ALTERNATE

An Alternate is a variation in the Work on which the Owner requires a price separate from the City Building General Conditions Base Bid. If an Alternate is accepted by the Owner,

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the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted prior to any Work under the alternate being performed or materials delivered to the Project site, the Owner will be entitled to a credit in the full value of the alternate as priced in the Prime Contractor's Bid.

i) BASE BID

The Base Bid is the price quoted for the Work before Alternates are considered.

j) HAZARDOUS SUBSTANCE

The term Hazardous Substance is defined to include the following:

(1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable;

(2) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

(3) radon;

(4) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

(5) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

(6) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(7) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

(8) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

k) OTHER DEFINITIONS

As used in the Contract Documents, the following additional terms have the following meanings:

(1) "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;

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(2) "shall" means the action of the party to which reference is being made is mandatory;

(3) "as required" means as prescribed in the Contract Documents; and

(4) "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.2 EXECUTION, CORRELATION AND INTENT

(a) The Building Construction Services Agreement shall be signed by duly authorized representatives of the Owner and Prime Contractor as provided in the Agreement.

(b) Execution of the Building Construction Services Agreement by the Prime Contractor is a representation that the Prime Contractor has visited the site, has become familiar with local conditions, including but not limited to subsurface conditions, under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

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

(d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Prime Contractor in dividing the Work among Subcontractor(s) or in establishing the extent of Work to be performed by any trade.

(e) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

(f) The Drawings and Specifications are intended to agree with one another, and Work called for by Drawings and not mentioned in Specifications, or vice versa, shall be furnished as if set forth by both. Specifications shall govern materials, methods and quality of work. In the event of a conflict on the Drawings between scale and dimension, figured dimensions shall govern over scale dimensions and large scale drawings shall govern over small scale drawings. Conflict between two or more dimensions applying to a common point shall be referred to the Architect/Engineer/Engineer for final adjustment. If discrepancies or conflicts occur within or between the Drawings and Specifications regarding the Work, or within or between other Contract Documents, the Prime Contractor shall not perform such Work without having obtained a clarification from the Architect/Engineer and resolution by the Owner. The Owner's decision as to the appropriate resolution of a conflict or discrepancy shall be final. Should the Drawings or the Specifications disagree within themselves or with each other; the Base Bid will be based on the most expensive combination of quality and quantity of Work indicated.

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(g) Deviations from Contract Documents shall be made only after written approval is obtained from Architect/Engineer and Owner, as provided in Article 7.

(h) The intention of the Contract Documents is to include all materials, labor, tools, equipment, utilities, appliances, accessories, services, transportation, and supervision required to completely perform the fabrication, erection and execution of the Work in its final position.

(i) The most recently issued Drawing or Specification takes precedence over previous issues of the same Drawing or Specification. In the event of a conflict, the order of precedence of interpretation of the Contract Documents is as follows:

(1) Amendments (see Paragraph 7.2 for order of precedence between Amendments);

(2) the Building Construction Services Agreement;

(3) addenda, with those addenda of later date having precedence over those of an earlier date;

(4) the Supplementary General Conditions and Special Provisions, if any;

(5) the General Conditions for Building Construction;

(6) 0the Specifications and Drawings.

1.3 OWNERSHIP AND USE OF ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications, and copies thereof furnished by the Architect/Engineer are and shall remain the property of the Owner and are, with the exception of the Contract set for each party, to be returned to the Owner upon request at the completion of the Work.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are:

(1) specifically defined in these General Conditions (except the terms defined in Subparagraph 1.1(j), which terms are of common grammatical usage and are not normally capitalized);

(2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses;

(3) the titles of other documents published or used by the Owner as manuals or official policy statements; or

(4) proper nouns or other words required under standard grammatical rules to be capitalized.

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ARTICLE 2 - THE OWNER

2.1 DEFINITION OF OWNER

The Owner is the City of Denton, a Texas municipal corporation, and is identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

(a) The Owner shall furnish the most recent survey describing the physical characteristics, legal limits, utility locations, and a permanent benchmark for the site of the Project. The Owner shall also furnish any environmental site assessments that may have been given to the Owner or conducted for the property upon which the Project is to be constructed. THIS INFORMATION IS FURNISHED TO THE PRIME CONTRACTOR ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.

(b) Except for permits and fees which are provided for in Subparagraph 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.

(c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Prime Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval, as required in Paragraph 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Prime Contractor as scheduled and Prime Contractor is not prepared to accept or act on such information or services, then Prime Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

(d) Unless otherwise provided in the Contract Documents, the Prime Contractor will be furnished electronic copies of the Drawings and Specifications for bid purposes and one hard copy approved by Building Inspections upon execution of the Contract. Prime Contractor may obtain additional copies by paying the cost of additional printing or reproduction.

(e) The obligations described above are in addition to other duties and responsibilities of the Owner enumerated in the Contract Documents and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

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(f) The Owner shall forward all instructions to the Prime Contractor through the Architect/Engineer, except for the Owner's Notice to Proceed and the Owner's decision to carry out Work as described in Paragraph 2.4.

(g) The Owner's employees, agents, and consultants may be present at the Project site during performance of the Work to assist the Architect/Engineer in the performance of the Architect/Engineer's duties and to verify the Prime Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, the equipment used in the performance of the Work, and for purpose of verification of Prime Contractor's Applications for Payment.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Prime Contractor fails to correct any portion of the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or refuses or fails to carry out all or any part of the Work in accordance with the Contract Documents, the Owner, by written order, may order the Prime Contractor to stop the Work, or any portion of the Work, until the cause for the order has been eliminated. The right of the Owner however, to stop the Work shall not create or imply a duty on the part of the Owner to exercise this right for the benefit of the Prime Contractor or any other person or entity. The rights of the Owner under this Paragraph 2.3 shall be in addition to, and not in restriction of, the Owner's rights under Paragraph 12.2.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Prime Contractor fails or refuses to carry out the Work or perform any of the terms, covenants, or obligations of the Contract Documents, and fails or refuses to correct any failure or refusal with diligence and promptness within fourteen (14) days after receipt of written notice from the Owner, the Owner may correct the Prime Contractor's failure or refusal or cause such failure or refusal to be corrected, without affecting, superseding, or waiving any other contractual, legal, or equitable remedies the Owner has, including but not limited to the Owner's termination rights under Article 13. In that case, an appropriate Change Order will be issued deducting the Owner's cost of correction, including Architect/Engineer's compensation for additional services and expenses made necessary by the failure or refusal of the Prime Contractor from payments then or thereafter due to the Prime Contractor. The cost of correction is subject to verification (but not approval) by the Architect/Engineer. If payments then or thereafter due the Prime Contractor are not sufficient to cover the cost of correction, the Prime Contractor shall pay the difference to the Owner.

ARTICLE 3 - THE CONTRACTOR

3.1 DEFINITION OF CONTRACTOR

The Prime Contractor is the person or business entity identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Prime Contractor" means the Prime Contractor or the Prime Contractor's authorized employees or representatives.

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3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

(a) The Prime Contractor shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Architect/Engineer in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Prime Contractor may discover. The Prime Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Prime Contractor will be held responsible for any subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the Prime Contractor continues to work on an item where an inconsistency, ambiguity, error, omission, conflict, or discrepancy exists without obtaining such clarification or resolution or commences an item of the Work without giving written notice of an error, omission, conflict, or discrepancy that might have been avoided by the check, study, and comparison required above, it shall be deemed that the Prime Contractor bid and intended to execute the more stringent, higher quality, or state of the art requirement, or accepted the condition "as is" in the Contract Documents, without any increase to the Contract Sum or Contract Time. The Prime Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Prime Contractor's failure to give notice of and obtain a clarification or resolution of any error, omission, conflict, or discrepancy, without any right to any increase to the Contract Sum or Contract Time.

(b) The Prime Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

(a) The Prime Contractor shall supervise and direct the Work, using the Prime Contractor's best skill and attention. The Prime 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, unless the Contract Documents set forth specific instructions concerning these matters.

(b) The Prime Contractor shall be responsible to the Owner for the acts and omissions of the Prime Contractor's employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Prime Contractor, or with any Subcontractor, and all other persons or entities for which the Prime Contractor is legally responsible. All labor shall be performed by mechanics that are trained and skilled in their respective trades. Standards of work required throughout shall be of a quality that will bring only first class results. Mechanics whose work is unsatisfactory, or who are considered careless, incompetent, unskilled, or otherwise objectionable shall be dismissed promptly from the Work and immediately replaced with competent, skilled personnel. Any part of the Work adversely affected by the acts or omissions of incompetent, unskilled, careless, or objectionable personnel shall be immediately corrected by the Prime Contractor.

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(c) The Prime Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Prime Contractor.

(d) The Prime Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Prime Contractor's responsibility under this paragraph will not in any way eliminate the Architect/Engineer's responsibility to the Owner under the Architect/Engineer/Owner Agreement.

(e) Any Prime Contractor, Subcontractor, Sub-subcontractor, or separate contractor who commences Work over, in, or under any surface prepared by the Owner or by any other contractor, subcontractor, sub-subcontractor or any separate contractor, without the Prime Contractor having given written notice to the Architect/Engineer of the existence of any faulty surface or condition in the surface that prevents achieving the quality of workmanship specified by the Contract Documents and without having obtained the prior approval of the Architect/Engineer and the Owner to proceed is deemed to have accepted the surface or condition in the surface as satisfactory at the commencement of such Work. Any unsatisfactory Work subsequently resulting from such a faulty surface or condition in the surface that was not pre-approved by the Architect/Engineer or the Owner after notice as provided above may be rejected and replacement required, without any increase to the Contract Sum or Contract Time.

(f) All grades, lines, levels, and benchmarks shall be established and maintained on an ongoing basis by the Prime Contractor. The Prime Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Contractor shall verify all grades, lines, levels, and dimensions as indicated on Drawings. He shall report any errors, omissions, conflicts, or inconsistencies to Architect/Engineer before commencing any Work affected by these conditions. Contractor shall establish and safeguard benchmarks in at least two widely separated places and, as Work progresses, establish benchmarks at each level and lay out partitions on rough floor in exact locations as guides to all trades. The Contractor shall, from the permanent benchmark provided by the Owner, establish and maintain adequate horizontal and vertical control.

3.4 LABOR AND MATERIALS

(a) Except as is otherwise specifically provided in the Contract Documents as being the responsibility of the Owner, the Prime 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.

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(b) The Prime Contractor shall enforce strict discipline and good order among the Prime Contractor's employees and all other persons carrying out the Contract. The Prime Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

(c) The Prime Contractor shall give preference, when qualified labor is available to perform the Work to which the employment relates, to all labor hired for the Project in the following order:

(1) residents of the City of Denton, Texas;

(2) residents of the County of Denton, Texas;

3.5 WARRANTY

(a) General Warranty. The Contractor warrants to the Owner that all Work shall be accomplished in a good and workmanlike manner and that all materials and equipment furnished under the Contract will be of good quality, new (unless otherwise specified), and free from faults or defects, and that the Work will otherwise conform to the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective or nonconforming. The Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The commencement date, duration, and other conditions related to the scope of this general warranty are established in Subparagraphs 9.9 (a) and 12.2(b) of these General Conditions. THE GENERAL WARRANTY PROVIDED IN THIS SUBPARAGRAPH IS IN ADDITION TO AND DOES NOT LIMIT OR DISCLAIM ANY OTHER WARRANTY OR REMEDY REQUIRED OR PROVIDED BY LAW OR THE CONTRACT DOCUMENTS AND SUCH WARRANTY SHALL REQUIRE THE CONTRACTOR TO REPLACE DEFECTIVE MATERIALS AND RE-EXECUTE DEFECTIVE WORK THAT IS DISCLOSED BY THE OWNER TO THE CONTRACTOR WITHIN A PERIOD OF TWO (2) YEARS AFTER SUBSTANTIAL COMPLETION OF THE ENTIRE WORK; OR, IF A LATENT DEFECT IS DISCOVERED WITHIN TWO YEARS OF SUBSTATIONAL COMPLETION OF THE ENTIRE WORK.

(b) Special Warranties. The Contractor shall assign to the Owner in writing, as a condition precedent to final payment, the terms and conditions of all special warranties required under the Contract Documents.

3.6 TAXES

The Owner qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the Owner shall not be liable for, or pay the Contractor's cost of, such sales and use taxes which would

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otherwise be payable in connection with the purchase of tangible personal property furnished and incorporated into the real property being improved under the Contract Documents or the purchase of materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for performance of the Contract which is to be completely consumed at the job site. The Contractor shall issue an exemption certificate in lieu of the tax on such purchases.

3.7 PERMITS, FEES AND NOTICES

(a) The Architect/Engineer will apply and arrange for the issuance of the City of Denton Building Permit. The Prime Contractor and Subcontractors will apply and arrange for the issuance of all other required permits, and will not be required to pay a fee for any City of Denton permits required for the Project. The Owner will pay all service extension charges, including tap fees, assessed by the Water Utilities Department.

(b) The Prime Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of governmental entities or agencies applying to performance of the Work.

(c) Except as provided in Subparagraph (d) below, it is not the Prime Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Prime Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Prime Contractor shall promptly notify the Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.

(d) If the Prime Contractor performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Architect/Engineer and the Owner, the Prime Contractor shall assume full responsibility for the Work and shall bear the attributable costs of the correction of the Work and any other Work in place that may be adversely affected by the corrective work.

3.8 ALLOWANCES

(a) The Prime Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for the amounts identified in the Contract and by persons or entities as the Owner may direct, but the Prime Contractor shall not be required to employ persons or entities against which the Prime Contractor makes reasonable objection.

(b) Unless otherwise provided in the Contract Documents:

(1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

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(2) the amount of each allowance shall cover the cost to the Prime Contractor of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts;

(3) the amount of each allowance includes the Prime Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance Work;

(4) 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:

(i) the difference between actual costs and the allowances under Clause (b) (2); and

(ii) changes in Contractor's costs under Clause (b) (3);

(5) the Owner retains the right to review and approve Subcontractors selected by the Prime Contractor to perform work activities covered by allowances.

3.9 SUPERINTENDENT

The Prime Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Prime Contractor, and communications given to the superintendent shall be as binding as if given to the Prime Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to request that the Prime Contractor replace its superintendent at any time and the Prime Contractor will replace said superintendent at the Owner's direction.

3.10 PRIME CONTRACTOR'S CONSTRUCTION SCHEDULES

(a) The Prime Contractor shall, immediately after award of the Contract and before submittal of the first Application for Payment, prepare and submit the construction schedule for the Architect/Engineer's and Owner's information, review, and approval in accordance with the following provisions:

(1) Unless otherwise approved in writing by the Owner, the construction schedule shall not exceed the Contract Time limits currently in effect under the Contract Documents and shall provide for expeditious and practicable execution of the Work.

(2) The construction schedule shall include all shop drawing and submittal data requirements, indicating for each:
(i) the latest date to be submitted by the Prime Contractor; and
(ii) the latest date for approval by the Architect/Engineer.

(3) The construction schedule shall be in the form of a critical path management schedule, and shall indicate each critical task (the "predecessor") of all the major construction activities of the Work in a logical and sequential order (the "project network") which

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requires completion prior to commencement of the task next following (the "successor"). Each task shall be identified with:

(i) actual work time, exclusive of slack time, for accomplishment;

(ii) the latest start date;

(iii) the latest finish date;

(iv) the amount of float associated with each task;

(v) the amount of labor, material, and equipment associated with each task; and

(vi) the percentage of completion as of the date of the current schedule.

(4) The construction schedule shall be revised and updated monthly to reflect the actual status of the Work and shall be submitted with each Application for Payment.

(5) On or before the first day of each month, following the date of commencement of the Work as stated in the notice to proceed, the Prime Contractor shall prepare and submit to the Architect/Engineer and the Owner an up-to-date status report of the progress of the various construction phases of the Work in the form of an updated construction schedule. This status report shall consist of a time scale drawing indicating actual progress of the various phases of the Work and the percentage of completion of the entire Work. The original construction schedule shall be updated or changed to indicate any adjustments to the Contract Time granted by the Owner. The updated schedule must be submitted with the Prime Contractor's Application for Payment. No such application will be certified without a satisfactory update to the construction schedule.

(6) The construction schedule will also be revised to show the effect of change orders and other events on Contract Time. No request for an increase in Contract Time will be considered unless it is accompanied by a schedule revision demonstrating the amount of time related to the cause of the request. If the Contractor's status schedules reflect that the Prime Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Prime Contractor shall prepare a recovery schedule demonstrating how it intends to bring its progress back within the Contract Time. This recovery schedule shall be in a form acceptable to the Owner.

(7) Costs incurred by the Prime Contractor in preparing and maintaining the required construction schedule, any updated schedule, and any recovery schedule required by the Owner will not be paid as an additional or extra cost and shall be included in the Contract Sum.

(8) The Contract Sum is deemed to be based upon a construction schedule requiring the full Contract Time. NO CLAIM FOR ADDITIONAL COMPENSATION SHALL BE ALLOWED AS A RESULT OF THE PRIME CONTRACTOR BASING HIS BID ON

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AN EARLY COMPLETION SCHEDULE, OR AS A RESULT OF DELAYS AND COSTS ATTRIBUTABLE TO COMPLETION LATER THAN THE PLANNED EARLY COMPLETION DATE.

(b) The Prime Contractor shall also prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Prime Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.

(c) The Prime Contractor shall conform to the most recent schedules approved as to form by the Architect/Engineer and the Owner. Any subsequent revisions made by the Prime Contractor to schedules in effect shall conform to the provisions of Subparagraph 3.10(a)

(d) If the Work falls behind the approved construction schedule, the Prime Contractor shall take such steps as may be necessary to improve his progress, and the Architect/Engineer and the Owner may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, and to submit for approval revised schedules in the form required above in order to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

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, materialmen, manufacturer(s), supplier(s), or distributor(s) 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 which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Paragraph 4.2.

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(e) The Prime Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents 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. Submittals made by the Prime Contractor which are not required by the Contract Documents may be returned without action.

(f) The Prime Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect/Engineer. Work requiring this submittal and review shall be in accordance with approved submittals and any identified exceptions noted by the Architect/Engineer.

(g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Prime Contractor represents that the Prime Contractor has determined and verified materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within submittals with the requirements of the Work and of the Contract Documents. The Prime Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.

(h) The Prime Contractor shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Prime Contractor has specifically informed the Architect/Engineer in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Architect/Engineer, subject to a formal Change Order signed by the Owner, Architect/Engineer and Prime Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Prime Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect/Engineer's approval thereof. Further, notwithstanding any approval of a submittal by the Architect/Engineer, the Prime Contractor shall be responsible for all associated Project costs, including costs of coordination’s, modifications, or impacts, direct or indirect, resulting from any and all substitutions, changes, additions, deletions, omissions, or deviations, whether or not specifically identified by the Prime Contractor to the Architect/Engineer at the time of the above-mentioned submittals, including additional consulting fees, if any, in any and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.

(i) The Prime Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to additional revisions other than those requested by the Architect/Engineer on previous submittals. In the absence of such written notice, the Architect/Engineer’s approval of a resubmission shall not apply to the additional revisions not requested.

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(j) Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.

(k) When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF THE PROJECT SITE

The Prime Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

3.14 CUTTING AND PATCHING

(a) The Prime Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Prime Contractor shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering the construction, or by excavating. The Prime Contractor shall not cut or otherwise alter the construction by the Owner or a separate contractor except with the written consent of the Owner and of the separate contractor; consent shall not be unreasonably withheld. The Prime Contractor shall not unreasonably withhold from the Owner or a separate contractor the Prime Contractor's consent to cutting or otherwise altering the Work.

(c) A "Hot Work Permit" must be obtained from the City of Denton's Facilities Management Department, 869 S. Woodrow Lane, Denton, Texas (940 349-7200) for any temporary operation involving open flames or producing heat and/or sparks. This includes, but is not limited to: Brazing, Cutting, Grinding, Soldering, Torch Applied Roofing and Welding.

3.15 CLEANING UP

(a) The Prime Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon the completion of the Work the Prime Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Prime Contractor's tools, construction equipment, machinery, and surplus materials.

(b) If the Prime Contractor fails to clean up as provided in the Contract Documents, the Owner may, at Owner's option, clean up the Project site, and the Owner's cost of cleaning up shall be charged to the Contractor.

3.16 ACCESS TO WORK

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The Prime Contractor shall provide the Owner and the Architect/Engineer access to the Work in preparation and progress wherever located during the course of construction.

3.17 TESTS AND INSPECTIONS

(a) Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of governmental entities or agencies having jurisdiction over the Work shall be made at appropriate times. Unless otherwise provided, the Prime 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 governmental entity or agency, and the Prime Contractor shall bear all related costs of tests, inspections, and approvals. The Prime Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals which become requirements after bids or proposals are received.

(b) If the Architect/Engineer, the Owner or other public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 3.17(a), the Architect/Engineer will, upon written authorization from the Owner, instruct the Prime Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Prime Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so that the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 3.17(c).

(c) If procedures for testing, inspection, or approval under Subparagraphs 3.17(a) and 3.17(b) reveal deficiencies or nonconformities in the Work, the Prime Contractor shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Architect/Engineer's services and expenses, if any. The Prime Contractor shall bear the costs of any subsequent testing, inspection, or approval of the corrected Work.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Prime Contractor and promptly delivered to the Architect/Engineer.

(e) If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing or inspection.

(f) Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

3.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. CONTRACTOR SHALL

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COMPLETELY DEFEND, INDEMNIFY AND HOLD OWNER AND ARCHITECT/ENGINEER HARMLESS FROM ANY AND ALL LIABILITIES, SUITS OR CLAIMS FOR INFRINGEMENT OF PATENT RIGHTS, REGARDLESS OF WHETHER OR NOT THE OWNER OR THE ARCHITECT/ENGINEER SPECIFIED A PARTICULAR DESIGN, PROCESS OR PRODUCT IN THE CONTRACT DOCUMENTS THAT MAY BE THE SUBJECT OF A PATENT INFRINGEMENT OR OTHERWISE ACTIVELY INDUCED OR CONTRIBUTED TO THE PATENT INFRINGEMENT. In the event the Prime Contractor has reason to believe that a particular design, process or product specified infringes a patent, the Prime Contractor shall immediately notify the Owner and the Architect/Engineer of same.

3.19 INDEMNIFICATION

(a) THE PRIME CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT/ENGINEER, HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITIES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE PRIME CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE PRIME CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR OF THE ARCHITECT/ENGINEER, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CONTRACTOR, THE OWNER, AND THE ARCHITECT/ENGINEER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW, AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER THIRD PERSON OR ENTITY.

(b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Prime Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.19 shall not be limited by a limitation on amount or type of damages,

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compensation or benefits payable by or for the Prime Contractor or any Subcontractor, under workers compensation acts, disability benefit acts or other employee benefit acts.

(c) Indemnification under this Paragraph 3.19 shall include, but is not limited to, liability which could result to or be created for the Owner, its officers, agents, or employees, or the Architect/Engineer pursuant to State or Federal laws or regulations relating to pollution of the environment and State or Federal laws or regulations relating to the occupational safety and health of workers. The Prime Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Prime Contractor and that the obligations of the Owner, its officers, agents, and employees, and the Architect/Engineer under the above-mentioned laws and regulations are secondary to those of the Prime Contractor.

ARTICLE 4 - CONTRACT ADMINISTRATION

4.1 THE DESIGN PROFESSIONAL (ARCHITECT/ENGINEER)

(a) The design professional is the person lawfully licensed to practice architecture or engineering or a firm or other business entity lawfully practicing architecture/engineering identified as such in the formal Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect/Engineer" means the Architect/Engineer or the Architect/Engineer's authorized representative. The Owner may, at its option, designate a qualified Owner representative to serve as the Architect/Engineer on the Project instead of an outside firm or person. In such event, the references in these General Conditions that refer to the Architect/Engineer shall apply to the Owner-designated Architect/Engineer representative and the Owner-designated Architect/Engineer representative shall be accorded that same status by the Prime Contractor.

(b) In the event the Architect/Engineer is an outside person or firm and the Architect/Engineer's employment is terminated, the Owner may, at its option, contract with a new outside Architect/Engineer to replace the former, or may designate a qualified Owner representative to serve as the Architect/Engineer. The replacement Architect/Engineer, whether an Owner representative, an independent Architect/Engineer or any other qualified person or entity, shall be regarded as the Architect/Engineer for all purposes under the Contract Documents and shall be accorded that same status by the Prime Contractor. Any dispute in connection with such appointment shall be reviewed and settled by the Owner, whose decision shall be final and binding.

(c) Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect/Engineer's Construction Phase responsibility. Similarly, from time to time the Owner may expand or reduce the Owner's delegation of powers to the Architect/Engineer, with the Owner notifying the Prime Contractor of any such changes. The Architect/Engineer shall not be construed as a third party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth in this Subparagraph (c). In no event, however, shall the Owner have control over charge of, or be responsible for, construction means, methods, techniques,

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sequences, or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of Prime Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2 ARCHITECT/ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION

(a) The Architect/Engineer will administer the Contract as described in the Contract Documents and in accordance with the terms of the Architect/Engineer's agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Prime Contractor, the provisions of the Owner/Architect/Engineer Agreement will be made available to the Prime Contractor.

(b) The Architect/Engineer shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent necessary to personally familiarize themselves with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents. The Architect/Engineer shall not, however, be required to make continuous on-site inspections to check the Work. Field reports of each visit shall be prepared by the Architect/Engineer and submitted to the Owner. The Architect/Engineer shall employ all reasonable measures to safeguard the Owner against defects and nonconformities in the Work. The Architect/Engineer shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Work. The Architect/Engineer will, however, immediately inform the Owner whenever defects or nonconformities in the Work are observed, or when any observed actions or omissions are undertaken by the Prime Contractor or any Subcontractor which are not in the best interests of the Owner or the Project.

(c) The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Prime Contractor's responsibility as provided in Paragraph 4.3. The Architect/Engineer and the Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Prime Contractor, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Prime Contractor is responsible.

(d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Prime Contractor shall endeavor to communicate through the Architect/Engineer. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Prime Contractor.

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Communications by and with separate contractors will be through the Owner. The Prime Contractor shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Architect/Engineer.

(e) Based on the Architect/Engineer's observations and evaluations of the Prime Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Prime Contractor and will issue Certificates for Payment in such amounts.

(f) The Architect/Engineer and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 3.17(b) and 3.17(c), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer to the Prime Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

(g) The Architect/Engineer will review and approve or take other appropriate action upon the Prime Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such reasonable promptness as to not delay the Work or the activities of the Owner, Contractor, or separate contractors. 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 Prime Contractor as required by the Contract Documents. The Architect/Engineer's review of the Prime Contractor's submittals shall not relieve the Prime Contractor of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work as provided in Paragraph 7.3.

(i) The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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 Prime Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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(j) If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more Project representatives to assist in carrying out the Architect/Engineer'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 into the Contract Documents.

(k) The Architect/Engineer will interpret and make recommendations to the Owner concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Architect/Engineer shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Prime Contractor which change the scope of the Work or which modify or change the terms and conditions of any of the Contract Documents.

(l) Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by the Prime Contractor.

(m) The Architect/Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents; provided that the Architect/Engineer has the prior written approval of the Owner.

4.3 CLAIMS AND DISPUTES

(a) Definition; General Notice of Claim Procedure. As used in these General Conditions, a "Claim" means a demand or assertion by one of the parties to the Contract seeking an adjustment of the terms of the Contract Documents, of the Contract Sum, of the Contract Time, or some other relief in respect to the terms of the Contract Documents. The term also includes all other disputes between the Owner and the Contractor arising out of or relating to the Project or the Contract Documents, including but not limited to claims that work was outside the scope of the Contract Documents. The responsibility to substantiate the Claim and the burden of demonstrating compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, WITHOUT EXCEPTION, MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT/ENGINEER AND TO THE OWNER WITHIN FOURTEEN (14) DAYS IMMEDIATELY AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM. Every Claim of the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Prime Contractor by his signature) of the Prime Contractor, verifying the truth and accuracy of the Claim. THE PRIME CONTRACTOR SHALL BE CONCLUSIVELY DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURES AND TIME LIMITS SET OUT IN THIS PARAGRAPH.

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(b) Referral to the Architect/Engineer. Claims, disputes, and other matters in question between the Prime Contractor and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Architect/Engineer for recommendation to the Owner, which recommendation the Architect/Engineer will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Prime Contractor to submit the Claim to the Architect/Engineer for rendering of a recommendation to the Owner shall constitute a waiver of the Claim.

(c) Continuing Contract Performance. Pending final resolution of a claim the Prime Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents.

(d) Claims for Concealed or Unknown Conditions. No adjustment in the Contract Sum or Time associated with concealed or unknown conditions will normally be considered or allowed; provided, however, that the Contract Sum or Time may be adjusted by the Owner in such circumstances only if:

(1) a concealed subsurface condition is encountered in the course of performance of the Work;
(2) a concealed or unknown condition in an existing structure is at variance with conditions indicated by the Contract Documents; or
(3) an unknown physical condition is encountered below the surface of the ground or in an existing structure which is of an unusual nature and materially different from those ordinarily encountered and generally recognized as inherent in the character of the Work; and
(4) a notice of claim with proper and adequate substantiation is presented pursuant to Subparagraph 4.3(a) of these General Conditions; and
(5) the Owner and the Architect/Engineer determine that:

(i) prior to submitting its bid for the Work, the Contractor used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and

(ii) the work caused or required by the concealed or unknown condition at issue can be considered extra work to the extent that additional new Drawings must be prepared and issued and new construction beyond the scope of the Contract Documents is required.

(e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE ARCHITECT/ENGINEER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE PRIME CONTRACTOR AT THE PRIME CONTRACTOR'S OWN RISK. THE OWNER AND THE ARCHITECT/ENGINEER DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.

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(f) Claims for Additional Cost. If the Prime Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided in this Paragraph 4.3 shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. In addition, the Prime Contractor's request for an increase in the Contract Sum for any reason (other than work performed under emergency conditions) shall be made far enough in advance of required work to allow the Owner and the Architect/Engineer a sufficient amount of time, without adversely affecting the construction schedule, to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates or proposals and to negotiate, execute and distribute a Change Order for the required work if the Prime Contractor believes that additional cost is involved for reasons including but not limited to:

(1) a written interpretation from the Architect/Engineer;

(2) a written order for a minor change in the Work issued by the Architect/Engineer;

(3) failure of payment by the Owner;

(4) termination of the Contract by the Owner;

(5) the Owner's temporary suspension of all or any portion of the Work where the Prime Contractor was not at fault; or

(6) other reasonable grounds.

(g) Injury or Damage to Person or Property. If the Prime Contractor suffers injury or damages to person or property because of an act or omission of the Owner, or of any of the Owner's officers, employees or agents, written, sworn-to notice of any claim for damages or injury shall be given as provided in Subparagraph 4.3(a). The notice shall provide sufficient detail to enable the Architect/Engineer and the Owner to investigate the matter.

(h) Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Prime Contractor asserts a claim to the Prime Contractor, that the Prime Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the Prime Contractor to submit and assert the claim against the Owner shall be subject to:

(1) the requirements of Paragraph 4.3 of these General Conditions; and

(2) the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Prime Contractor to seek and assert such claim against the Owner:

(ii) The Prime Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Prime Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Prime

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Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Prime Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Prime Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Prime Contractor in the claim submittal materials.

(ii) The Prime Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Prime Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Prime Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed by the Contractor to be valid.

(iii) The Subcontractor making the claim to the Prime Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Prime Contractor in the claim submittal materials made by Contractor to the Owner..

(3) Any failure of the Prime Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim against Owner.

(4) Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or by applicable law.

(i) Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part. The Prime Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If the Prime Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Prime Contractor to develop a recovery schedule as described in Paragraph 3.10 or to accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as the Owner may reasonably direct and, upon receipt, the Prime Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Prime Contractor to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).

(2) In the event that the Prime Contractor is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance

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with Subparagraph 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to the Prime Contractor provided within fourteen (14) days after receipt of the Prime Contractor's Claim. If the Owner denies the Prime Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Prime Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(3) If the Prime Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by the Owner if not for the need and right to accelerate, the Prime Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Prime Contractor under Subparagraph 4.3(a) above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance; provided however, not to exceed five (5%) per cent, will be allowed on the claimed acceleration costs. NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM. The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (i)(3).

(i) Waiver of Claims; Final Payment. The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

(1) claims, security interests, purported liens, or other attempted encumbrances arising out of the Contract and remaining unsettled;

(2) defective or nonconforming Work appearing after Substantial Completion;

(3) latent defects, as defined in Subparagraph 12.2(d), appearing after Final Completion; or

(4) the terms of general and special warranties required by the Contract Documents or allowed or implied by law.

(k) THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING.

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(l) No Waiver of Governmental Immunity. NOTHING IN THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY APPLICABLE STATE LAW.

ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS OF SUBCONTRACTOR

(a) A Subcontractor is person or entity who has a direct Contract with the Prime Contractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Prime Contractor by purchase or lease for use in performance of or incorporation into the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(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 Project site or to supply materials or equipment to the Subcontractor or another Sub-subcontractor by purchase or lease for use in performance of or incorporation into the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

(a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Prime Contractor and the Owner, the Prime Contractor shall furnish to the Architect/Engineer in writing, for acceptance by the Owner and the Architect/Engineer, a list of the names, addresses, telephone numbers, M/WBE certification numbers (where applicable), and type of work of the Subcontractors (including those who are to furnish materials or equipment fabricated to a special design), proposed for the principal portions of the Work, including furnishings when made a part of the Contract. The Prime Contractor shall immediately notify the Owner in writing of any changes in the list as they occur. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.

(b) The Prime Contractor shall not Contract with a proposed person or entity to whom the Owner or Architect/Engineer has made reasonable and timely objection.

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(c) Architect/Engineer's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Prime Contractor of his responsibility for performance of Work as called for under the Contract Documents, and shall not provide a basis for any claim for additional time or money on the part of the Prime Contractor. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the Owner or Architect/Engineer. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.

(d) The Prime Contractor shall not change a Subcontractor previously selected if the Owner or Architect/Engineer makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

(a) By appropriate agreement, written where legally required for validity, the Prime Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Prime Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Prime Contractor all the obligations and responsibilities which the Prime Contractor, by the Contract Documents, assumes toward the Owner and the Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Contract Documents (including but not limited to these General Conditions) with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the rights of the Owner and the Architect/Engineer. Where appropriate, the Prime Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Prime Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.

(b) The Prime Contractor is solely responsible for making payments properly to the Prime Contractor’s Subcontractors on the Project. During performance of the Work, the Prime Contractor shall comply with the following additional rules regarding Subcontractor payments:

(1) The Prime Contractor shall submit, beginning with the Second Application and Certificate for Payment, a Subcontractor Payment Report (the "Report") with each Application and Certificate for Payment. The Report shall show all payments made to date by the Prime Contractor (plus existing retainage) to each Subcontractor involved in the Project. The Report shall be made on a form approved and supplied by the Owner. As an alternative to the Report, the Prime Contractor may furnish Affidavits of Payment Received with the Application and Certificate for Payment, which affidavits shall be executed by each Subcontractor owed money and paid by Subcontractor during the previous progress payment period for work or materials furnished on the Project. RECEIPT BY THE OWNER OF THE REPORT OR AFFIDAVITS OF PAYMENT RECEIVED SHALL BE A CONDITION PRECEDENT TO PAYMENT ON ANY APPLICATION FOR PAYMENT .

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(2) If, for any reason, the Prime Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Prime Contractor shall note the amount withheld and further note that the payment is in dispute. The Owner may, in its sole discretion, require the Prime Contractor to document and verify the dispute or other problem in question.

(3) The Owner reserves the right in its sole discretion, to withhold payment to the Prime Contractor pursuant to Paragraph 9.5(a) of the General Conditions, should it appear from the Report, statements of payment received or other information furnished to the Owner that:

(i) the Report has not been properly completed;

(ii) the Prime Contractor has knowingly provided false information regarding payment of any Subcontractor; or

(iii) the Prime Contractor has otherwise failed to make payments properly to any Subcontractor.

(4) THE PRIME CONTRACTOR SHALL NOT HAVE ANY RIGHT TO MAKE A CLAIM FOR ADDITIONAL TIME OR ADDITIONAL COMPENSATION AS A RESULT OF THE OWNER'S OR ARCHITECT/ENGINEER'S ENFORCEMENT OF THIS SUBPARAGRAPH 5.3(b). NO PROVISION OF THIS SUBPARAGRAPH OR ANY OF THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO CREATE A CONTRACTUAL RELATIONSHIP, EXPRESS OR IMPLIED, BETWEEN ANY SUBCONTRACTOR AND EITHER THE OWNER OR THE ARCHITECT/ENGINEER AND SHALL NOT BE CONSTRUED TO MAKE ANY SUBCONTRACTOR OR ANY OTHER PERSON OR ENTITY, A THIRD-PARTY BENEFICIARY OF THE CONTRACT BETWEEN THE OWNER AND THE PRIME CONTRACTOR.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of a termination of this Contract by the Owner under Article 14, the Prime Contractor shall, if requested in writing by the Owner, within fifteen (15) days after the date notice of termination is sent, deliver and assign to Owner, or any person or entity acting on the Owner's behalf, any or all subcontracts made by Prime Contractor in the performance of the Work, and deliver to the Owner true and correct originals and copies of the subcontract documents. In the event assignment is not requested by the Owner, Prime Contractor shall terminate all subcontracts to the extent that Owner has not directed assignment of same and to the extent that they relate to the performance of Work terminated by the notice of termination.

ARTICLE 6 - CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE

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CONTRACTS

(a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Prime Contractor claims that delay or additional cost is involved because of such action by the Owner, the Prime Contractor shall make a claim as provided elsewhere in, and in accordance with the Contract Documents.

(b) When separate Contracts are awarded for different portions of the Project or other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Building Construction Services Agreement with the Owner.

(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 Prime Contractor, who shall cooperate with them. The Prime Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Prime Contractor shall, with the approval of the Owner, make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Prime Contractor, separate contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Prime Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Prime Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Prime Contractor's Change Order proposal is denied by the Owner, the Prime Contractor must submit any Claim pursuant to Paragraph 4.3 of the General Conditions.

(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, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Prime Contractor under these General Conditions, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

(a) The Prime Contractor shall afford the Owner and separate contractors' reasonable opportunity for access to and storage of their materials and equipment and the performance of their activities and shall coordinate the Prime Contractor's construction and operations with the separate contractors as required by the Contract Documents.

(b) If part of the Prime Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Prime Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in the other construction that would

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render it unsuitable for proper execution and results. Failure of the Prime Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Prime Contractor's Work, except as to defects not then reasonably discoverable.

(c) The Owner shall not be liable to the prime Contractor for damages suffered by the Prime Contractor due to the fault or negligence of a separate contractor or through failure of a separate contractor to carry out the directions of the Owner or the Architect/Engineer. Should any interference occur between the Prime Contractor and a separate contractor, the Architect/Engineer or the Owner may furnish the Prime Contractor with written instructions designating priority of effort or change in methods, whereupon the Prime Contractor shall immediately comply with such direction. In such event, the Prime Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Prime Contractor.

(d) The Prime Contractor shall promptly remedy damage wrongfully caused by the Prime Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2(e).

(e) Should the Prime Contractor cause damage to the work or property of any separate contractor on the Project, the Prime Contractor shall, upon due notice, settle with the separate contractor by agreement, if the separate contractor will so settle. If the separate contractor sues the Owner or submits a claim on account of any damage alleged to have been so sustained, the Owner shall notify the Prime Contractor who shall defend such proceedings, at the Prime Contractor's sole expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Prime Contractor shall fully pay or satisfy it and shall reimburse the Owner for any and all attorney's fees and costs which the Owner has incurred.

(f) The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Prime Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project Site and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up, but is not obligated to do so, and Owner shall allocate the cost among those parties responsible, as the Architect/Engineer recommends to be just.

ARTICLE 7 - AMENDMENTS

7.1 CHANGE ORDERS

(a) A Change Order is a written order to the Contractor, signed by the Owner and the Architect/Engineer, issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, or an adjustment to the Contract Time, consistent

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with other applicable provisions of this Contract. The Owner, without invalidating the Contract and without requiring notice of any kind to the sureties, may order changes to the scope of Work under the Contract by additions, deletions, or other revisions, the Contract Sum and Contract Time to be adjusted consistent with other applicable provisions of this Contract. All Change Orders shall be executed on a Change Order form approved by the Owner and the Owner's City Attorney.

(b) In addition to the Owner and the Architect/Engineer, the Contractor shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Contractor refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Architect/Engineer to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Contractor indicates his agreement with all of the changes approved, including the adjustment in the Contract Sum or the Contract Time. EACH CHANGE ORDER SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. The Contractor forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on other Work.

(c) No extra work (except under emergency conditions) or changes shall be made nor shall any substitutions, changes or additions to or omissions or deviations from the requirements of the Drawings and Specifications be made unless pursuant to a written Change Order signed by the Owner and the Architect/Engineer, it being expressly understood that the Owner shall not be liable for the cost of extra work or any substitution, change, addition, omission or deviation from the requirements of the Drawings or Specifications unless the same shall have been authorized in writing by the Owner and the Architect/Engineer in a written change order or other Amendment. The provisions of this Paragraph 7.1 shall control in the event of any inconsistency between such provisions and the other provisions of this Article 7. See Subparagraph 10.3(a) of the General Conditions for Change Orders under emergency conditions.

(d) The method of determining the cost or credit to the Owner for any change in the Work shall be one of the following:

(1) mutual acceptance of a not-to-exceed lump-sum amount properly itemized and supported by sufficient substantiating data to permit evaluation; or

(2) unit prices stated in the Contract Documents or subsequently agreed upon; or

(3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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(4) the force account method provided in Subparagraph 7.1(e)

(e) If the parties cannot agree to one of the methods of calculating cost provided in Clauses (d) (1), (d) (2), or (d) (3), or if the parties agree to a method but cannot agree on a final dollar figure; or if the Contractor for whatever reason refuses to sign the Change Order in question; the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of the Work involved shall then be calculated on the basis of the reasonable jobsite expenditures and savings of those performing the Work attributable to the changes, including a reasonable allowance for overhead and profit, such allowance in any case never to exceed fifteen (15%) per cent. In such case, the Contractor shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Architect/Engineer and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to the Architect/Engineer each day during the performance of force account work, with copies to the Owner.

FAILURE OF THE CONTRACTOR TO SUBMIT THE SWORN-TO ITEMIZED ACCOUNTING DAILY AS REQUIRED HEREIN SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY RIGHT TO DISPUTE THE OWNER'S DETERMINATION OF THE AMOUNT DUE THE CONTRACTOR FOR FORCE ACCOUNT WORK. Costs to be charged under this Subparagraph for force account work are limited to the following:

(1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker’s compensation insurance;

(2) costs of materials, supplies and equipment (but not to include off-site storage unless approved in writing by the Owner), 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 related to the Work; and

(5) additional costs of supervision and field office personnel directly attributable to the changed Work. Pending final determination of cost to the Owner, payment of undisputed amounts on force account shall be included on the Architect/Engineer's Certificate of Payment as work is completed.

(f) The amount of credit to be allowed to the Owner for any deletion of Work or any other change which results in a net decrease of the Contract Sum shall be the amount of actual net cost confirmed by the Architect/Engineer plus the stated percentage for overhead and profit. When both additions and deletions or credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease with respect to that change.

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7.2 SUPPLEMENTAL AGREEMENTS

A written Supplemental Agreement can also be used to implement changes in the Work instead of a Change Order form, including but not limited to situations involving partial occupancy of the Work under Paragraph 9.8, a change made to the Drawings or the Specifications without an increase in the Contract Sum, or special circumstances where it is necessary or more appropriate for the Owner to use a Supplemental Agreement. Written Supplemental Agreements shall have a status equal to that of Change Orders for purposes of priority of Contract Documents interpretation, except that to the extent of a conflict, later Supplemental Agreements in time control over earlier Supplemental Agreements, and the latest Change Order or Supplemental Agreement in time controls over earlier dated Change Orders and Supplemental Agreements. The rules of Subparagraphs 7.1(b) through (f) shall also apply to the negotiation and execution of Supplemental Agreements.

7.3 MINOR CHANGES IN THE WORK

The Architect/Engineer, after notifying the Owner, shall be authorized to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Minor changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly. These written orders shall not be deemed to change or impact the Contract Sum or the Contract Time. Contractor shall have no Claim for any minor change ordered to the Work under this Paragraph 7.3 unless the Contractor submits its change proposal, prior to complying with the minor change ordered and in no event later than ten (10) working days from the date the minor change was ordered, to the Owner for approval.

7.4 TIME REQUIRED TO PROCESS AMENDMENTS

(a) All of the Contractor's responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Architect/Engineer a minimum of thirty (30) calendar days after receipt by the Architect/Engineer to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. All of the Prime Contractor's responses to proposal requests shall include a statement that the cost described in the response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation under the Contract Documents, without reservation or further recourse.

(b) All Amendments require approval by either the City Council or, where authorized by the State law and City ordinance, by the City Manager pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution, Ordinance or Administrative Action. THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE

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CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS. Pending the approval described above, the Contractor will proceed with the work under a pending Amendment only if directed in writing by the Owner.

ARTICLE 8 - CONTRACT TIME

8.1 DEFINITIONS

(a) Unless otherwise provided, the 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 Notice to Proceed from the Owner. The date of commencement shall not be postponed by the failure of the Prime Contractor, or of persons or entities for whom the Prime Contractor is responsible to act promptly to commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed, through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable extension of the Contract Time; the Contract Sum shall remain unchanged.

(c) The date of Substantial Completion is the date certified by the Architect/Engineer in accordance with Paragraph 9.7.

(d) The term “day” as used in the Contract Documents shall mean a calendar day, beginning and ending at 12:00 midnight, unless otherwise specifically defined by special provision.

8.2 PROGRESS AND COMPLETION

(a) **Time limits stated in the Contract Documents are of the essence of the Contract**. By executing the Building Construction Services Agreement, the Prime Contractor confirms that the Contract Time is a reasonable period for performing the Work.

(b) The Prime Contractor shall not knowingly, except by agreement with or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance to be furnished by the Prime Contractor as required by Article 11. The date of commencement of the Work shall not be changed by the effective date of insurance required by Article 11.

8.3 DELAYS AND EXTENSIONS OF TIME

(a) If the Prime Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Prime Contractor’s control, or by delay authorized by the Owner pending a claim, or by other causes which the Architect/Engineer determines may justify delay, then the

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Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer and Owner may determine.

(b) Claims relating to Contract Time and time extensions shall be made in accordance with the applicable provisions of Paragraph 4.3.

(c) No Damages for Delay. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, INCLUDING THE GENERAL CONDITIONS, NO ADJUSTMENT SHALL BE MADE TO THE CONTRACT SUM AND THE PRIME CONTRACTOR SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR UNFORESEEN, WHICH INCREASES THE TIME TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE ARCHITECT/ENGINEER, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE PRIME CONTRACTOR’S SOLE REMEDY.

(d) The Owner shall have the right to occupy, without prejudice to the right of either party, any completed or largely completed portions of the structure or Work, notwithstanding the fact that the Contract Time for completing all or a portion of the Work may not have expired. Partial occupancy and use shall not be deemed as an acceptance of the Work taken or used.

(e) The Prime Contractor shall promptly suspend the Work when either the Prime Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Prime Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Prime Contractor will also not be liable to the Owner for a delay caused in fact by the Work being suspended by a court order.

(f) The Architect/Engineer, with the consent of the Owner, shall have the authority to suspend the Work, in whole or in part, for such period or periods as the Architect/Engineer deems necessary due to unusual or severe weather conditions as are considered unfavorable for the suitable prosecution of the Work, or due to failure on the part of the Prime Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop the Work for an indefinite period, the Prime Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way, and shall take every precaution to prevent damage or deterioration of the Work performed. In cases of suspension of the Work under this Subparagraph, the Prime Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Prime Contractor shall not suspend the Work in whole or in part without written authority from the Architect/Engineer or the Owner, and shall resume the Work promptly when notified by the Architect/Engineer or the Owner to resume operations.

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(g) In the event of a delay that is the responsibility of the Prime Contractor or any of the Subcontractors, for which the Prime Contractor is not entitled to a time extension under the provisions of this Contract, the Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts, or resequencing. This acceleration shall be at no cost to the Owner and will continue until the Contract Time is restored. In the event of a delay for which the Prime Contractor is entitled to a time extension, as determined by the Architect/Engineer, Owner may similarly direct acceleration and the Prime Contractor agrees to perform same on the basis that the Prime Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). THE PRIME CONTRACTOR EXPRESSLY WAIVES ANY OTHER COMPENSATION RESULTING FROM ACCELERATION, SUCH AS LOSS OF LABOR PRODUCTIVITY OR EFFICIENCY.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Building Construction Services Agreement and, including authorized adjustments, is the total amount of compensation payable by the Owner to the Prime Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Prime Contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, when approved by the Architect/Engineer and the Owner, shall be used as a basis for the Prime Contractor's Application for Payment. The schedule of values shall follow the trade division of the Specifications. Prime Contractor's Application for Payment shall be filed on the current version of AIA Form G702 (Application and Certificate for Payment), as approved by the Owner.

9.3 APPLICATIONS FOR PAYMENT

(a) At least ten (10) days before the date established for each progress payment, the Prime Contractor shall submit to the Architect/Engineer an itemized Application for Payment for Work completed in accordance with the schedule of values. The Application shall be notarized, if required, and supported by data substantiating the Prime Contractor’s right to payment as the Owner or Architect/Engineer may require, including but not limited to copies of requisitions from Subcontractors and material suppliers, and reflecting the applicable retainage as required in the Contract Documents. Prime Contractor's Application for Payment shall also provide other supporting documentation as the Owner or the other applicable provisions of the Contract Documents may require.

(b) Applications for Payment may not include requests for payment of amounts the Prime Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Prime Contractor complies with Clause 5.3(b) (2) of these General Conditions and the

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Prime Contractor's Payment Bond Surety consents in writing to payment to the Prime Contractor of the funds deemed to be in dispute.

(c) Unless otherwise provided in the Contract Documents, progress payments shall include payment for materials and equipment delivered and suitably stored at the Project site for subsequent incorporation into the Work within thirty (30) days after delivery to the Project site. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored away from the Project site at a location agreed upon in writing. Payment for costs incurred in storage of materials or equipment away from the Project site will NOT be made by Owner unless:

(1) the Owner has given prior approval of such off-site storage in writing;
(2) the materials or equipment are stored in a bonded warehouse located in Denton County and identified with the Project for which they are stored, as evidenced by warehouse receipts and appropriate documents of title; and
(3) the materials or equipment stored off-site will be incorporated into the Work within thirty (30) days after delivery. STORAGE IN FACILITIES OF THE MANUFACTURER OR THE PRIME CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.

(d) The Prime Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Prime 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 Prime Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

(e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an "early delivery." All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Prime Contractor shall, at Prime Contractor's expense or at the expense of the responsible Subcontractor or Supplier, cause such early delivery to be removed from the Project site and stored off-site until required at the Project site. All costs of labor, transportation and storage will be included as part of the expense. If the Prime Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Prime Contractor's sole expense, and amounts may be withheld from the Prime Contractor's Application for Payment to reimburse the Owner for any costs incurred in removing unauthorized early delivery materials. OWNER WILL NOT BE RESPONSIBLE FOR THE PROTECTION OF OR RISK OF LOSS ON ANY EARLY DELIVERY MATERIALS OR EQUIPMENT, NOR WILL OWNER BE LIABLE FOR ANY PAYMENT FOR THE EARLY DELIVERY MATERIALS OR EQUIPMENT. Any materials or equipment classified as early delivery will not be approved for payment as stored materials prior to thirty (30) days before the incorporation

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of the materials or equipment into the Work, unless storage and payment at an earlier date is expressly approved in writing by the Owner.

(f) If the Contract Sum is equal to or less than $25,000, and if performance and payment bonds are not furnished by the Contractor, then no payment applied for will be payable under the Contract until the Work has been finally completed and accepted.

9.4 CERTIFICATES FOR PAYMENT

(a) The Architect/Engineer will, within ten (10) days after receipt of the Prime Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Prime Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Prime Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in:
   (a) City of Denton "General Conditions for Building Construction."
   (b) Subparagraph 9.5(a). The Certificate for Payment shall be issued on the current version of AIA Form G702 (Application and Certificate for Payment) as approved by the Owner.
   (c) The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Final Completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Prime Contractor is entitled to payment in the amount certified, subject to the Owner's approval. The issuance of a Certificate for Payment is not a representation that the Architect/Engineer has:

      (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

      (2) reviewed construction means, methods, techniques, sequences or procedures;

      (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Prime Contractor's right to payment; or

      (4) made examination to ascertain how or for what purpose the Prime Contractor has used money previously paid on account of the Contract Sum.

   (d) Whenever the Application for Payment for Work done since the last previous Application for Payment exceeds one hundred dollars ($100.00) in amount, Owner will pay a percentage of the Application, less applicable retainage, to the Prime Contractor

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within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Architect/Engineer. The Application may include acceptable nonperishable materials delivered to the Work or stored as provided for in Paragraph 9.3(c) and the payment will be allowed on the net invoice value, less taxes and applicable retainage.

(e) The City is required to withhold five percent (5%) retainage for public works contracts in which the total contract price estimate at the time of execution is more than $400,000; however, this requirement is applied by the City for all public works contracts in excess of $50,000. The retainage will be withheld by the Owner from each progress payment until final completion of the Work by the Contractor, approval of final completion by the Architect/Engineer, and final acceptance of the Work by the Owner. Unless otherwise required by state law, the retainage percentage as specified above is based upon the original Contract Sum, and will not be affected in the event the original Contract Sum is subsequently increased by Change Order.

(f) No progress payments shall be made on contracts where performance and payment bonds are not required or furnished. In such instances, payment for the Work performed will be made upon final completion and acceptance by the Owner of all Work.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

(a) The Architect/Engineer or the Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner's interest, if in the Architect/Engineer's or Owner's opinion the representations to the Owner required by Subparagraph 9.4(b) cannot be made. If the Architect/Engineer or the Owner is unable to certify payment in the amount of the Application, the Architect/Engineer or the Owner will notify the Prime Contractor as provided in Subparagraph 9.4(a). If the Prime Contractor and Architect/Engineer or the Owner cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make the required representations to the Owner. The Architect/Engineer or the Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary, in the Architect/Engineer's or Owner's opinion, to protect the Owner from loss because of:

(1) defective or nonconforming Work not remedied;

(2) third-party claims filed or reasonable evidence indicating probable filing of such claims;

(3) failure of the Prime Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;

(4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

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(5) damage to the Owner or another 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 damages for the anticipated delay;

(7) persistent failure to carry out the Work in accordance with the Contract Documents; or

(8) mathematical or other errors that are discovered in the Application for Payment.

(b) When all of the above reasons that existed for withholding certification are removed or remedied, then, at that time, certification will be made for amounts previously withheld.

(c) The Owner may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to the Owner from the Prime Contractor, regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise, and regardless of whether or not the debt due to the Owner has been reduced to judgment by a court.

9.6 PROGRESS PAYMENTS

(a) After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect/Engineer. The Owner shall not be liable for interest on any late or delayed progress payment or final payment caused by any claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the Application for Payment or as a precondition to payment under the Contract Documents, or due to any payment the Owner or the Architect/Engineer has a right to withhold or not certify under the Contract Documents. Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contract Documents, including but not limited to those defaults set forth in Subparagraph 9.5(a), Clauses (1) through (7). The Owner shall not be deemed in default by reason of withholding payment while any Prime Contractor default remains uncured.

(b) The Prime Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Prime Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Prime Contractor on account of such Subcontractors portion of the Work. The Prime Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

(c) The Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Prime

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Contractor and action taken thereon by the Architect/Engineer and the Owner on account of portions of the Work done by such Subcontractor.

(d) Neither the Owner nor the Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. That obligation belongs to the Prime Contractor or, in the event of the Prime Contractor's failure to pay a Subcontractor, to the Surety on the Payment Bond as required under Paragraph 11.3.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6(b), (c), and (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 Work not performed in accordance with the Contract Documents.

9.7 SUBSTANTIAL COMPLETION

(a) The Date of Substantial Completion of the Work, or designated portion of the Work, is the date certified by the Architect/Engineer when construction is sufficiently completed in accordance with the City Of Denton General Conditions For Building Construction.

(a) the Contract Documents such that the Owner may beneficially occupy and use the Work, or designated portions of the Work, for the purposes for which it is intended and only trivial and insignificant items remain which do not affect the Work as a whole.

(b) When the Prime Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Prime Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The Prime Contractor shall proceed promptly to complete and correct items on the list (hereinafter called the "punch list"). Failure to include an item on the punch list does not alter the responsibility of the Prime Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Architect/Engineer will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Architect/Engineer's inspection discloses any item, whether or not included on the punch list, which is not in accordance with the requirements of the Contract Documents and which renders the Work inspected not Substantially Complete the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Architect/Engineer. The Prime Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and the Prime Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Prime Contractor shall finish all items on the punch list accompanying the Certificate.

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(c) The Certificate of Substantial Completion shall be submitted to the Owner and the Prime Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

(d) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Prime Contractor and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

9.8 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 Supplemental Agreement with the Prime Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.2(e) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Prime 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 Prime Contractor considers a portion Substantially Complete, the Prime Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Prime 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 Prime Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

(b) Immediately prior to such partial occupancy or use, the Owner, Prime Contractor, and Architect/Engineer 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.

9.9 FINAL COMPLETION AND FINAL PAYMENT

(a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer, accompanied by the Owner's representative, will promptly make final inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Prime Contractor and

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noted in said final Certificate is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9(b) as a condition precedent to the Prime Contractor's being entitled to final payment have been fulfilled. Owner will normally make final payment within thirty (30) days after Owner's receipt and approval of the final Certificate for Payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided by separate agreement between the Owner and the Prime Contractor.

(b) Neither final payment nor any remaining retained percentage shall become due until the Prime Contractor submits to the Architect/Engineer:

(1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
(2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;
(3) a written statement that the Prime Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
(4) a consent of surety to final payment; and
(5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

(c) As a precondition to final payment by the Owner under this Contract, the Prime Contractor's affidavit under Clause (b)(1) shall state that the Prime Contractor has paid each of his subcontractors, laborers or materialmen in full for all labor and materials provided to Contractor for the Work performed under this Contract. In the event the Prime Contractor has not paid each of his subcontractors, laborers or materialmen in full, the Prime Contractor shall state in the affidavit the amount owed and the name of each subcontractor, laborer or materialmen to whom such payment is owed. IN ANY EVENT, THE PRIME CONTRACTOR SHALL BE REQUIRED TO EXECUTE THE OWNER'S STANDARD AFFIDAVIT OF FINAL PAYMENT AND RELEASE AS A PRECONDITION TO RECEIPT OF FINAL PAYMENT.

(d) If, after Substantial Completion of the Work, final completion of the Work is materially delayed through no fault of the Prime Contractor or by issuance of Change Orders affecting final completion and the Architect/Engineer confirms the delay, the Owner shall, upon application by the Prime Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion

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of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of payment. Payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

(e) The acceptance by the Prime Contractor of the final payment shall operate as and shall be a complete release of the Owner from all claims or liabilities under the Contract, for anything done or furnished or relating to the Work or the Project, or for any act or neglect of the Owner relating to or connected with the Work or the Project.

ARTICLE 10 SAFETY, SECURITY AND UTILITY PROVISIONS; ENVIRONMENTAL COMPLIANCE

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Prime Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and will comply with all applicable City, County, State and Federal health and safety regulations.

10.2 SAFETY OF PERSONS AND PROPERTY

(a) The Prime Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(1) employees on the Work and other persons who may be affected thereby;

(2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Prime Contractor or the Prime Contractor's Subcontractors or Sub-subcontractors; and

(3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Prime Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

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(e) USE OF EXPLOSIVES - CLAIMS AND TOTAL INDEMNIFICATION. The Owner shall have the right to pre-approve the use of any explosives on the Project; the Prime Contractor shall not assume in its bid that permission to use explosives will be granted. The Owner shall NOT be liable for any claim for additional time or compensation as a result of the Owner's denial of permission to use explosives. Where use of explosives is permitted by the Owner, the Prime Contractor EXPRESSLY AGREES TO BE SOLELY RESPONSIBLE for the determination as to whether explosives shall actually be used, and for any result from the use, handling or storage of explosives, and shall INDEMNIFY, DEFEND AND HOLD COMPLETELY HARMLESS the Owner, its officers, agents and employees, and the Architect/Engineer against any and all claims, lawsuits, judgments, costs or expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, as the result of the use, handling or storage of the explosives by the Prime Contractor or any Subcontractor, REGARDLESS OF WHETHER SAID USE, HANDLING OR STORAGE WAS NEGLIGENT OR NOT, AND REGARDLESS OF WHETHER THE DAMAGE OR INJURY WAS CONTRIBUTED TO IN ANY WAY BY THE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES, OR THE ARCHITECT/ENGINEER AND ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. In the event of conflict with any other indemnity paragraph in this Contract, this paragraph controls. This indemnity paragraph is intended solely for the benefit of the parties to this Contract and is not intended to create or grant any rights, contractual or otherwise, to or for any other person or entity. The Prime Contractor shall furnish the Owner and the Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury, which insurance shall either include the Owner and the Architect/Engineer as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Architect/Engineer. All explosives shall be stored in a safe and secure manner, under the care of a competent watchman at all times, and all storage places shall be marked clearly and conspicuously: "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives and highly flammable materials shall conform to Federal and State laws, City of Denton ordinances, and the City of Denton Fire Department regulations. The Prime Contractor shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Prime Contractor’s intention to use explosives, and such notice shall be given sufficiently in advance to enable the telecommunications and public utility companies and private property owners to take such steps as they may deem necessary to protect their property from injury. The notice shall not relieve the Prime Contractor of any responsibility for damage resulting from any blasting operations.

(f) The Prime 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 Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the Prime Contractor, a 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 Prime Contractor is responsible under Clauses 10.2(a)(2) and 10.2(a)(3), except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of

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them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Prime Contractor or any of its Subcontractors. The foregoing obligations of the Prime Contractor are in addition to the Prime Contractor's obligations under Paragraph 3.l9. To the extent that any such damage or loss may be covered by property insurance or other insurance required by the Contract Documents, the Owner and the Prime Contractor shall exercise their best efforts to make a claim and obtain recovery from the insurers to provide for the cost, in whole or in part, of the repair work or to provide for reimbursement for such damage or loss.

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

(h) The Prime Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In an emergency affecting safety, health, or security of persons or property, the Prime Contractor shall act, at the Prime Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Prime Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.4 PUBLIC CONVENIENCE AND SAFETY

(a) The Prime Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

(b) The Owner reserves the right to remedy any neglect on the part of the Prime Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Prime Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Prime Contractor's neglect shall be deducted from the Contract Sum. The Prime Contractor shall notify the City Traffic Control Department when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the

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extent necessary for the safety and benefit of the traveling public. The Prime Contractor shall, when directed by the Architect/Engineer or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Prime Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Prime Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN

If the Work is carried on or adjacent to any street, alley or public place, the Prime Contractor shall, at the Prime Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon the Prime Contractor's name and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Paragraph, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Prime Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect the Work. Whenever evidence is found of such damage, the Architect/Engineer may order the damaged portion immediately removed and replaced by the Prime Contractor at Prime Contractor's cost and expense. The Prime Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect/Engineer. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Prime Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Prime Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, the Prime Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Prime Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers; for this purpose, the Prime Contractor shall provide and maintain, at the Prime Contractor's own

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expense, adequate pumping facilities and temporary outlets or diversions. The Prime Contractor shall, at the Prime Contractor's own expense, construct such troughs, pipes, or other structures necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Architect/Engineer. All storm water and sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT

(a) When the Prime Contractor desires to use the Owner's water in connection with the Work, the Prime Contractor shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the Prime Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the Denton Water Utilities Department.

(b) The Prime Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner or with Denton Municipal Electric in the event that separately metered electrical connections are required for the Project. The Prime Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Prime Contractor through the City of Denton.

10.9 USE OF FIRE HYDRANTS

The Prime Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the Denton Water Utilities Department in accordance with the Denton City Code.

10.10 ENVIRONMENTAL COMPLIANCE

(a) The Prime Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic

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Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

(b) In the event the Prime Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Prime Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Architect/Engineer and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a Change Order with the Prime Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Prime Contractor or any of its Subcontractors, the Prime Contractor shall be responsible for remediating the condition at the sole expense of the Prime Contractor in accordance with the Prime Contractor's APPROVED Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Paragraph 4.3 and Article 8.

(c) The Prime Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Prime Contractor or any Subcontractor or Supplier. The Prime Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Architect/Engineer so that they may observe the activities; provided, however, that it shall be the Prime Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

(d) Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Prime Contractor shall submit to the Owner for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Prime Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include

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methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Owner's Project Manager or other designated representative. The Prime Contractor shall not commence any field work prior to approval of such plan by the Owner. The following additional rules shall apply with respect to spills caused by the Prime Contractor or a Subcontractor:

(1) The Prime Contractor shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the Prime Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.

(2) The Prime Contractor shall immediately respond in accordance with the SPRP in the event of a spill.

(3) The Prime Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the Prime Contractor shall use only those transporters and disposal facilities that are approved in advance in writing by the Owner. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request of the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter. ALL COSTS OF COLLECTION, CONTAINMENT, AND DISPOSAL OF SPILLED MATERIALS SHALL BE THE SOLE RESPONSIBILITY OF THE PRIME CONTRACTOR.

(4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.

(e) Clean Air Management Plan. The Prime Contractor shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the contractor selection process. The Owner reserves the right, at the Prime Contractor's sole expense, to require the removal or retrofitting of any equipment used in the course of construction that does not comply with the Plan submitted to and approved by the Owner.

(f) The Prime Contractor shall deposit surplus or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Prime Contractor shall submit to the Owner for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon

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request to the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter.

(g) The Prime Contractor is responsible for obtaining all TXPDES Storm Water Permits from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities promulgated by EPA, including but not limited to cleaning, grading, and excavation that disturb the applicable amount of total land area. In addition, the Prime Contractor shall comply with all regulations of the Owner relating to storm water and storm water runoff management at the Project site pursuant to Chapter 19, Article IX, Denton City Code, as amended.

(h) The Prime Contractor shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable.

(i) The Owner reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the Owner and without an extension of the Contract Time, in the event the Prime Contractor fails or refuses after seven (7) days advance written notice from the Owner to comply with the provisions of this Paragraph 10.10, the terms of the SPRP, the terms of the Clean Air Management Plan, any storm water permit or other environmental permit issued in connection with the Work, or any applicable environmental law, rule, regulation, or ordinance:

(1) suspend all or any portion of the Work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the Prime Contractor and approved by the Owner;

(2) if the Prime Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and backcharge the Prime Contractor for the cost of the remediation or correction; or

(3) terminate the Contract for cause as provided in Article 13.

ARTICLE 11 INSURANCE AND BONDS

11.1 PRIME CONTRACTOR'S INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

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11.2 PROPERTY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.3 'UMBRELLA' LIABILITY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.4 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.5 PERFORMANCE AND PAYMENT BONDS

(a) Subject to the provisions of Subparagraph 11.5(b), the Prime Contractor shall furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses (a)(1) and (a)(2) below, which surety bonds shall be in accordance with the Charter of the City of Denton and the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Prime Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.5(c) and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:

(1) Performance Bond. A good and sufficient bond in an amount equal to 100% of the total awarded task order, guaranteeing the full and faithful execution of the work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any Amendments thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of final completion and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

(2) Payment Bond. A good and sufficient bond in an amount equal to 100% of the total awarded task order, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract

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Documents and any Amendments thereto, and for the use and protection of each claimant.

(b) No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Prime Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Denton County, Texas. Each surety shall designate an agent resident in Denton County, Texas to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

Contractor will be required to furnish original performance and payment bonds for 100% of the total submission price before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms are attached and shall be returned upon notice of each awarded project task order by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from task order award. Upon approval, a purchase order will be issued.

(c) The failure of the Contractor to deliver the required statutory bonds and evidence of insurance within fourteen (14) calendar days after the task order is awarded shall constitute a material breach of the Prime Contractor’s bid proposal and the Owner may rescind the task order award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Prime Contractor's failure to execute and furnish the statutory bonds within fourteen (14) calendar days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.5(e). In the event the Owner should re-advertise for bids, the defaulting Prime Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this Paragraph.

ARTICLE 12 DEFECTIVE AND NONCONFORMING WORK

12.1 UNCOVERING OF WORK

(a) If a portion of the Work is covered contrary to the Architect/Engineer’s request or to requirements specifically expressed in the Contract Documents, the Work must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer’s

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observation and be replaced at the Prime Contractor's expense without change in the Contract Time.

(b) If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to it being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Prime Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If any Work is not in accordance with the Contract Documents, the Prime Contractor shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

(a) The Prime Contractor shall promptly correct Work rejected by the Architect/Engineer as failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Prime Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby.

(b) If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Prime Contractor shall correct it promptly after receipt of written notice from the Architect/Engineer or the Owner to do so unless the Owner has previously given the Prime Contractor a written acceptance or waiver of the defect or nonconformity. The Prime Contractor's obligation to correct defective or nonconforming Work remains in effect for:

(1) one year after the date of Substantial Completion of the Work or designated portion of the Work;

(2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or

(3) the stipulated duration of any applicable special warranty required by the Contract Documents.

(c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.

(d) The obligations of the Prime Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Prime Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Clauses (b)(1) and (b)(2) does not limit the ability of the Owner to require the Prime Contractor to correct latent defects or

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nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect/Engineer at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one year period also does not relieve the Prime Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

(e) The Prime Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Prime Contractor nor accepted by the Owner.

(f) If the Prime Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.4. If the Prime Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Prime Contractor's expense. If the Prime Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Prime Contractor, including compensation for the Architect/Engineer's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover costs which the Prime Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Prime Contractor then or thereafter are not sufficient to cover the deficiency, the Prime Contractor shall pay the difference to the Owner.

(g) The Prime Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Prime Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

(h) Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Prime Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2(b) relates only to the specific obligation of the Prime 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 Prime Contractor's liability with respect to the Prime Contractor's obligations other than specifically to correct the Work.

(i) Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

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The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13 COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 FINAL COMPLETION OF CONTRACT

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Architect/Engineer, and final acceptance and final payment is made by the Owner.

13.2 WARRANTY FULFILLMENT

Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Architect/Engineer will make a detailed inspection of the Work and will advise the Prime Contractor and the Prime Contractor's Surety of the items that require correction. The Architect/Engineer will make a subsequent inspection and if the corrections have been properly performed, the Architect/Engineer will issue a letter of release on the maintenance stipulations to the Prime Contractor and the Surety. If for any reason the Prime Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

(a) Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Prime Contractor, including but not limited to the following causes:

(1) Failure or refusal of the Prime Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

(2) A reasonable belief that the progress of the Work being made by the Prime Contractor is insufficient to complete the Work within the specified time.

(3) Failure or refusal of the Prime Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

(4) A reasonable belief that the Prime Contractor has abandoned the Work.

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(5) A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

(6) Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect/Engineer or the Owner as provided for in the Contract Documents.

(7) Failure or refusal of the Prime Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect/Engineer.

(8) A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.

(9) Repeated and flagrant violation of safe working procedures.

(10) The filing by the Prime Contractor of litigation against the Owner prior to completion of the Work.

(b) When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3(e), the Prime Contractor shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Prime Contractor and the surety or its authorized agents, assume the obligations of the Prime Contractor for the Work or that portion of the Work which the Owner has ordered the Prime Contractor to discontinue and may:

(1) perform the Work with forces employed by the surety;

(2) with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

(3) with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming Work, and compensate the Owner for any other loss sustained as a result of Prime Contractor's default.

In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the Prime Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms

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of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Architect/Engineer and attorneys fees, as a result of such termination.

(c) The balance of the Contract Sum remaining at the time of the Prime Contractor's default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Subparagraph 13.3(b), exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Prime Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Prime Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Prime Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Prime Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Prime Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of the Architect/Engineer and attorney's fees), and damages incurred as a result of the termination.

(d) The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3(c), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Prime Contractor, then the Owner may pay to the Prime Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Prime Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Prime Contractor, then the Prime Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the Prime Contractor shall continue the remainder of the Work in conformity with the terms of the Contract, and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

(e) The unconditional right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of termination for convenience to the Prime Contractor.

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Upon the Prime Contractor's receipt of such written notice, the Prime Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Prime Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Prime Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Prime Contractor for lost or anticipated profits.

13.4 TEMPORARY SUSPENSION OF THE WORK

(a) The Work or any portion of the Work may be temporarily suspended by the Owner immediately upon written notice to the Prime Contractor for any reason, including but not limited to:
(1) the causes described in Clauses 13.1(a)(1) through (a)(10) above;

(2) where other provisions in the Contract Documents require or permit temporary suspension of the Work;

(3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or

(4) other unforeseen conditions or circumstances.

(b) The Prime Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Prime Contractor arising from a temporary suspension due to a cause described in Clause (a)(1) above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses (a)(2) through (a)(4), where the Prime Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Prime Contractor under Subparagraph 4.3 of these General Conditions:

(1) an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Architect/Engineer and the Owner;

(2) an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and

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(3) if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

(a) This Contract shall be in all things governed by the laws of the State of Texas without regard to conflict of laws principles.

(b) The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Prime Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Prime Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without written consent of the Owner. If the Prime Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Prime Contractor, except where assignment is compelled or allowed by court order, the terms of the Contract Documents, or other operation of law.

14.3 WRITTEN NOTICE

Except as otherwise provided in Article 16, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid to the Project Manager or Superintendent of either party, or to an officer, partner, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

(a) The duties and obligations imposed on the Prime Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.

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(b) No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Prime Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

14.5 INTEREST

The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Paragraph 9.6(a) of these General Conditions.

14.6 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

No officer or employee of the Owner shall have a financial interest, direct or indirect, in any Contract with the Owner, or be financially interested, directly or indirectly, in the sale to the Owner of any land, materials, supplies or services, except on behalf of the Owner as an officer or employee. Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.7 VENUE

This Contract is deemed to be performed in Denton County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Denton County, Texas.

14.8 INDEPENDENT CONTRACTOR

In performing the Work under this Contract, the relationship between the Owner and the Prime Contractor is that of an independent contractor. The Prime Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Prime Contractor an agent, servant, or employee of the Owner, or making the Prime Contractor or any of the Prime Contractor’s employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

14.9 NONDISCRIMINATION

As a condition of this Contract, the Prime Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Prime Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex,

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sexual orientation, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Prime Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Prime Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.10 GIFTS TO PUBLIC SERVANTS

(a) The Owner may terminate this Contract immediately if the Prime Contractor has offered, conferred, or agreed to confer any benefit on a City of Denton employee or official that the City of Denton employee or official is prohibited by law from accepting.

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

(c) Notwithstanding any other legal remedies, the Owner may require the Prime Contractor to remove any employee of the Prime Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Prime Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.

ARTICLE 15 RIGHT TO AUDIT CONTRACTOR'S RECORDS

By execution of the Building Construction Services Agreement, the Prime Contractor grants the Owner the right to audit, at the Owner's election, all of the Prime Contractor's records and billings relating to the performance of the Work under the Contract Documents. The Prime Contractor agrees to retain its Project records for a minimum of five (5) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Prime Contractor under this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City’s rights as may be disclosed by an audit under this section.

ARTICLE 16 NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of the Denton City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Prime Contractor shall comply with the requirements of this ordinance as a precondition of any litigation relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

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EXHIBIT D
PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The Contractor will be required to furnish Payment and Performance Bonds for 100% of the total awarded project task order before work is to commence. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms are attached and shall be returned upon notice of each project task order award by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from notice of task order award. Upon approval, a purchase order will be issued.

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INSURANCE REQUIREMENTS

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.

As soon as practicable after notification of contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- or better**.

- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees, and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- Liability policies shall be endorsed to provide the following:

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- Name as Additional Insured the City of Denton, its Officials, Agents, Employees, and volunteers.

- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

A. <u>COMMERCIAL GENERAL LIABILITY INSURANCE</u>

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum

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combined bodily injury (including death) and property damage limits of $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: $100,000.00 Each Accident
Bodily Injury by Disease: $100,000.00 Each Employee
Bodily Injury by Disease: $500,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. INSTALLATION FLOATER POLICY

Providing **All-Risk** coverage including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft in an amount equal to one hundred percent (100%) of the contract cost of the project in question. The policy shall include materials delivered and labor performed for the project in question. The policy shall be written jointly in the names of the City of Denton, Contractor teams, subcontractors, and sub-subcontractors as their interests may appear.

The policy shall have endorsements as follows:

a) This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
a) Loss, if any, shall be adjusted with and made payable to the City of Denton as Trustee for the insureds as their interests may appear.

D. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including

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death) and property damage limit of $1,000,000.00 per occurrence.

NOTE:

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

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Exhibit F
Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at : https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

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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.**

Bean Electrical, LLC

2

[X] **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 relations hip 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 [X] 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 [X] 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 [X] 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

Signed by:
Bobby Webb
8E4E349CBFB345A...
Signature of vendor doing business with the governmental entity

6/27/2025
Date

Docusign Envelope ID: 9047061F-EC0E-4BBA-9781-F95B3F103002

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

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

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

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

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

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

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

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

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

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

Certificate Of Completion

Envelope Id: 9047061F-EC0E-4BBA-9781-F95B3F103002
Status: Sent
Subject: Please DocuSign: City Council Contract 8801 Prequalification for Traffic Signal Construction Bean
Source Envelope:
Document Pages: 81
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Gabby Leeper
901B Texas Street
Denton, TX 76209
Gabby.Leeper@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
6/16/2025 4:48:01 PM
Holder: Gabby Leeper
Gabby.Leeper@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Gabby Leeper gabby.leeper@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 6/16/2025 4:49:12 PM Viewed: 6/16/2025 4:49:20 PM Signed: 6/16/2025 4:49:33 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DS LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 6/16/2025 4:49:36 PM Viewed: 6/16/2025 4:54:46 PM Signed: 6/16/2025 4:55:31 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by: Marcella Lunn 4B070831B4AA438... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 6/16/2025 4:55:35 PM Viewed: 6/19/2025 11:21:58 PM Signed: 6/19/2025 11:25:40 PM
Bobby Webb bobby.webb@lumin8.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 6/20/2025 8:37:40 AM ID: d46c4918-86a9-4136-a601-71b3023759e2	Signed by: Bobby Webb 8E4E349CBFB345A... Signature Adoption: Pre-selected Style Using IP Address: 71.86.127.142	Sent: 6/20/2025 8:04:57 AM Resent: 6/23/2025 9:06:59 AM Resent: 6/24/2025 10:21:56 AM Resent: 6/27/2025 3:13:41 PM Viewed: 6/27/2025 3:14:19 PM Signed: 6/27/2025 3:35:45 PM

Signer Events	Signature	Timestamp
Scott McDonlald scott.mcdonald@cityofdenton.com Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 7/8/2025 12:33:46 PM ID: ece6ce5f-ceb6-4017-84f7-4049b64efa06	Signed by: D4585119F060407... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 6/27/2025 3:35:49 PM Resent: 7/2/2025 10:10:44 AM Resent: 7/8/2025 9:52:54 AM Viewed: 7/8/2025 12:33:46 PM Signed: 7/8/2025 12:34:15 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 7/8/2025 12:34:19 PM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 6/16/2025 4:49:36 PM
Andrew Hawkins ahawkins@beanelectrical.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 6/20/2025 8:05:00 AM

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 7/8/2025 12:34:19 PM Viewed: 7/15/2025 3:09:06 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
James Andrews james.andrews@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 10/9/2024 5:32:03 PM ID: 4f7ee8fd-93df-452a-ad9d-25bcc34ba748		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/16/2025 4:49:12 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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

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 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 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 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:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** 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.

Docusign Envelope ID: 015B3CD8-F818-46A2-AEEF-1EAB0CFE54D6

Docusign City Council Transmittal Coversheet

RFQ	8801
File Name	Prequalification for Traffic Signal Construction- EAR TC
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

DS
LH

Docusign Envelope ID: 015B3CD8-F818-46A2-AEEF-1EAB0CFE54D6

CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND EAR TELECOMMUNICATIONS LLC DBA EAR TC
(CONTRACT 8801)

THIS CONTRACT is made and entered into this date _____, by and between **EAR Telecommunications LLC dba EAR TC** a Texas Limited Liability Company, whose address is 14719 US-HWY 290 East, Suite 106 Manor Texas 78653 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide products and/or services in accordance with the City's document RFQ 8801 – Prequalification for Traffic Signal Construction Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFQ 8801 **(Exhibit "B" on File at the Office of the Purchasing Agent);**
(c) General Provisions – Standard Terms and Conditions **(Exhibit "C");**
(d) Payment and Performance Bond Requirements **(Exhibit "D");**
(e) Insurance Requirements **(Exhibit "E");**
(f) Certificate of Interested Parties Electronic Filing **(Exhibit "F");**
(g) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "G");**

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

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.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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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.

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.

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.

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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR

DocuSigned by:

BY: Najeeb Reyes
AUTHORIZED SIGNATURE

Printed Name: Najeeb Reyes

Title: Chief Operating Office

305-783-0500
PHONE NUMBER

najeeb.reyes@eartc.com
EMAIL ADDRESS

2025-1325000
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:

BY: Marcella Lunn
4B070831B4AA438...

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

Signed by:

Scott McDonald | Scott McDonald
SIGNATURE | PRINTED NAME

Director
TITLE

Development Services
DEPARTMENT

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Exhibit A
Special Terms and Conditions

1. Total Contract Amount
EAR Telecommunications LLC dba EAR TC, is pre-qualified for RFQ 8801 – Traffic Signal Construction Services. All pre-qualified contractors will be issued a Request for Cost that defines the scope of work, project material list, and project timeline dates. The pre-qualified contractors will have (5) days to respond to such Request for Cost. Thereafter, the City will select the pre-qualified contractor with the lowest price and ability to meet the City's timeline schedule requirements. If a response to the Request for Cost request is not received in the applicable time period, such pre-qualified contractor will be disqualified from that Request for Cost. The cumulative contract total for all awarded projects to all pre-qualified contractors for contract 8801 shall not exceed$7,100,000.

2. Contract Terms
The contract term will be three (3) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. Performance Liquidated Damages
Contractor recognizes that time is of the essence of this Agreement and that City will suffer financial loss if the Work is not completed within the times specified in each task order, plus any extension thereof allowed in accordance with Article 8.3 of the General Provisions. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City one thousand dollars ($1,000) for each day that expires after the time specified in each task order for Final Acceptance until the City issues the Final Letter of Acceptance.

4. Post Award Additional Requirements
Pre-Construction Meeting: Prior to commencement of the services, the City and the Contractor will conduct a pre-construction meeting to review the overall scope, schedule, deliverables, planning process, and to ensure that all relevant parties to the project are introduced.

List of Subcontractors: Prior to commencement of the services, the respondent awarded the task order will submit to the City for approval a list of all Subcontractors, and/or his major Subcontractors, proposed to use. This list will include each Subcontractor's correct name, mailing address and phone number.

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Contractor's Superintendent: The Contractor shall submit the name and qualifications of the person designated as Project Superintendent within ten (10) days of the receipt of the Notice of Award Letter.

Environmental Hazards: There are no known safety or environmental hazards existing on the project site at the time of issue of this solicitation. The City does not warrant or guarantee against the possibility that safety or environmental hazards or potential hazards may exist at the City's facilities. The Contractor shall be responsible for identifying any hazardous conditions and notifying the City verbally of such conditions as soon as possible after discovery and shall follow up in writing within 10 days of such discovery. The costs for necessary investigations or any potential corrective actions will be negotiated between the City and the Contractor.

Contractor Standards of Performance: The contractor shall prosecute the work diligently with skilled craftsmen and with state-of-the-art methods to complete the work within the time stated in the Request for Cost or such time extensions as may be granted.

Monthly Reports: The Contractor awarded the task order shall provide to the City of Denton, detailed reports of daily work conditions, daily man power availability, equipment problems, and work accomplished on a monthly basis.

Safety: All contractors to the City of Denton are required to ensure absolute safety standards are applied and enforced. The City of Denton will not be responsible for individual contractor safety, and the awarded contractor shall not hold the City of Denton responsible. Known hazards shall immediately be reported to the Project Manager and all safety precautions shall be taken to prevent potential safety issues from occurring.

5. Disposal of Material

All costs associated with the removal of trash and debris, including but not limited to rental of special equipment, open top containers, dumpsters, and trailers as well as payment of landfill fees, must be included in the unit pricing.

a) The City of Denton is the EXCLUSIVE provider of Solid Waste Services for the City of Denton. Consistent with the City of Denton Code of Ordinances: Ord. No. 23-386
   a. All Waste must be transported to the City of Denton Landfill (1527 S Mayhill Rd., Denton TX) for Disposal
   b. Contractor must use Contractor Employees and haul materials in contractor-owned equipment, should they wish to haul material themselves for disposal at the City of Denton Landfill.
   c. Should the Contractor choose to use a third party to supply and haul containers to the landfill, the Contractor MUST contract with the City of Denton, Solid Waste and Recycling Department to provide equipment and services. Cost may be found online at https://tx-denton.civicplus.com/DocumentCenter/View/4255/Fiscal-Year-2024---2025-Solid-Waste-Rate-Ordinance?bidId=
   d. Service requests are made to the City of Denton Customer Service by calling 940-349-8400.

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EXHIBIT C
GENERAL PROVISIONS- TERMS AND CONDITIONS FOR FACILITY CONSTRUCTION SERVICES

Invoices, Payments, and Releases

1. INVOICES AND PAYMENT PROCESSING:

Payment processing: The City review, inspection, and processing procedures for invoices ordinarily require thirty (30) days after receipt of invoices, materials, or services. Proposals which call for payment before thirty (30) days from receipt of invoice, or cash discounts given on such payment, will be considered only if, in the opinion of the Purchasing Manager, the review, inspection, and processing procedures can be completed as specified. It is the intention of the City of Denton to make payment within thirty (30) days after receipt of valid invoices for which items or services have been received unless unusual circumstances arise. The thirty (30) day processing period for invoices will begin on the date the invoice is received or the date the items or services are received, **whichever date is later**.

Direct deposit for payments: Prime Contractors are encouraged to arrange for receiving payments through direct deposit. Information regarding direct deposit payments is available from the City of Denton Purchasing website: www.dentonpurchasing.com.

Invoices: Invoices shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299 with a copy to the attention of Pritam Deshmukh, City of Denton Traffic Department emailed to pritam.deshmukh@cityofdenton.com. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.** Invoices for partial payments on construction projects should normally be presented for payment within the first five (5) days of the month, and submitted on the Pay Application Form.

2. TAX EXEMPTION:

The City of Denton qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. Any Prime Contractor performing work under this Contract for the City of Denton may purchase materials and supplies and rent or lease equipment sales tax free. This is accomplished by issuing exemption certificates to suppliers. Certificates must comply with State Comptroller's ruling #95-0.07 and #95-0.09.

3. PAYMENTS TO CONTRACTORS:

A. Upon presentation of valid invoices, which should be within the first week of each month, the Owner shall make partial payments to the Prime Contractor for construction accomplished during the preceding calendar month on the basis of completed construction certified to by the Prime Contractor and approved by the Owner and Architect/Engineer solely for the purposes of payment. Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety-five percent (95%) of each payment request approved during the construction of the project shall be paid by the Owner to the Prime Contractor prior to completion of the Project. Upon the approval by the Owner of the Prime Contractor's "Final Invoice for Payment" showing the total cost of the construction performed, the Owner shall make payment to the Prime Contractor of all

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amounts to which the Prime Contractor shall be entitled there under which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of completion of construction of the Project, as specified in the Final Invoice for Payment, unless withheld because of the fault of the Prime Contractor.

B. The Prime Contractor shall be paid on the basis of the percentage of the work actually completed for each construction item. The total amount paid for periodic billings shall not exceed the maximum Contract price for the construction of the project as set forth in the Contract, unless such excess shall have been approved in writing by the Purchasing Agent as part of a change order.

C. No payment shall be due while the Prime Contractor is in default in respect of any of the provisions of this Contract, and the Owner may withhold from the Prime Contractor the amount of any claim by any third party against either the Prime Contractor or the Owner based upon an alleged failure of the Prime Contractor to perform the work hereunder in accordance with the provisions of this Contract. This includes, without limitation, the alleged failure of the Prime Contractor to make payments to subcontractors.

4. RELEASE OF LIENS AND CERTIFICATE OF CONTRACTOR:

Upon award of the Contract, the Prime Contractor shall inform the Owner of the subcontractors and material sources that will be used. Upon the completion by the Prime Contractor of the construction of the Project, but prior to final payment to the Prime Contractor, the Prime Contractor shall deliver to the Owner releases of all liens, and of rights to claim any lien, from all manufacturers, materialmen and subcontractors furnishing services or materials for the Project, to the effect that all materials or services used on or for the Project have been paid for and indicating that the Owner is fully released from all such claims.

5. PAYMENTS TO MATERIALMEN AND SUBCONTRACTORS:

The Prime Contractor shall pay each materialman, and each subcontractor, if any, not later than five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Contractor for and on account of materials furnished or construction performed by each materialman or each subcontractor.

6. REMEDIES:

A. Completion of Prime Contractor's Default

If default shall be made by the Prime Contractor or by any subcontractor in the performance of any of the terms of this proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Prime Contractor and the Surety or Sureties upon the Prime Contractor's bond or bonds a written notice requiring the Prime Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Prime Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner and/or Architect/Engineer shall be made by the Prime Contractor or its Surety or Sureties, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Prime Contractor, and the Prime Contractor and its Surety or Sureties shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Prime Contractor or any

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of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Prime Contractor may have against third persons in connection with this Contract and for such purpose the Prime Contractor does hereby assign, transfer and set over unto the Owner all such rights claims and demands.

B. Cumulative Remedies

Every right or remedy herein conferred upon or reserved to the Owner shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election. Provided, however, that the provisions of the **REMEDIES SECTION** shall be the exclusive measure of damages for failure by the Prime Contractor to complete the construction of the Project within the time herein agreed upon.

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CITY OF DENTON GENERAL CONDITIONS FOR CONSTRUCTION
ARTICLE 1 GENERAL PROVISIONS

GENERAL DEFINITIONS

1.1 THE FOLLOWING DEFINITIONS APPLY THROUGHOUT THESE GENERAL CONDITIONS AND TO THE OTHER CONTRACT DOCUMENTS:

a) THE CONTRACT DOCUMENTS

The Contract Documents consist of the formal Building Construction Services Agreement between the Owner and the Prime Contractor, these General Conditions and other supplementary conditions included by special provisions or addenda, drawings, specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract, and Amendments issued after execution of the Contract. For purposes of these General Conditions, an Amendment is:

(1) a written Supplemental Agreement to the Contract signed by authorized representatives of both parties;

(2) a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1(b) and Subparagraph 7.1(e); or

(3) a written order for a minor change in the Work issued by the Architect/Engineer as described in Paragraph 7.3.

The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Prime Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Prime Contractor.

b) THE CONTRACT

The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and made a part of the formal Building Construction Services Agreement between the Owner and the Prime Contractor by reference in this Paragraph and Paragraph 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Prime Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

(1) between the Architect/Engineer and Prime Contractor;

(2) between the Owner and a Subcontractor or -subcontractor; or

(3) between any persons or entities other than the Owner and Prime Contractor.

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The Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect/Engineer's duties.

c) THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Prime Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Prime Contractor is responsible, to fulfill the Prime Contractor's obligations. The Work may constitute the whole or a part of the Project.

d) THE PROJECT

The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

e) THE DRAWINGS

The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, 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, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

g) THE PROJECT MANUAL

The Project Manual is the volume or volumes which contain the bidding requirements, sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

h) ALTERNATE

An Alternate is a variation in the Work on which the Owner requires a price separate from the City Building General Conditions Base Bid. If an Alternate is accepted by the Owner,

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the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted prior to any Work under the alternate being performed or materials delivered to the Project site, the Owner will be entitled to a credit in the full value of the alternate as priced in the Prime Contractor's Bid.

i) BASE BID

The Base Bid is the price quoted for the Work before Alternates are considered.

j) HAZARDOUS SUBSTANCE

The term Hazardous Substance is defined to include the following:

(1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable;

(2) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

(3) radon;

(4) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

(5) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

(6) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(7) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

(8) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

k) OTHER DEFINITIONS

As used in the Contract Documents, the following additional terms have the following meanings:

(1) "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;

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(2) “shall” means the action of the party to which reference is being made is mandatory;

(3) “as required” means as prescribed in the Contract Documents; and

(4) “as necessary” means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.2 EXECUTION, CORRELATION AND INTENT

(a) The Building Construction Services Agreement shall be signed by duly authorized representatives of the Owner and Prime Contractor as provided in the Agreement.

(b) Execution of the Building Construction Services Agreement by the Prime Contractor is a representation that the Prime Contractor has visited the site, has become familiar with local conditions, including but not limited to subsurface conditions, under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

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

(d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Prime Contractor in dividing the Work among Subcontractor(s) or in establishing the extent of Work to be performed by any trade.

(e) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

(f) The Drawings and Specifications are intended to agree with one another, and Work called for by Drawings and not mentioned in Specifications, or vice versa, shall be furnished as if set forth by both. Specifications shall govern materials, methods and quality of work. In the event of a conflict on the Drawings between scale and dimension, figured dimensions shall govern over scale dimensions and large scale drawings shall govern over small scale drawings. Conflict between two or more dimensions applying to a common point shall be referred to the Architect/Engineer/Engineer for final adjustment. If discrepancies or conflicts occur within or between the Drawings and Specifications regarding the Work, or within or between other Contract Documents, the Prime Contractor shall not perform such Work without having obtained a clarification from the Architect/Engineer and resolution by the Owner. The Owner's decision as to the appropriate resolution of a conflict or discrepancy shall be final. Should the Drawings or the Specifications disagree within themselves or with each other; the Base Bid will be based on the most expensive combination of quality and quantity of Work indicated.

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(g) Deviations from Contract Documents shall be made only after written approval is obtained from Architect/Engineer and Owner, as provided in Article 7.

(h) The intention of the Contract Documents is to include all materials, labor, tools, equipment, utilities, appliances, accessories, services, transportation, and supervision required to completely perform the fabrication, erection and execution of the Work in its final position.

(i) The most recently issued Drawing or Specification takes precedence over previous issues of the same Drawing or Specification. In the event of a conflict, the order of precedence of interpretation of the Contract Documents is as follows:

(1) Amendments (see Paragraph 7.2 for order of precedence between Amendments);

(2) the Building Construction Services Agreement;

(3) addenda, with those addenda of later date having precedence over those of an earlier date;

(4) the Supplementary General Conditions and Special Provisions, if any;

(5) the General Conditions for Building Construction;

(6) 0the Specifications and Drawings.

1.3 OWNERSHIP AND USE OF ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications, and copies thereof furnished by the Architect/Engineer are and shall remain the property of the Owner and are, with the exception of the Contract set for each party, to be returned to the Owner upon request at the completion of the Work.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are:

(1) specifically defined in these General Conditions (except the terms defined in Subparagraph 1.1(j), which terms are of common grammatical usage and are not normally capitalized);

(2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses;

(3) the titles of other documents published or used by the Owner as manuals or official policy statements; or

(4) proper nouns or other words required under standard grammatical rules to be capitalized.

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ARTICLE 2 - THE OWNER

2.1 DEFINITION OF OWNER

The Owner is the City of Denton, a Texas municipal corporation, and is identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

(a) The Owner shall furnish the most recent survey describing the physical characteristics, legal limits, utility locations, and a permanent benchmark for the site of the Project. The Owner shall also furnish any environmental site assessments that may have been given to the Owner or conducted for the property upon which the Project is to be constructed. THIS INFORMATION IS FURNISHED TO THE PRIME CONTRACTOR ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.

(b) Except for permits and fees which are provided for in Subparagraph 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.

(c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Prime Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval, as required in Paragraph 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Prime Contractor as scheduled and Prime Contractor is not prepared to accept or act on such information or services, then Prime Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

(d) Unless otherwise provided in the Contract Documents, the Prime Contractor will be furnished electronic copies of the Drawings and Specifications for bid purposes and one hard copy approved by Building Inspections upon execution of the Contract. Prime Contractor may obtain additional copies by paying the cost of additional printing or reproduction.

(e) The obligations described above are in addition to other duties and responsibilities of the Owner enumerated in the Contract Documents and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

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(f) The Owner shall forward all instructions to the Prime Contractor through the Architect/Engineer, except for the Owner's Notice to Proceed and the Owner's decision to carry out Work as described in Paragraph 2.4.

(g) The Owner's employees, agents, and consultants may be present at the Project site during performance of the Work to assist the Architect/Engineer in the performance of the Architect/Engineer's duties and to verify the Prime Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, the equipment used in the performance of the Work, and for purpose of verification of Prime Contractor's Applications for Payment.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Prime Contractor fails to correct any portion of the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or refuses or fails to carry out all or any part of the Work in accordance with the Contract Documents, the Owner, by written order, may order the Prime Contractor to stop the Work, or any portion of the Work, until the cause for the order has been eliminated. The right of the Owner however, to stop the Work shall not create or imply a duty on the part of the Owner to exercise this right for the benefit of the Prime Contractor or any other person or entity. The rights of the Owner under this Paragraph 2.3 shall be in addition to, and not in restriction of, the Owner's rights under Paragraph 12.2.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Prime Contractor fails or refuses to carry out the Work or perform any of the terms, covenants, or obligations of the Contract Documents, and fails or refuses to correct any failure or refusal with diligence and promptness within fourteen (14) days after receipt of written notice from the Owner, the Owner may correct the Prime Contractor's failure or refusal or cause such failure or refusal to be corrected, without affecting, superseding, or waiving any other contractual, legal, or equitable remedies the Owner has, including but not limited to the Owner's termination rights under Article 13. In that case, an appropriate Change Order will be issued deducting the Owner's cost of correction, including Architect/Engineer's compensation for additional services and expenses made necessary by the failure or refusal of the Prime Contractor from payments then or thereafter due to the Prime Contractor. The cost of correction is subject to verification (but not approval) by the Architect/Engineer. If payments then or thereafter due the Prime Contractor are not sufficient to cover the cost of correction, the Prime Contractor shall pay the difference to the Owner.

ARTICLE 3 - THE CONTRACTOR

3.1 DEFINITION OF CONTRACTOR

The Prime Contractor is the person or business entity identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Prime Contractor" means the Prime Contractor or the Prime Contractor's authorized employees or representatives.

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3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

(a) The Prime Contractor shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Architect/Engineer in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Prime Contractor may discover. The Prime Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Prime Contractor will be held responsible for any subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the Prime Contractor continues to work on an item where an inconsistency, ambiguity, error, omission, conflict, or discrepancy exists without obtaining such clarification or resolution or commences an item of the Work without giving written notice of an error, omission, conflict, or discrepancy that might have been avoided by the check, study, and comparison required above, it shall be deemed that the Prime Contractor bid and intended to execute the more stringent, higher quality, or state of the art requirement, or accepted the condition "as is" in the Contract Documents, without any increase to the Contract Sum or Contract Time. The Prime Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Prime Contractor's failure to give notice of and obtain a clarification or resolution of any error, omission, conflict, or discrepancy, without any right to any increase to the Contract Sum or Contract Time.

(b) The Prime Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

(a) The Prime Contractor shall supervise and direct the Work, using the Prime Contractor's best skill and attention. The Prime 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, unless the Contract Documents set forth specific instructions concerning these matters.

(b) The Prime Contractor shall be responsible to the Owner for the acts and omissions of the Prime Contractor's employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Prime Contractor, or with any Subcontractor, and all other persons or entities for which the Prime Contractor is legally responsible. All labor shall be performed by mechanics that are trained and skilled in their respective trades. Standards of work required throughout shall be of a quality that will bring only first class results. Mechanics whose work is unsatisfactory, or who are considered careless, incompetent, unskilled, or otherwise objectionable shall be dismissed promptly from the Work and immediately replaced with competent, skilled personnel. Any part of the Work adversely affected by the acts or omissions of incompetent, unskilled, careless, or objectionable personnel shall be immediately corrected by the Prime Contractor.

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(c) The Prime Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Prime Contractor.

(d) The Prime Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Prime Contractor's responsibility under this paragraph will not in any way eliminate the Architect/Engineer's responsibility to the Owner under the Architect/Engineer/Owner Agreement.

(e) Any Prime Contractor, Subcontractor, Sub-subcontractor, or separate contractor who commences Work over, in, or under any surface prepared by the Owner or by any other contractor, subcontractor, sub-subcontractor or any separate contractor, without the Prime Contractor having given written notice to the Architect/Engineer of the existence of any faulty surface or condition in the surface that prevents achieving the quality of workmanship specified by the Contract Documents and without having obtained the prior approval of the Architect/Engineer and the Owner to proceed is deemed to have accepted the surface or condition in the surface as satisfactory at the commencement of such Work. Any unsatisfactory Work subsequently resulting from such a faulty surface or condition in the surface that was not pre-approved by the Architect/Engineer or the Owner after notice as provided above may be rejected and replacement required, without any increase to the Contract Sum or Contract Time.

(f) All grades, lines, levels, and benchmarks shall be established and maintained on an ongoing basis by the Prime Contractor. The Prime Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Contractor shall verify all grades, lines, levels, and dimensions as indicated on Drawings. He shall report any errors, omissions, conflicts, or inconsistencies to Architect/Engineer before commencing any Work affected by these conditions. Contractor shall establish and safeguard benchmarks in at least two widely separated places and, as Work progresses, establish benchmarks at each level and lay out partitions on rough floor in exact locations as guides to all trades. The Contractor shall, from the permanent benchmark provided by the Owner, establish and maintain adequate horizontal and vertical control.

3.4 LABOR AND MATERIALS

(a) Except as is otherwise specifically provided in the Contract Documents as being the responsibility of the Owner, the Prime 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.

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(b) The Prime Contractor shall enforce strict discipline and good order among the Prime Contractor's employees and all other persons carrying out the Contract. The Prime Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

(c) The Prime Contractor shall give preference, when qualified labor is available to perform the Work to which the employment relates, to all labor hired for the Project in the following order:

(1) residents of the City of Denton, Texas;

(2) residents of the County of Denton, Texas;

3.5 WARRANTY

(a) General Warranty. The Contractor warrants to the Owner that all Work shall be accomplished in a good and workmanlike manner and that all materials and equipment furnished under the Contract will be of good quality, new (unless otherwise specified), and free from faults or defects, and that the Work will otherwise conform to the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective or nonconforming. The Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The commencement date, duration, and other conditions related to the scope of this general warranty are established in Subparagraphs 9.9 (a) and 12.2(b) of these General Conditions. THE GENERAL WARRANTY PROVIDED IN THIS SUBPARAGRAPH IS IN ADDITION TO AND DOES NOT LIMIT OR DISCLAIM ANY OTHER WARRANTY OR REMEDY REQUIRED OR PROVIDED BY LAW OR THE CONTRACT DOCUMENTS AND SUCH WARRANTY SHALL REQUIRE THE CONTRACTOR TO REPLACE DEFECTIVE MATERIALS AND RE-EXECUTE DEFECTIVE WORK THAT IS DISCLOSED BY THE OWNER TO THE CONTRACTOR WITHIN A PERIOD OF TWO (2) YEARS AFTER SUBSTANTIAL COMPLETION OF THE ENTIRE WORK; OR, IF A LATENT DEFECT IS DISCOVERED WITHIN TWO YEARS OF SUBSTATIONAL COMPLETION OF THE ENTIRE WORK.

(b) Special Warranties. The Contractor shall assign to the Owner in writing, as a condition precedent to final payment, the terms and conditions of all special warranties required under the Contract Documents.

3.6 TAXES

The Owner qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the Owner shall not be liable for, or pay the Contractor's cost of, such sales and use taxes which would

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otherwise be payable in connection with the purchase of tangible personal property furnished and incorporated into the real property being improved under the Contract Documents or the purchase of materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for performance of the Contract which is to be completely consumed at the job site. The Contractor shall issue an exemption certificate in lieu of the tax on such purchases.

3.7 PERMITS, FEES AND NOTICES

(a) The Architect/Engineer will apply and arrange for the issuance of the City of Denton Building Permit. The Prime Contractor and Subcontractors will apply and arrange for the issuance of all other required permits, and will not be required to pay a fee for any City of Denton permits required for the Project. The Owner will pay all service extension charges, including tap fees, assessed by the Water Utilities Department.

(b) The Prime Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of governmental entities or agencies applying to performance of the Work.

(c) Except as provided in Subparagraph (d) below, it is not the Prime Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Prime Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Prime Contractor shall promptly notify the Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.

(d) If the Prime Contractor performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Architect/Engineer and the Owner, the Prime Contractor shall assume full responsibility for the Work and shall bear the attributable costs of the correction of the Work and any other Work in place that may be adversely affected by the corrective work.

3.8 ALLOWANCES

(a) The Prime Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for the amounts identified in the Contract and by persons or entities as the Owner may direct, but the Prime Contractor shall not be required to employ persons or entities against which the Prime Contractor makes reasonable objection.

(b) Unless otherwise provided in the Contract Documents:

(1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

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(2) the amount of each allowance shall cover the cost to the Prime Contractor of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts;

(3) the amount of each allowance includes the Prime Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance Work;

(4) 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:

(i) the difference between actual costs and the allowances under Clause (b) (2); and

(ii) changes in Contractor's costs under Clause (b) (3);

(5) the Owner retains the right to review and approve Subcontractors selected by the Prime Contractor to perform work activities covered by allowances.

3.9 SUPERINTENDENT

The Prime Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Prime Contractor, and communications given to the superintendent shall be as binding as if given to the Prime Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to request that the Prime Contractor replace its superintendent at any time and the Prime Contractor will replace said superintendent at the Owner's direction.

3.10 PRIME CONTRACTOR'S CONSTRUCTION SCHEDULES

(a) The Prime Contractor shall, immediately after award of the Contract and before submittal of the first Application for Payment, prepare and submit the construction schedule for the Architect/Engineer's and Owner's information, review, and approval in accordance with the following provisions:

(1) Unless otherwise approved in writing by the Owner, the construction schedule shall not exceed the Contract Time limits currently in effect under the Contract Documents and shall provide for expeditious and practicable execution of the Work.

(2) The construction schedule shall include all shop drawing and submittal data requirements, indicating for each:
(i) the latest date to be submitted by the Prime Contractor; and
(ii) the latest date for approval by the Architect/Engineer.

(3) The construction schedule shall be in the form of a critical path management schedule, and shall indicate each critical task (the "predecessor") of all the major construction activities of the Work in a logical and sequential order (the "project network") which

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requires completion prior to commencement of the task next following (the "successor"). Each task shall be identified with:

(i) actual work time, exclusive of slack time, for accomplishment;

(ii) the latest start date;

(iii) the latest finish date;

(iv) the amount of float associated with each task;

(v) the amount of labor, material, and equipment associated with each task; and

(vi) the percentage of completion as of the date of the current schedule.

(4) The construction schedule shall be revised and updated monthly to reflect the actual status of the Work and shall be submitted with each Application for Payment.

(5) On or before the first day of each month, following the date of commencement of the Work as stated in the notice to proceed, the Prime Contractor shall prepare and submit to the Architect/Engineer and the Owner an up-to-date status report of the progress of the various construction phases of the Work in the form of an updated construction schedule. This status report shall consist of a time scale drawing indicating actual progress of the various phases of the Work and the percentage of completion of the entire Work. The original construction schedule shall be updated or changed to indicate any adjustments to the Contract Time granted by the Owner. The updated schedule must be submitted with the Prime Contractor's Application for Payment. No such application will be certified without a satisfactory update to the construction schedule.

(6) The construction schedule will also be revised to show the effect of change orders and other events on Contract Time. No request for an increase in Contract Time will be considered unless it is accompanied by a schedule revision demonstrating the amount of time related to the cause of the request. If the Contractor's status schedules reflect that the Prime Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Prime Contractor shall prepare a recovery schedule demonstrating how it intends to bring its progress back within the Contract Time. This recovery schedule shall be in a form acceptable to the Owner.

(7) Costs incurred by the Prime Contractor in preparing and maintaining the required construction schedule, any updated schedule, and any recovery schedule required by the Owner will not be paid as an additional or extra cost and shall be included in the Contract Sum.

(8) The Contract Sum is deemed to be based upon a construction schedule requiring the full Contract Time. NO CLAIM FOR ADDITIONAL COMPENSATION SHALL BE ALLOWED AS A RESULT OF THE PRIME CONTRACTOR BASING HIS BID ON

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AN EARLY COMPLETION SCHEDULE, OR AS A RESULT OF DELAYS AND COSTS ATTRIBUTABLE TO COMPLETION LATER THAN THE PLANNED EARLY COMPLETION DATE.

(b) The Prime Contractor shall also prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Prime Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.

(c) The Prime Contractor shall conform to the most recent schedules approved as to form by the Architect/Engineer and the Owner. Any subsequent revisions made by the Prime Contractor to schedules in effect shall conform to the provisions of Subparagraph 3.10(a)

(d) If the Work falls behind the approved construction schedule, the Prime Contractor shall take such steps as may be necessary to improve his progress, and the Architect/Engineer and the Owner may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, and to submit for approval revised schedules in the form required above in order to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

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, materialmen, manufacturer(s), supplier(s), or distributor(s) 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 which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Paragraph 4.2.

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(e) The Prime Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents 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. Submittals made by the Prime Contractor which are not required by the Contract Documents may be returned without action.

(f) The Prime Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect/Engineer. Work requiring this submittal and review shall be in accordance with approved submittals and any identified exceptions noted by the Architect/Engineer.

(g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Prime Contractor represents that the Prime Contractor has determined and verified materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within submittals with the requirements of the Work and of the Contract Documents. The Prime Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.

(h) The Prime Contractor shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Prime Contractor has specifically informed the Architect/Engineer in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Architect/Engineer, subject to a formal Change Order signed by the Owner, Architect/Engineer and Prime Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Prime Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect/Engineer's approval thereof. Further, notwithstanding any approval of a submittal by the Architect/Engineer, the Prime Contractor shall be responsible for all associated Project costs, including costs of coordination’s, modifications, or impacts, direct or indirect, resulting from any and all substitutions, changes, additions, deletions, omissions, or deviations, whether or not specifically identified by the Prime Contractor to the Architect/Engineer at the time of the above-mentioned submittals, including additional consulting fees, if any, in any and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.

(i) The Prime Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to additional revisions other than those requested by the Architect/Engineer on previous submittals. In the absence of such written notice, the Architect/Engineer’s approval of a resubmission shall not apply to the additional revisions not requested.

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(j) Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.

(k) When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF THE PROJECT SITE

The Prime Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

3.14 CUTTING AND PATCHING

(a) The Prime Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Prime Contractor shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering the construction, or by excavating. The Prime Contractor shall not cut or otherwise alter the construction by the Owner or a separate contractor except with the written consent of the Owner and of the separate contractor; consent shall not be unreasonably withheld. The Prime Contractor shall not unreasonably withhold from the Owner or a separate contractor the Prime Contractor's consent to cutting or otherwise altering the Work.

(c) A "Hot Work Permit" must be obtained from the City of Denton's Facilities Management Department, 869 S. Woodrow Lane, Denton, Texas (940 349-7200) for any temporary operation involving open flames or producing heat and/or sparks. This includes, but is not limited to: Brazing, Cutting, Grinding, Soldering, Torch Applied Roofing and Welding.

3.15 CLEANING UP

(a) The Prime Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon the completion of the Work the Prime Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Prime Contractor's tools, construction equipment, machinery, and surplus materials.

(b) If the Prime Contractor fails to clean up as provided in the Contract Documents, the Owner may, at Owner's option, clean up the Project site, and the Owner's cost of cleaning up shall be charged to the Contractor.

3.16 ACCESS TO WORK

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The Prime Contractor shall provide the Owner and the Architect/Engineer access to the Work in preparation and progress wherever located during the course of construction.

3.17 TESTS AND INSPECTIONS

(a) Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of governmental entities or agencies having jurisdiction over the Work shall be made at appropriate times. Unless otherwise provided, the Prime 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 governmental entity or agency, and the Prime Contractor shall bear all related costs of tests, inspections, and approvals. The Prime Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals which become requirements after bids or proposals are received.

(b) If the Architect/Engineer, the Owner or other public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 3.17(a), the Architect/Engineer will, upon written authorization from the Owner, instruct the Prime Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Prime Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so that the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 3.17(c).

(c) If procedures for testing, inspection, or approval under Subparagraphs 3.17(a) and 3.17(b) reveal deficiencies or nonconformities in the Work, the Prime Contractor shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Architect/Engineer's services and expenses, if any. The Prime Contractor shall bear the costs of any subsequent testing, inspection, or approval of the corrected Work.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Prime Contractor and promptly delivered to the Architect/Engineer.

(e) If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing or inspection.

(f) Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

3.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. CONTRACTOR SHALL

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COMPLETELY DEFEND, INDEMNIFY AND HOLD OWNER AND ARCHITECT/ENGINEER HARMLESS FROM ANY AND ALL LIABILITIES, SUITS OR CLAIMS FOR INFRINGEMENT OF PATENT RIGHTS, REGARDLESS OF WHETHER OR NOT THE OWNER OR THE ARCHITECT/ENGINEER SPECIFIED A PARTICULAR DESIGN, PROCESS OR PRODUCT IN THE CONTRACT DOCUMENTS THAT MAY BE THE SUBJECT OF A PATENT INFRINGEMENT OR OTHERWISE ACTIVELY INDUCED OR CONTRIBUTED TO THE PATENT INFRINGEMENT. In the event the Prime Contractor has reason to believe that a particular design, process or product specified infringes a patent, the Prime Contractor shall immediately notify the Owner and the Architect/Engineer of same.

3.19 INDEMNIFICATION

(a) THE PRIME CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT/ENGINEER, HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITIES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE PRIME CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE PRIME CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR OF THE ARCHITECT/ENGINEER, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CONTRACTOR, THE OWNER, AND THE ARCHITECT/ENGINEER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW, AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER THIRD PERSON OR ENTITY.

(b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Prime Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.19 shall not be limited by a limitation on amount or type of damages,

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compensation or benefits payable by or for the Prime Contractor or any Subcontractor, under workers compensation acts, disability benefit acts or other employee benefit acts.

(c) Indemnification under this Paragraph 3.19 shall include, but is not limited to, liability which could result to or be created for the Owner, its officers, agents, or employees, or the Architect/Engineer pursuant to State or Federal laws or regulations relating to pollution of the environment and State or Federal laws or regulations relating to the occupational safety and health of workers. The Prime Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Prime Contractor and that the obligations of the Owner, its officers, agents, and employees, and the Architect/Engineer under the above-mentioned laws and regulations are secondary to those of the Prime Contractor.

ARTICLE 4 - CONTRACT ADMINISTRATION

4.1 THE DESIGN PROFESSIONAL (ARCHITECT/ENGINEER)

(a) The design professional is the person lawfully licensed to practice architecture or engineering or a firm or other business entity lawfully practicing architecture/engineering identified as such in the formal Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect/Engineer" means the Architect/Engineer or the Architect/Engineer's authorized representative. The Owner may, at its option, designate a qualified Owner representative to serve as the Architect/Engineer on the Project instead of an outside firm or person. In such event, the references in these General Conditions that refer to the Architect/Engineer shall apply to the Owner-designated Architect/Engineer representative and the Owner-designated Architect/Engineer representative shall be accorded that same status by the Prime Contractor.

(b) In the event the Architect/Engineer is an outside person or firm and the Architect/Engineer's employment is terminated, the Owner may, at its option, contract with a new outside Architect/Engineer to replace the former, or may designate a qualified Owner representative to serve as the Architect/Engineer. The replacement Architect/Engineer, whether an Owner representative, an independent Architect/Engineer or any other qualified person or entity, shall be regarded as the Architect/Engineer for all purposes under the Contract Documents and shall be accorded that same status by the Prime Contractor. Any dispute in connection with such appointment shall be reviewed and settled by the Owner, whose decision shall be final and binding.

(c) Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect/Engineer's Construction Phase responsibility. Similarly, from time to time the Owner may expand or reduce the Owner's delegation of powers to the Architect/Engineer, with the Owner notifying the Prime Contractor of any such changes. The Architect/Engineer shall not be construed as a third party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth in this Subparagraph (c). In no event, however, shall the Owner have control over charge of, or be responsible for, construction means, methods, techniques,

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sequences, or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of Prime Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2 ARCHITECT/ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION

(a) The Architect/Engineer will administer the Contract as described in the Contract Documents and in accordance with the terms of the Architect/Engineer's agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Prime Contractor, the provisions of the Owner/Architect/Engineer Agreement will be made available to the Prime Contractor.

(b) The Architect/Engineer shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent necessary to personally familiarize themselves with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents. The Architect/Engineer shall not, however, be required to make continuous on-site inspections to check the Work. Field reports of each visit shall be prepared by the Architect/Engineer and submitted to the Owner. The Architect/Engineer shall employ all reasonable measures to safeguard the Owner against defects and nonconformities in the Work. The Architect/Engineer shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Work. The Architect/Engineer will, however, immediately inform the Owner whenever defects or nonconformities in the Work are observed, or when any observed actions or omissions are undertaken by the Prime Contractor or any Subcontractor which are not in the best interests of the Owner or the Project.

(c) The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Prime Contractor's responsibility as provided in Paragraph 4.3. The Architect/Engineer and the Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Prime Contractor, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Prime Contractor is responsible.

(d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Prime Contractor shall endeavor to communicate through the Architect/Engineer. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Prime Contractor.

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Communications by and with separate contractors will be through the Owner. The Prime Contractor shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Architect/Engineer.

(e) Based on the Architect/Engineer's observations and evaluations of the Prime Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Prime Contractor and will issue Certificates for Payment in such amounts.

(f) The Architect/Engineer and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 3.17(b) and 3.17(c), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer to the Prime Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

(g) The Architect/Engineer will review and approve or take other appropriate action upon the Prime Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such reasonable promptness as to not delay the Work or the activities of the Owner, Contractor, or separate contractors. 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 Prime Contractor as required by the Contract Documents. The Architect/Engineer's review of the Prime Contractor's submittals shall not relieve the Prime Contractor of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work as provided in Paragraph 7.3.

(i) The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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 Prime Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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(j) If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more Project representatives to assist in carrying out the Architect/Engineer'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 into the Contract Documents.

(k) The Architect/Engineer will interpret and make recommendations to the Owner concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Architect/Engineer shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Prime Contractor which change the scope of the Work or which modify or change the terms and conditions of any of the Contract Documents.

(l) Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by the Prime Contractor.

(m) The Architect/Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents; provided that the Architect/Engineer has the prior written approval of the Owner.

4.3 CLAIMS AND DISPUTES

(a) Definition; General Notice of Claim Procedure. As used in these General Conditions, a "Claim" means a demand or assertion by one of the parties to the Contract seeking an adjustment of the terms of the Contract Documents, of the Contract Sum, of the Contract Time, or some other relief in respect to the terms of the Contract Documents. The term also includes all other disputes between the Owner and the Contractor arising out of or relating to the Project or the Contract Documents, including but not limited to claims that work was outside the scope of the Contract Documents. The responsibility to substantiate the Claim and the burden of demonstrating compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, WITHOUT EXCEPTION, MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT/ENGINEER AND TO THE OWNER WITHIN FOURTEEN (14) DAYS IMMEDIATELY AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM. Every Claim of the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Prime Contractor by his signature) of the Prime Contractor, verifying the truth and accuracy of the Claim. THE PRIME CONTRACTOR SHALL BE CONCLUSIVELY DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURES AND TIME LIMITS SET OUT IN THIS PARAGRAPH.

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(b) Referral to the Architect/Engineer. Claims, disputes, and other matters in question between the Prime Contractor and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Architect/Engineer for recommendation to the Owner, which recommendation the Architect/Engineer will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Prime Contractor to submit the Claim to the Architect/Engineer for rendering of a recommendation to the Owner shall constitute a waiver of the Claim.

(c) Continuing Contract Performance. Pending final resolution of a claim the Prime Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents.

(d) Claims for Concealed or Unknown Conditions. No adjustment in the Contract Sum or Time associated with concealed or unknown conditions will normally be considered or allowed; provided, however, that the Contract Sum or Time may be adjusted by the Owner in such circumstances only if:

(1) a concealed subsurface condition is encountered in the course of performance of the Work;
(2) a concealed or unknown condition in an existing structure is at variance with conditions indicated by the Contract Documents; or
(3) an unknown physical condition is encountered below the surface of the ground or in an existing structure which is of an unusual nature and materially different from those ordinarily encountered and generally recognized as inherent in the character of the Work; and
(4) a notice of claim with proper and adequate substantiation is presented pursuant to Subparagraph 4.3(a) of these General Conditions; and
(5) the Owner and the Architect/Engineer determine that:

(i) prior to submitting its bid for the Work, the Contractor used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and

(ii) the work caused or required by the concealed or unknown condition at issue can be considered extra work to the extent that additional new Drawings must be prepared and issued and new construction beyond the scope of the Contract Documents is required.

(e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE ARCHITECT/ENGINEER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE PRIME CONTRACTOR AT THE PRIME CONTRACTOR'S OWN RISK. THE OWNER AND THE ARCHITECT/ENGINEER DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.

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(f) Claims for Additional Cost. If the Prime Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided in this Paragraph 4.3 shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. In addition, the Prime Contractor's request for an increase in the Contract Sum for any reason (other than work performed under emergency conditions) shall be made far enough in advance of required work to allow the Owner and the Architect/Engineer a sufficient amount of time, without adversely affecting the construction schedule, to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates or proposals and to negotiate, execute and distribute a Change Order for the required work if the Prime Contractor believes that additional cost is involved for reasons including but not limited to:

(1) a written interpretation from the Architect/Engineer;

(2) a written order for a minor change in the Work issued by the Architect/Engineer;

(3) failure of payment by the Owner;

(4) termination of the Contract by the Owner;

(5) the Owner's temporary suspension of all or any portion of the Work where the Prime Contractor was not at fault; or

(6) other reasonable grounds.

(g) Injury or Damage to Person or Property. If the Prime Contractor suffers injury or damages to person or property because of an act or omission of the Owner, or of any of the Owner's officers, employees or agents, written, sworn-to notice of any claim for damages or injury shall be given as provided in Subparagraph 4.3(a). The notice shall provide sufficient detail to enable the Architect/Engineer and the Owner to investigate the matter.

(h) Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Prime Contractor asserts a claim to the Prime Contractor, that the Prime Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the Prime Contractor to submit and assert the claim against the Owner shall be subject to:

(1) the requirements of Paragraph 4.3 of these General Conditions; and

(2) the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Prime Contractor to seek and assert such claim against the Owner:

(ii) The Prime Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Prime Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Prime

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Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Prime Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Prime Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Prime Contractor in the claim submittal materials.

(ii) The Prime Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Prime Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Prime Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed by the Contractor to be valid.

(iii) The Subcontractor making the claim to the Prime Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Prime Contractor in the claim submittal materials made by Contractor to the Owner..

(3) Any failure of the Prime Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim against Owner.

(4) Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or by applicable law.

(i) Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part. The Prime Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If the Prime Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Prime Contractor to develop a recovery schedule as described in Paragraph 3.10 or to accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as the Owner may reasonably direct and, upon receipt, the Prime Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Prime Contractor to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).

(2) In the event that the Prime Contractor is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance

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with Subparagraph 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to the Prime Contractor provided within fourteen (14) days after receipt of the Prime Contractor's Claim. If the Owner denies the Prime Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Prime Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(3) If the Prime Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by the Owner if not for the need and right to accelerate, the Prime Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Prime Contractor under Subparagraph 4.3(a) above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance; provided however, not to exceed five (5%) per cent, will be allowed on the claimed acceleration costs. NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM. The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (i)(3).

(i) Waiver of Claims; Final Payment. The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

(1) claims, security interests, purported liens, or other attempted encumbrances arising out of the Contract and remaining unsettled;

(2) defective or nonconforming Work appearing after Substantial Completion;

(3) latent defects, as defined in Subparagraph 12.2(d), appearing after Final Completion; or

(4) the terms of general and special warranties required by the Contract Documents or allowed or implied by law.

(k) THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING.

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(l) No Waiver of Governmental Immunity. NOTHING IN THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY APPLICABLE STATE LAW.

ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS OF SUBCONTRACTOR

(a) A Subcontractor is person or entity who has a direct Contract with the Prime Contractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Prime Contractor by purchase or lease for use in performance of or incorporation into the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(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 Project site or to supply materials or equipment to the Subcontractor or another Sub-subcontractor by purchase or lease for use in performance of or incorporation into the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

(a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Prime Contractor and the Owner, the Prime Contractor shall furnish to the Architect/Engineer in writing, for acceptance by the Owner and the Architect/Engineer, a list of the names, addresses, telephone numbers, M/WBE certification numbers (where applicable), and type of work of the Subcontractors (including those who are to furnish materials or equipment fabricated to a special design), proposed for the principal portions of the Work, including furnishings when made a part of the Contract. The Prime Contractor shall immediately notify the Owner in writing of any changes in the list as they occur. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.

(b) The Prime Contractor shall not Contract with a proposed person or entity to whom the Owner or Architect/Engineer has made reasonable and timely objection.

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(c) Architect/Engineer's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Prime Contractor of his responsibility for performance of Work as called for under the Contract Documents, and shall not provide a basis for any claim for additional time or money on the part of the Prime Contractor. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the Owner or Architect/Engineer. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.

(d) The Prime Contractor shall not change a Subcontractor previously selected if the Owner or Architect/Engineer makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

(a) By appropriate agreement, written where legally required for validity, the Prime Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Prime Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Prime Contractor all the obligations and responsibilities which the Prime Contractor, by the Contract Documents, assumes toward the Owner and the Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Contract Documents (including but not limited to these General Conditions) with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the rights of the Owner and the Architect/Engineer. Where appropriate, the Prime Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Prime Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.

(b) The Prime Contractor is solely responsible for making payments properly to the Prime Contractor’s Subcontractors on the Project. During performance of the Work, the Prime Contractor shall comply with the following additional rules regarding Subcontractor payments:

(1) The Prime Contractor shall submit, beginning with the Second Application and Certificate for Payment, a Subcontractor Payment Report (the "Report") with each Application and Certificate for Payment. The Report shall show all payments made to date by the Prime Contractor (plus existing retainage) to each Subcontractor involved in the Project. The Report shall be made on a form approved and supplied by the Owner. As an alternative to the Report, the Prime Contractor may furnish Affidavits of Payment Received with the Application and Certificate for Payment, which affidavits shall be executed by each Subcontractor owed money and paid by Subcontractor during the previous progress payment period for work or materials furnished on the Project. RECEIPT BY THE OWNER OF THE REPORT OR AFFIDAVITS OF PAYMENT RECEIVED SHALL BE A CONDITION PRECEDENT TO PAYMENT ON ANY APPLICATION FOR PAYMENT .

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(2) If, for any reason, the Prime Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Prime Contractor shall note the amount withheld and further note that the payment is in dispute. The Owner may, in its sole discretion, require the Prime Contractor to document and verify the dispute or other problem in question.

(3) The Owner reserves the right in its sole discretion, to withhold payment to the Prime Contractor pursuant to Paragraph 9.5(a) of the General Conditions, should it appear from the Report, statements of payment received or other information furnished to the Owner that:

(i) the Report has not been properly completed;

(ii) the Prime Contractor has knowingly provided false information regarding payment of any Subcontractor; or

(iii) the Prime Contractor has otherwise failed to make payments properly to any Subcontractor.

(4) THE PRIME CONTRACTOR SHALL NOT HAVE ANY RIGHT TO MAKE A CLAIM FOR ADDITIONAL TIME OR ADDITIONAL COMPENSATION AS A RESULT OF THE OWNER'S OR ARCHITECT/ENGINEER'S ENFORCEMENT OF THIS SUBPARAGRAPH 5.3(b). NO PROVISION OF THIS SUBPARAGRAPH OR ANY OF THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO CREATE A CONTRACTUAL RELATIONSHIP, EXPRESS OR IMPLIED, BETWEEN ANY SUBCONTRACTOR AND EITHER THE OWNER OR THE ARCHITECT/ENGINEER AND SHALL NOT BE CONSTRUED TO MAKE ANY SUBCONTRACTOR OR ANY OTHER PERSON OR ENTITY, A THIRD-PARTY BENEFICIARY OF THE CONTRACT BETWEEN THE OWNER AND THE PRIME CONTRACTOR.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of a termination of this Contract by the Owner under Article 14, the Prime Contractor shall, if requested in writing by the Owner, within fifteen (15) days after the date notice of termination is sent, deliver and assign to Owner, or any person or entity acting on the Owner's behalf, any or all subcontracts made by Prime Contractor in the performance of the Work, and deliver to the Owner true and correct originals and copies of the subcontract documents. In the event assignment is not requested by the Owner, Prime Contractor shall terminate all subcontracts to the extent that Owner has not directed assignment of same and to the extent that they relate to the performance of Work terminated by the notice of termination.

ARTICLE 6 - CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE

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CONTRACTS

(a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Prime Contractor claims that delay or additional cost is involved because of such action by the Owner, the Prime Contractor shall make a claim as provided elsewhere in, and in accordance with the Contract Documents.

(b) When separate Contracts are awarded for different portions of the Project or other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Building Construction Services Agreement with the Owner.

(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 Prime Contractor, who shall cooperate with them. The Prime Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Prime Contractor shall, with the approval of the Owner, make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Prime Contractor, separate contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Prime Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Prime Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Prime Contractor's Change Order proposal is denied by the Owner, the Prime Contractor must submit any Claim pursuant to Paragraph 4.3 of the General Conditions.

(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, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Prime Contractor under these General Conditions, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

(a) The Prime Contractor shall afford the Owner and separate contractors' reasonable opportunity for access to and storage of their materials and equipment and the performance of their activities and shall coordinate the Prime Contractor's construction and operations with the separate contractors as required by the Contract Documents.

(b) If part of the Prime Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Prime Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in the other construction that would

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render it unsuitable for proper execution and results. Failure of the Prime Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Prime Contractor's Work, except as to defects not then reasonably discoverable.

(c) The Owner shall not be liable to the prime Contractor for damages suffered by the Prime Contractor due to the fault or negligence of a separate contractor or through failure of a separate contractor to carry out the directions of the Owner or the Architect/Engineer. Should any interference occur between the Prime Contractor and a separate contractor, the Architect/Engineer or the Owner may furnish the Prime Contractor with written instructions designating priority of effort or change in methods, whereupon the Prime Contractor shall immediately comply with such direction. In such event, the Prime Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Prime Contractor.

(d) The Prime Contractor shall promptly remedy damage wrongfully caused by the Prime Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2(e).

(e) Should the Prime Contractor cause damage to the work or property of any separate contractor on the Project, the Prime Contractor shall, upon due notice, settle with the separate contractor by agreement, if the separate contractor will so settle. If the separate contractor sues the Owner or submits a claim on account of any damage alleged to have been so sustained, the Owner shall notify the Prime Contractor who shall defend such proceedings, at the Prime Contractor's sole expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Prime Contractor shall fully pay or satisfy it and shall reimburse the Owner for any and all attorney's fees and costs which the Owner has incurred.

(f) The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Prime Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project Site and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up, but is not obligated to do so, and Owner shall allocate the cost among those parties responsible, as the Architect/Engineer recommends to be just.

ARTICLE 7 - AMENDMENTS

7.1 CHANGE ORDERS

(a) A Change Order is a written order to the Contractor, signed by the Owner and the Architect/Engineer, issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, or an adjustment to the Contract Time, consistent

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with other applicable provisions of this Contract. The Owner, without invalidating the Contract and without requiring notice of any kind to the sureties, may order changes to the scope of Work under the Contract by additions, deletions, or other revisions, the Contract Sum and Contract Time to be adjusted consistent with other applicable provisions of this Contract. All Change Orders shall be executed on a Change Order form approved by the Owner and the Owner's City Attorney.

(b) In addition to the Owner and the Architect/Engineer, the Contractor shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Contractor refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Architect/Engineer to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Contractor indicates his agreement with all of the changes approved, including the adjustment in the Contract Sum or the Contract Time. EACH CHANGE ORDER SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. The Contractor forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on other Work.

(c) No extra work (except under emergency conditions) or changes shall be made nor shall any substitutions, changes or additions to or omissions or deviations from the requirements of the Drawings and Specifications be made unless pursuant to a written Change Order signed by the Owner and the Architect/Engineer, it being expressly understood that the Owner shall not be liable for the cost of extra work or any substitution, change, addition, omission or deviation from the requirements of the Drawings or Specifications unless the same shall have been authorized in writing by the Owner and the Architect/Engineer in a written change order or other Amendment. The provisions of this Paragraph 7.1 shall control in the event of any inconsistency between such provisions and the other provisions of this Article 7. See Subparagraph 10.3(a) of the General Conditions for Change Orders under emergency conditions.

(d) The method of determining the cost or credit to the Owner for any change in the Work shall be one of the following:

(1) mutual acceptance of a not-to-exceed lump-sum amount properly itemized and supported by sufficient substantiating data to permit evaluation; or

(2) unit prices stated in the Contract Documents or subsequently agreed upon; or

(3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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(4) the force account method provided in Subparagraph 7.1(e)

(e) If the parties cannot agree to one of the methods of calculating cost provided in Clauses (d) (1), (d) (2), or (d) (3), or if the parties agree to a method but cannot agree on a final dollar figure; or if the Contractor for whatever reason refuses to sign the Change Order in question; the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of the Work involved shall then be calculated on the basis of the reasonable jobsite expenditures and savings of those performing the Work attributable to the changes, including a reasonable allowance for overhead and profit, such allowance in any case never to exceed fifteen (15%) per cent. In such case, the Contractor shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Architect/Engineer and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to the Architect/Engineer each day during the performance of force account work, with copies to the Owner.

FAILURE OF THE CONTRACTOR TO SUBMIT THE SWORN-TO ITEMIZED ACCOUNTING DAILY AS REQUIRED HEREIN SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY RIGHT TO DISPUTE THE OWNER'S DETERMINATION OF THE AMOUNT DUE THE CONTRACTOR FOR FORCE ACCOUNT WORK. Costs to be charged under this Subparagraph for force account work are limited to the following:

(1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker’s compensation insurance;

(2) costs of materials, supplies and equipment (but not to include off-site storage unless approved in writing by the Owner), 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 related to the Work; and

(5) additional costs of supervision and field office personnel directly attributable to the changed Work. Pending final determination of cost to the Owner, payment of undisputed amounts on force account shall be included on the Architect/Engineer's Certificate of Payment as work is completed.

(f) The amount of credit to be allowed to the Owner for any deletion of Work or any other change which results in a net decrease of the Contract Sum shall be the amount of actual net cost confirmed by the Architect/Engineer plus the stated percentage for overhead and profit. When both additions and deletions or credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease with respect to that change.

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7.2 SUPPLEMENTAL AGREEMENTS

A written Supplemental Agreement can also be used to implement changes in the Work instead of a Change Order form, including but not limited to situations involving partial occupancy of the Work under Paragraph 9.8, a change made to the Drawings or the Specifications without an increase in the Contract Sum, or special circumstances where it is necessary or more appropriate for the Owner to use a Supplemental Agreement. Written Supplemental Agreements shall have a status equal to that of Change Orders for purposes of priority of Contract Documents interpretation, except that to the extent of a conflict, later Supplemental Agreements in time control over earlier Supplemental Agreements, and the latest Change Order or Supplemental Agreement in time controls over earlier dated Change Orders and Supplemental Agreements. The rules of Subparagraphs 7.1(b) through (f) shall also apply to the negotiation and execution of Supplemental Agreements.

7.3 MINOR CHANGES IN THE WORK

The Architect/Engineer, after notifying the Owner, shall be authorized to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Minor changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly. These written orders shall not be deemed to change or impact the Contract Sum or the Contract Time. Contractor shall have no Claim for any minor change ordered to the Work under this Paragraph 7.3 unless the Contractor submits its change proposal, prior to complying with the minor change ordered and in no event later than ten (10) working days from the date the minor change was ordered, to the Owner for approval.

7.4 TIME REQUIRED TO PROCESS AMENDMENTS

(a) All of the Contractor's responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Architect/Engineer a minimum of thirty (30) calendar days after receipt by the Architect/Engineer to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. All of the Prime Contractor's responses to proposal requests shall include a statement that the cost described in the response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation under the Contract Documents, without reservation or further recourse.

(b) All Amendments require approval by either the City Council or, where authorized by the State law and City ordinance, by the City Manager pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution, Ordinance or Administrative Action. THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE

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CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS. Pending the approval described above, the Contractor will proceed with the work under a pending Amendment only if directed in writing by the Owner.

ARTICLE 8 - CONTRACT TIME

8.1 DEFINITIONS

(a) Unless otherwise provided, the 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 Notice to Proceed from the Owner. The date of commencement shall not be postponed by the failure of the Prime Contractor, or of persons or entities for whom the Prime Contractor is responsible to act promptly to commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed, through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable extension of the Contract Time; the Contract Sum shall remain unchanged.

(c) The date of Substantial Completion is the date certified by the Architect/Engineer in accordance with Paragraph 9.7.

(d) The term “day” as used in the Contract Documents shall mean a calendar day, beginning and ending at 12:00 midnight, unless otherwise specifically defined by special provision.

8.2 PROGRESS AND COMPLETION

(a) **Time limits stated in the Contract Documents are of the essence of the Contract**. By executing the Building Construction Services Agreement, the Prime Contractor confirms that the Contract Time is a reasonable period for performing the Work.

(b) The Prime Contractor shall not knowingly, except by agreement with or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance to be furnished by the Prime Contractor as required by Article 11. The date of commencement of the Work shall not be changed by the effective date of insurance required by Article 11.

8.3 DELAYS AND EXTENSIONS OF TIME

(a) If the Prime Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Prime Contractor’s control, or by delay authorized by the Owner pending a claim, or by other causes which the Architect/Engineer determines may justify delay, then the

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Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer and Owner may determine.

(b) Claims relating to Contract Time and time extensions shall be made in accordance with the applicable provisions of Paragraph 4.3.

(c) No Damages for Delay. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, INCLUDING THE GENERAL CONDITIONS, NO ADJUSTMENT SHALL BE MADE TO THE CONTRACT SUM AND THE PRIME CONTRACTOR SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR UNFORESEEN, WHICH INCREASES THE TIME TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE ARCHITECT/ENGINEER, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE PRIME CONTRACTOR’S SOLE REMEDY.

(d) The Owner shall have the right to occupy, without prejudice to the right of either party, any completed or largely completed portions of the structure or Work, notwithstanding the fact that the Contract Time for completing all or a portion of the Work may not have expired. Partial occupancy and use shall not be deemed as an acceptance of the Work taken or used.

(e) The Prime Contractor shall promptly suspend the Work when either the Prime Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Prime Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Prime Contractor will also not be liable to the Owner for a delay caused in fact by the Work being suspended by a court order.

(f) The Architect/Engineer, with the consent of the Owner, shall have the authority to suspend the Work, in whole or in part, for such period or periods as the Architect/Engineer deems necessary due to unusual or severe weather conditions as are considered unfavorable for the suitable prosecution of the Work, or due to failure on the part of the Prime Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop the Work for an indefinite period, the Prime Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way, and shall take every precaution to prevent damage or deterioration of the Work performed. In cases of suspension of the Work under this Subparagraph, the Prime Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Prime Contractor shall not suspend the Work in whole or in part without written authority from the Architect/Engineer or the Owner, and shall resume the Work promptly when notified by the Architect/Engineer or the Owner to resume operations.

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(g) In the event of a delay that is the responsibility of the Prime Contractor or any of the Subcontractors, for which the Prime Contractor is not entitled to a time extension under the provisions of this Contract, the Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts, or resequencing. This acceleration shall be at no cost to the Owner and will continue until the Contract Time is restored. In the event of a delay for which the Prime Contractor is entitled to a time extension, as determined by the Architect/Engineer, Owner may similarly direct acceleration and the Prime Contractor agrees to perform same on the basis that the Prime Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). THE PRIME CONTRACTOR EXPRESSLY WAIVES ANY OTHER COMPENSATION RESULTING FROM ACCELERATION, SUCH AS LOSS OF LABOR PRODUCTIVITY OR EFFICIENCY.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Building Construction Services Agreement and, including authorized adjustments, is the total amount of compensation payable by the Owner to the Prime Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Prime Contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, when approved by the Architect/Engineer and the Owner, shall be used as a basis for the Prime Contractor's Application for Payment. The schedule of values shall follow the trade division of the Specifications. Prime Contractor's Application for Payment shall be filed on the current version of AIA Form G702 (Application and Certificate for Payment), as approved by the Owner.

9.3 APPLICATIONS FOR PAYMENT

(a) At least ten (10) days before the date established for each progress payment, the Prime Contractor shall submit to the Architect/Engineer an itemized Application for Payment for Work completed in accordance with the schedule of values. The Application shall be notarized, if required, and supported by data substantiating the Prime Contractor’s right to payment as the Owner or Architect/Engineer may require, including but not limited to copies of requisitions from Subcontractors and material suppliers, and reflecting the applicable retainage as required in the Contract Documents. Prime Contractor's Application for Payment shall also provide other supporting documentation as the Owner or the other applicable provisions of the Contract Documents may require.

(b) Applications for Payment may not include requests for payment of amounts the Prime Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Prime Contractor complies with Clause 5.3(b) (2) of these General Conditions and the

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Prime Contractor's Payment Bond Surety consents in writing to payment to the Prime Contractor of the funds deemed to be in dispute.

(c) Unless otherwise provided in the Contract Documents, progress payments shall include payment for materials and equipment delivered and suitably stored at the Project site for subsequent incorporation into the Work within thirty (30) days after delivery to the Project site. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored away from the Project site at a location agreed upon in writing. Payment for costs incurred in storage of materials or equipment away from the Project site will NOT be made by Owner unless:

(1) the Owner has given prior approval of such off-site storage in writing;
(2) the materials or equipment are stored in a bonded warehouse located in Denton County and identified with the Project for which they are stored, as evidenced by warehouse receipts and appropriate documents of title; and
(3) the materials or equipment stored off-site will be incorporated into the Work within thirty (30) days after delivery. STORAGE IN FACILITIES OF THE MANUFACTURER OR THE PRIME CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.

(d) The Prime Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Prime 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 Prime Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

(e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an "early delivery." All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Prime Contractor shall, at Prime Contractor's expense or at the expense of the responsible Subcontractor or Supplier, cause such early delivery to be removed from the Project site and stored off-site until required at the Project site. All costs of labor, transportation and storage will be included as part of the expense. If the Prime Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Prime Contractor's sole expense, and amounts may be withheld from the Prime Contractor's Application for Payment to reimburse the Owner for any costs incurred in removing unauthorized early delivery materials. OWNER WILL NOT BE RESPONSIBLE FOR THE PROTECTION OF OR RISK OF LOSS ON ANY EARLY DELIVERY MATERIALS OR EQUIPMENT, NOR WILL OWNER BE LIABLE FOR ANY PAYMENT FOR THE EARLY DELIVERY MATERIALS OR EQUIPMENT. Any materials or equipment classified as early delivery will not be approved for payment as stored materials prior to thirty (30) days before the incorporation

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of the materials or equipment into the Work, unless storage and payment at an earlier date is expressly approved in writing by the Owner.

(f) If the Contract Sum is equal to or less than $25,000, and if performance and payment bonds are not furnished by the Contractor, then no payment applied for will be payable under the Contract until the Work has been finally completed and accepted.

9.4 CERTIFICATES FOR PAYMENT

(a) The Architect/Engineer will, within ten (10) days after receipt of the Prime Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Prime Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Prime Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in:
   (a) City of Denton "General Conditions for Building Construction."
   (b) Subparagraph 9.5(a). The Certificate for Payment shall be issued on the current version of AIA Form G702 (Application and Certificate for Payment) as approved by the Owner.
   (c) The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Final Completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Prime Contractor is entitled to payment in the amount certified, subject to the Owner's approval. The issuance of a Certificate for Payment is not a representation that the Architect/Engineer has:

      (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

      (2) reviewed construction means, methods, techniques, sequences or procedures;

      (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Prime Contractor's right to payment; or

      (4) made examination to ascertain how or for what purpose the Prime Contractor has used money previously paid on account of the Contract Sum.

   (d) Whenever the Application for Payment for Work done since the last previous Application for Payment exceeds one hundred dollars ($100.00) in amount, Owner will pay a percentage of the Application, less applicable retainage, to the Prime Contractor

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within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Architect/Engineer. The Application may include acceptable nonperishable materials delivered to the Work or stored as provided for in Paragraph 9.3(c) and the payment will be allowed on the net invoice value, less taxes and applicable retainage.

(e) The City is required to withhold five percent (5%) retainage for public works contracts in which the total contract price estimate at the time of execution is more than $400,000; however, this requirement is applied by the City for all public works contracts in excess of $50,000. The retainage will be withheld by the Owner from each progress payment until final completion of the Work by the Contractor, approval of final completion by the Architect/Engineer, and final acceptance of the Work by the Owner. Unless otherwise required by state law, the retainage percentage as specified above is based upon the original Contract Sum, and will not be affected in the event the original Contract Sum is subsequently increased by Change Order.

(f) No progress payments shall be made on contracts where performance and payment bonds are not required or furnished. In such instances, payment for the Work performed will be made upon final completion and acceptance by the Owner of all Work.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

(a) The Architect/Engineer or the Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner's interest, if in the Architect/Engineer's or Owner's opinion the representations to the Owner required by Subparagraph 9.4(b) cannot be made. If the Architect/Engineer or the Owner is unable to certify payment in the amount of the Application, the Architect/Engineer or the Owner will notify the Prime Contractor as provided in Subparagraph 9.4(a). If the Prime Contractor and Architect/Engineer or the Owner cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make the required representations to the Owner. The Architect/Engineer or the Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary, in the Architect/Engineer's or Owner's opinion, to protect the Owner from loss because of:

(1) defective or nonconforming Work not remedied;

(2) third-party claims filed or reasonable evidence indicating probable filing of such claims;

(3) failure of the Prime Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;

(4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

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(5) damage to the Owner or another 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 damages for the anticipated delay;

(7) persistent failure to carry out the Work in accordance with the Contract Documents; or

(8) mathematical or other errors that are discovered in the Application for Payment.

(b) When all of the above reasons that existed for withholding certification are removed or remedied, then, at that time, certification will be made for amounts previously withheld.

(c) The Owner may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to the Owner from the Prime Contractor, regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise, and regardless of whether or not the debt due to the Owner has been reduced to judgment by a court.

9.6 PROGRESS PAYMENTS

(a) After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect/Engineer. The Owner shall not be liable for interest on any late or delayed progress payment or final payment caused by any claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the Application for Payment or as a precondition to payment under the Contract Documents, or due to any payment the Owner or the Architect/Engineer has a right to withhold or not certify under the Contract Documents. Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contract Documents, including but not limited to those defaults set forth in Subparagraph 9.5(a), Clauses (1) through (7). The Owner shall not be deemed in default by reason of withholding payment while any Prime Contractor default remains uncured.

(b) The Prime Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Prime Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Prime Contractor on account of such Subcontractors portion of the Work. The Prime Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

(c) The Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Prime

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Contractor and action taken thereon by the Architect/Engineer and the Owner on account of portions of the Work done by such Subcontractor.

(d) Neither the Owner nor the Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. That obligation belongs to the Prime Contractor or, in the event of the Prime Contractor's failure to pay a Subcontractor, to the Surety on the Payment Bond as required under Paragraph 11.3.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6(b), (c), and (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 Work not performed in accordance with the Contract Documents.

9.7 SUBSTANTIAL COMPLETION

(a) The Date of Substantial Completion of the Work, or designated portion of the Work, is the date certified by the Architect/Engineer when construction is sufficiently completed in accordance with the City Of Denton General Conditions For Building Construction.

(a) the Contract Documents such that the Owner may beneficially occupy and use the Work, or designated portions of the Work, for the purposes for which it is intended and only trivial and insignificant items remain which do not affect the Work as a whole.

(b) When the Prime Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Prime Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The Prime Contractor shall proceed promptly to complete and correct items on the list (hereinafter called the "punch list"). Failure to include an item on the punch list does not alter the responsibility of the Prime Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Architect/Engineer will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Architect/Engineer's inspection discloses any item, whether or not included on the punch list, which is not in accordance with the requirements of the Contract Documents and which renders the Work inspected not Substantially Complete the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Architect/Engineer. The Prime Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and the Prime Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Prime Contractor shall finish all items on the punch list accompanying the Certificate.

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(c) The Certificate of Substantial Completion shall be submitted to the Owner and the Prime Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

(d) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Prime Contractor and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

9.8 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 Supplemental Agreement with the Prime Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.2(e) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Prime 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 Prime Contractor considers a portion Substantially Complete, the Prime Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Prime 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 Prime Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

(b) Immediately prior to such partial occupancy or use, the Owner, Prime Contractor, and Architect/Engineer 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.

9.9 FINAL COMPLETION AND FINAL PAYMENT

(a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer, accompanied by the Owner’s representative, will promptly make final inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer’s knowledge, information and belief, and on the basis of the Architect/Engineer’s observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Prime Contractor and

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noted in said final Certificate is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9(b) as a condition precedent to the Prime Contractor's being entitled to final payment have been fulfilled. Owner will normally make final payment within thirty (30) days after Owner's receipt and approval of the final Certificate for Payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided by separate agreement between the Owner and the Prime Contractor.

(b) Neither final payment nor any remaining retained percentage shall become due until the Prime Contractor submits to the Architect/Engineer:

(1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
(2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;
(3) a written statement that the Prime Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
(4) a consent of surety to final payment; and
(5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

(c) As a precondition to final payment by the Owner under this Contract, the Prime Contractor's affidavit under Clause (b)(1) shall state that the Prime Contractor has paid each of his subcontractors, laborers or materialmen in full for all labor and materials provided to Contractor for the Work performed under this Contract. In the event the Prime Contractor has not paid each of his subcontractors, laborers or materialmen in full, the Prime Contractor shall state in the affidavit the amount owed and the name of each subcontractor, laborer or materialmen to whom such payment is owed. IN ANY EVENT, THE PRIME CONTRACTOR SHALL BE REQUIRED TO EXECUTE THE OWNER'S STANDARD AFFIDAVIT OF FINAL PAYMENT AND RELEASE AS A PRECONDITION TO RECEIPT OF FINAL PAYMENT.

(d) If, after Substantial Completion of the Work, final completion of the Work is materially delayed through no fault of the Prime Contractor or by issuance of Change Orders affecting final completion and the Architect/Engineer confirms the delay, the Owner shall, upon application by the Prime Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion

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of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of payment. Payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

(e) The acceptance by the Prime Contractor of the final payment shall operate as and shall be a complete release of the Owner from all claims or liabilities under the Contract, for anything done or furnished or relating to the Work or the Project, or for any act or neglect of the Owner relating to or connected with the Work or the Project.

ARTICLE 10 SAFETY, SECURITY AND UTILITY PROVISIONS; ENVIRONMENTAL COMPLIANCE

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Prime Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and will comply with all applicable City, County, State and Federal health and safety regulations.

10.2 SAFETY OF PERSONS AND PROPERTY

(a) The Prime Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(1) employees on the Work and other persons who may be affected thereby;

(2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Prime Contractor or the Prime Contractor's Subcontractors or Sub-subcontractors; and

(3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Prime Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

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(e) USE OF EXPLOSIVES - CLAIMS AND TOTAL INDEMNIFICATION. The Owner shall have the right to pre-approve the use of any explosives on the Project; the Prime Contractor shall not assume in its bid that permission to use explosives will be granted. The Owner shall NOT be liable for any claim for additional time or compensation as a result of the Owner's denial of permission to use explosives. Where use of explosives is permitted by the Owner, the Prime Contractor EXPRESSLY AGREES TO BE SOLELY RESPONSIBLE for the determination as to whether explosives shall actually be used, and for any result from the use, handling or storage of explosives, and shall INDEMNIFY, DEFEND AND HOLD COMPLETELY HARMLESS the Owner, its officers, agents and employees, and the Architect/Engineer against any and all claims, lawsuits, judgments, costs or expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, as the result of the use, handling or storage of the explosives by the Prime Contractor or any Subcontractor, REGARDLESS OF WHETHER SAID USE, HANDLING OR STORAGE WAS NEGLIGENT OR NOT, AND REGARDLESS OF WHETHER THE DAMAGE OR INJURY WAS CONTRIBUTED TO IN ANY WAY BY THE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES, OR THE ARCHITECT/ENGINEER AND ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. In the event of conflict with any other indemnity paragraph in this Contract, this paragraph controls. This indemnity paragraph is intended solely for the benefit of the parties to this Contract and is not intended to create or grant any rights, contractual or otherwise, to or for any other person or entity. The Prime Contractor shall furnish the Owner and the Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury, which insurance shall either include the Owner and the Architect/Engineer as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Architect/Engineer. All explosives shall be stored in a safe and secure manner, under the care of a competent watchman at all times, and all storage places shall be marked clearly and conspicuously: "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives and highly flammable materials shall conform to Federal and State laws, City of Denton ordinances, and the City of Denton Fire Department regulations. The Prime Contractor shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Prime Contractor’s intention to use explosives, and such notice shall be given sufficiently in advance to enable the telecommunications and public utility companies and private property owners to take such steps as they may deem necessary to protect their property from injury. The notice shall not relieve the Prime Contractor of any responsibility for damage resulting from any blasting operations.

(f) The Prime 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 Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the Prime Contractor, a 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 Prime Contractor is responsible under Clauses 10.2(a)(2) and 10.2(a)(3), except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of

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them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Prime Contractor or any of its Subcontractors. The foregoing obligations of the Prime Contractor are in addition to the Prime Contractor's obligations under Paragraph 3.l9. To the extent that any such damage or loss may be covered by property insurance or other insurance required by the Contract Documents, the Owner and the Prime Contractor shall exercise their best efforts to make a claim and obtain recovery from the insurers to provide for the cost, in whole or in part, of the repair work or to provide for reimbursement for such damage or loss.

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

(h) The Prime Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In an emergency affecting safety, health, or security of persons or property, the Prime Contractor shall act, at the Prime Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Prime Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.4 PUBLIC CONVENIENCE AND SAFETY

(a) The Prime Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

(b) The Owner reserves the right to remedy any neglect on the part of the Prime Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Prime Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Prime Contractor's neglect shall be deducted from the Contract Sum. The Prime Contractor shall notify the City Traffic Control Department when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the

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extent necessary for the safety and benefit of the traveling public. The Prime Contractor shall, when directed by the Architect/Engineer or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Prime Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Prime Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN

If the Work is carried on or adjacent to any street, alley or public place, the Prime Contractor shall, at the Prime Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon the Prime Contractor's name and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Paragraph, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Prime Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect the Work. Whenever evidence is found of such damage, the Architect/Engineer may order the damaged portion immediately removed and replaced by the Prime Contractor at Prime Contractor's cost and expense. The Prime Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect/Engineer. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Prime Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Prime Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, the Prime Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Prime Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers; for this purpose, the Prime Contractor shall provide and maintain, at the Prime Contractor's own

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expense, adequate pumping facilities and temporary outlets or diversions. The Prime Contractor shall, at the Prime Contractor's own expense, construct such troughs, pipes, or other structures necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Architect/Engineer. All storm water and sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT

(a) When the Prime Contractor desires to use the Owner's water in connection with the Work, the Prime Contractor shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the Prime Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the Denton Water Utilities Department.

(b) The Prime Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner or with Denton Municipal Electric in the event that separately metered electrical connections are required for the Project. The Prime Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Prime Contractor through the City of Denton.

10.9 USE OF FIRE HYDRANTS

The Prime Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the Denton Water Utilities Department in accordance with the Denton City Code.

10.10 ENVIRONMENTAL COMPLIANCE

(a) The Prime Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic

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Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

(b) In the event the Prime Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Prime Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Architect/Engineer and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a Change Order with the Prime Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Prime Contractor or any of its Subcontractors, the Prime Contractor shall be responsible for remediating the condition at the sole expense of the Prime Contractor in accordance with the Prime Contractor's APPROVED Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Paragraph 4.3 and Article 8.

(c) The Prime Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Prime Contractor or any Subcontractor or Supplier. The Prime Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Architect/Engineer so that they may observe the activities; provided, however, that it shall be the Prime Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

(d) Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Prime Contractor shall submit to the Owner for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Prime Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include

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methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Owner's Project Manager or other designated representative. The Prime Contractor shall not commence any field work prior to approval of such plan by the Owner. The following additional rules shall apply with respect to spills caused by the Prime Contractor or a Subcontractor:

(1) The Prime Contractor shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the Prime Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.

(2) The Prime Contractor shall immediately respond in accordance with the SPRP in the event of a spill.

(3) The Prime Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the Prime Contractor shall use only those transporters and disposal facilities that are approved in advance in writing by the Owner. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request of the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter. ALL COSTS OF COLLECTION, CONTAINMENT, AND DISPOSAL OF SPILLED MATERIALS SHALL BE THE SOLE RESPONSIBILITY OF THE PRIME CONTRACTOR.

(4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.

(e) Clean Air Management Plan. The Prime Contractor shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the contractor selection process. The Owner reserves the right, at the Prime Contractor's sole expense, to require the removal or retrofitting of any equipment used in the course of construction that does not comply with the Plan submitted to and approved by the Owner.

(f) The Prime Contractor shall deposit surplus or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Prime Contractor shall submit to the Owner for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon

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request to the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter.

(g) The Prime Contractor is responsible for obtaining all TXPDES Storm Water Permits from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities promulgated by EPA, including but not limited to cleaning, grading, and excavation that disturb the applicable amount of total land area. In addition, the Prime Contractor shall comply with all regulations of the Owner relating to storm water and storm water runoff management at the Project site pursuant to Chapter 19, Article IX, Denton City Code, as amended.

(h) The Prime Contractor shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable.

(i) The Owner reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the Owner and without an extension of the Contract Time, in the event the Prime Contractor fails or refuses after seven (7) days advance written notice from the Owner to comply with the provisions of this Paragraph 10.10, the terms of the SPRP, the terms of the Clean Air Management Plan, any storm water permit or other environmental permit issued in connection with the Work, or any applicable environmental law, rule, regulation, or ordinance:

(1) suspend all or any portion of the Work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the Prime Contractor and approved by the Owner;

(2) if the Prime Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and backcharge the Prime Contractor for the cost of the remediation or correction; or

(3) terminate the Contract for cause as provided in Article 13.

ARTICLE 11 INSURANCE AND BONDS

11.1 PRIME CONTRACTOR'S INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

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11.2 PROPERTY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.3 'UMBRELLA' LIABILITY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.4 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.5 PERFORMANCE AND PAYMENT BONDS

(a) Subject to the provisions of Subparagraph 11.5(b), the Prime Contractor shall furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses (a)(1) and (a)(2) below, which surety bonds shall be in accordance with the Charter of the City of Denton and the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Prime Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.5(c) and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:

(1) Performance Bond. A good and sufficient bond in an amount equal to 100% of the total awarded task order, guaranteeing the full and faithful execution of the work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any Amendments thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of final completion and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

(2) Payment Bond. A good and sufficient bond in an amount equal to 100% of the total awarded task order, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract

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Documents and any Amendments thereto, and for the use and protection of each claimant.

(b) No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Prime Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Denton County, Texas. Each surety shall designate an agent resident in Denton County, Texas to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

Contractor will be required to furnish original performance and payment bonds for 100% of the total submission price before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms are attached and shall be returned upon notice of each awarded project task order by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from task order award. Upon approval, a purchase order will be issued.

(c) The failure of the Contractor to deliver the required statutory bonds and evidence of insurance within fourteen (14) calendar days after the task order is awarded shall constitute a material breach of the Prime Contractor’s bid proposal and the Owner may rescind the task order award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Prime Contractor's failure to execute and furnish the statutory bonds within fourteen (14) calendar days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.5(e). In the event the Owner should re-advertise for bids, the defaulting Prime Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this Paragraph.

ARTICLE 12 DEFECTIVE AND NONCONFORMING WORK

12.1 UNCOVERING OF WORK

(a) If a portion of the Work is covered contrary to the Architect/Engineer’s request or to requirements specifically expressed in the Contract Documents, the Work must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer’s

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observation and be replaced at the Prime Contractor's expense without change in the Contract Time.

(b) If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to it being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Prime Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If any Work is not in accordance with the Contract Documents, the Prime Contractor shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

(a) The Prime Contractor shall promptly correct Work rejected by the Architect/Engineer as failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Prime Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby.

(b) If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Prime Contractor shall correct it promptly after receipt of written notice from the Architect/Engineer or the Owner to do so unless the Owner has previously given the Prime Contractor a written acceptance or waiver of the defect or nonconformity. The Prime Contractor's obligation to correct defective or nonconforming Work remains in effect for:

(1) one year after the date of Substantial Completion of the Work or designated portion of the Work;

(2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or

(3) the stipulated duration of any applicable special warranty required by the Contract Documents.

(c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.

(d) The obligations of the Prime Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Prime Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Clauses (b)(1) and (b)(2) does not limit the ability of the Owner to require the Prime Contractor to correct latent defects or

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nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect/Engineer at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one year period also does not relieve the Prime Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

(e) The Prime Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Prime Contractor nor accepted by the Owner.

(f) If the Prime Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.4. If the Prime Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Prime Contractor's expense. If the Prime Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Prime Contractor, including compensation for the Architect/Engineer's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover costs which the Prime Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Prime Contractor then or thereafter are not sufficient to cover the deficiency, the Prime Contractor shall pay the difference to the Owner.

(g) The Prime Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Prime Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

(h) Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Prime Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2(b) relates only to the specific obligation of the Prime 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 Prime Contractor's liability with respect to the Prime Contractor's obligations other than specifically to correct the Work.

(i) Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

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The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13 COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 FINAL COMPLETION OF CONTRACT

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Architect/Engineer, and final acceptance and final payment is made by the Owner.

13.2 WARRANTY FULFILLMENT

Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Architect/Engineer will make a detailed inspection of the Work and will advise the Prime Contractor and the Prime Contractor's Surety of the items that require correction. The Architect/Engineer will make a subsequent inspection and if the corrections have been properly performed, the Architect/Engineer will issue a letter of release on the maintenance stipulations to the Prime Contractor and the Surety. If for any reason the Prime Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

(a) Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Prime Contractor, including but not limited to the following causes:

(1) Failure or refusal of the Prime Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

(2) A reasonable belief that the progress of the Work being made by the Prime Contractor is insufficient to complete the Work within the specified time.

(3) Failure or refusal of the Prime Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

(4) A reasonable belief that the Prime Contractor has abandoned the Work.

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(5) A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

(6) Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect/Engineer or the Owner as provided for in the Contract Documents.

(7) Failure or refusal of the Prime Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect/Engineer.

(8) A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.

(9) Repeated and flagrant violation of safe working procedures.

(10) The filing by the Prime Contractor of litigation against the Owner prior to completion of the Work.

(b) When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3(e), the Prime Contractor shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Prime Contractor and the surety or its authorized agents, assume the obligations of the Prime Contractor for the Work or that portion of the Work which the Owner has ordered the Prime Contractor to discontinue and may:

(1) perform the Work with forces employed by the surety;

(2) with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

(3) with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming Work, and compensate the Owner for any other loss sustained as a result of Prime Contractor's default.

In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the Prime Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms

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of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Architect/Engineer and attorneys fees, as a result of such termination.

(c) The balance of the Contract Sum remaining at the time of the Prime Contractor's default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Subparagraph 13.3(b), exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Prime Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Prime Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Prime Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Prime Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Prime Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of the Architect/Engineer and attorney's fees), and damages incurred as a result of the termination.

(d) The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3(c), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Prime Contractor, then the Owner may pay to the Prime Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Prime Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Prime Contractor, then the Prime Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the Prime Contractor shall continue the remainder of the Work in conformity with the terms of the Contract, and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

(e) The unconditional right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of termination for convenience to the Prime Contractor.

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Upon the Prime Contractor's receipt of such written notice, the Prime Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Prime Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Prime Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Prime Contractor for lost or anticipated profits.

13.4 TEMPORARY SUSPENSION OF THE WORK

(a) The Work or any portion of the Work may be temporarily suspended by the Owner immediately upon written notice to the Prime Contractor for any reason, including but not limited to:
(1) the causes described in Clauses 13.1(a)(1) through (a)(10) above;

(2) where other provisions in the Contract Documents require or permit temporary suspension of the Work;

(3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or

(4) other unforeseen conditions or circumstances.

(b) The Prime Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Prime Contractor arising from a temporary suspension due to a cause described in Clause (a)(1) above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses (a)(2) through (a)(4), where the Prime Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Prime Contractor under Subparagraph 4.3 of these General Conditions:

(1) an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Architect/Engineer and the Owner;

(2) an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and

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(3) if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

(a) This Contract shall be in all things governed by the laws of the State of Texas without regard to conflict of laws principles.

(b) The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Prime Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Prime Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without written consent of the Owner. If the Prime Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Prime Contractor, except where assignment is compelled or allowed by court order, the terms of the Contract Documents, or other operation of law.

14.3 WRITTEN NOTICE

Except as otherwise provided in Article 16, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid to the Project Manager or Superintendent of either party, or to an officer, partner, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

(a) The duties and obligations imposed on the Prime Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.

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(b) No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Prime Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

14.5 INTEREST

The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Paragraph 9.6(a) of these General Conditions.

14.6 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

No officer or employee of the Owner shall have a financial interest, direct or indirect, in any Contract with the Owner, or be financially interested, directly or indirectly, in the sale to the Owner of any land, materials, supplies or services, except on behalf of the Owner as an officer or employee. Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.7 VENUE

This Contract is deemed to be performed in Denton County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Denton County, Texas.

14.8 INDEPENDENT CONTRACTOR

In performing the Work under this Contract, the relationship between the Owner and the Prime Contractor is that of an independent contractor. The Prime Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Prime Contractor an agent, servant, or employee of the Owner, or making the Prime Contractor or any of the Prime Contractor’s employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

14.9 NONDISCRIMINATION

As a condition of this Contract, the Prime Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Prime Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex,

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sexual orientation, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Prime Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Prime Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.10 GIFTS TO PUBLIC SERVANTS

(a) The Owner may terminate this Contract immediately if the Prime Contractor has offered, conferred, or agreed to confer any benefit on a City of Denton employee or official that the City of Denton employee or official is prohibited by law from accepting.

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

(c) Notwithstanding any other legal remedies, the Owner may require the Prime Contractor to remove any employee of the Prime Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Prime Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.

ARTICLE 15 RIGHT TO AUDIT CONTRACTOR'S RECORDS

By execution of the Building Construction Services Agreement, the Prime Contractor grants the Owner the right to audit, at the Owner's election, all of the Prime Contractor's records and billings relating to the performance of the Work under the Contract Documents. The Prime Contractor agrees to retain its Project records for a minimum of five (5) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Prime Contractor under this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City’s rights as may be disclosed by an audit under this section.

ARTICLE 16 NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of the Denton City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Prime Contractor shall comply with the requirements of this ordinance as a precondition of any litigation relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

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EXHIBIT D
PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The Contractor will be required to furnish Payment and Performance Bonds for 100% of the total awarded project task order before work is to commence. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms are attached and shall be returned upon notice of each project task order award by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from notice of task order award. Upon approval, a purchase order will be issued.

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INSURANCE REQUIREMENTS

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.

As soon as practicable after notification of contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- or better**.

- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees, and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- Liability policies shall be endorsed to provide the following:

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- Name as Additional Insured the City of Denton, its Officials, Agents, Employees, and volunteers.

- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

A. <u>COMMERCIAL GENERAL LIABILITY INSURANCE</u>

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum

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combined bodily injury (including death) and property damage limits of $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: $100,000.00 Each Accident
Bodily Injury by Disease: $100,000.00 Each Employee
Bodily Injury by Disease: $500,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. INSTALLATION FLOATER POLICY

Providing **All-Risk** coverage including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft in an amount equal to one hundred percent (100%) of the contract cost of the project in question. The policy shall include materials delivered and labor performed for the project in question. The policy shall be written jointly in the names of the City of Denton, Contractor teams, subcontractors, and sub-subcontractors as their interests may appear.

The policy shall have endorsements as follows:

a) This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
a) Loss, if any, shall be adjusted with and made payable to the City of Denton as Trustee for the insureds as their interests may appear.

D. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including

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death) and property damage limit of $1,000,000.00 per occurrence.

NOTE:

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

Docusign Envelope ID: 015B3CD8-F818-46A2-AEEF-1EAB0CFE54D6

Exhibit F
Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at : https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

Docusign Envelope ID: 015B3CD8-F818-46A2-AEEF-1EAB0CFE54D6

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.**

EAR Telecommunications LLC dba
EAR TC

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 relations hip 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:
Najeeb Reyes
FD3478E93B95458...
Signature of vendor doing business with the governmental entity

6/24/2025
Date

Docusign Envelope ID: 015B3CD8-F818-46A2-AEEF-1EAB0CFE54D6

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

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

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

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

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

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

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

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

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

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

Certificate Of Completion

Envelope Id: 015B3CD8-F818-46A2-AEEF-1EAB0CFE54D6
Status: Sent
Subject: Please DocuSign: City Council Contract 8801 Prequalification for Traffic Signal Construction EAR TC
Source Envelope:
Document Pages: 81
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Gabby Leeper
901B Texas Street
Denton, TX 76209
Gabby.Leeper@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
6/16/2025 4:45:20 PM
Holder: Gabby Leeper
Gabby.Leeper@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Gabby Leeper gabby.leeper@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 6/16/2025 4:46:40 PM Viewed: 6/16/2025 4:46:46 PM Signed: 6/16/2025 4:47:03 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DS LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 6/16/2025 4:47:07 PM Viewed: 6/16/2025 4:49:16 PM Signed: 6/16/2025 4:49:53 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by: Marcella Lunn 4B070831B4AA438... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 6/16/2025 4:49:58 PM Viewed: 6/19/2025 11:27:42 PM Signed: 6/19/2025 11:28:56 PM
Najeeb Reyes najeeb.reyes@eartc.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 6/20/2025 5:56:16 AM ID: 7081811d-a7c1-4f09-a2f7-fd7b9314adbf	DocuSigned by: Najeeb Reyes FD3478E93B95458... Signature Adoption: Pre-selected Style Using IP Address: 2600:1700:4671:8660:3051:eeb2:a919:ad52	Sent: 6/19/2025 11:29:01 PM Resent: 6/24/2025 10:22:00 AM Viewed: 6/24/2025 10:34:19 AM Signed: 6/24/2025 10:40:30 AM

Signer Events	Signature	Timestamp
Scott McDonlald scott.mcdonald@cityofdenton.com Director Security Level: Email, Account Authentication (None)	Signed by: D4585119F060407... Signature Adoption: Pre-selected Style Using IP Address: 47.190.47.120 Signed using mobile	Sent: 6/24/2025 10:40:34 AM Resent: 6/27/2025 3:13:34 PM Resent: 7/2/2025 10:10:50 AM Resent: 7/10/2025 12:16:24 PM Resent: 7/14/2025 2:56:32 PM Viewed: 7/14/2025 3:37:45 PM Signed: 7/14/2025 3:38:15 PM
Electronic Record and Signature Disclosure: Accepted: 7/14/2025 3:37:45 PM ID: 30ae799a-2b73-450a-99b8-2761a1a21e7c		
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)		Sent: 7/14/2025 3:38:20 PM
Electronic Record and Signature Disclosure: Not Offered via Docusign		
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via Docusign		
Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 6/16/2025 4:47:07 PM
Electronic Record and Signature Disclosure: Not Offered via Docusign		

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 7/14/2025 3:38:20 PM Viewed: 7/15/2025 3:06:54 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
James Andrews james.andrews@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 10/9/2024 5:32:03 PM ID: 4f7ee8fd-93df-452a-ad9d-25bcc34ba748		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/16/2025 4:46:40 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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

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 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 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 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:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** 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.

Docusign Envelope ID: EC09C499-3023-4ED0-AB8A-D3ECD8A13521

Docusign City Council Transmittal Coversheet

RFQ	8801
File Name	Prequalification for Traffic Signal Construction-Durable Specialties
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

DS
LH

Docusign Envelope ID: EC09C499-3023-4ED0-AB8A-D3ECD8A13521

CONTRACT BY AND BETWEEN CITY OF DENTON, TEXAS AND DURABLE SPECIALTIES, INC. (CONTRACT 8801)

THIS CONTRACT is made and entered into this date _____, by and between **Durable Specialties, Inc.** a Texas Corporation, whose address is 2302 Paddock Way Dr Grand Prairie, TX 75050 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide products and/or services in accordance with the City's document RFQ 8801 – Prequalification for Traffic Signal Construction Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFQ 8801 **(Exhibit "B" on File at the Office of the Purchasing Agent);**
(c) General Provisions – Standard Terms and Conditions **(Exhibit "C");**
(d) Payment and Performance Bond Requirements **(Exhibit "D");**
(e) Insurance Requirements **(Exhibit "E");**
(f) Certificate of Interested Parties Electronic Filing **(Exhibit "F");**
(g) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "G");**

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

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.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Docusign Envelope ID: EC09C499-3023-4ED0-AB8A-D3ECD8A13521

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.

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.

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.

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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

Docusign Envelope ID: EC09C499-3023-4ED0-AB8A-D3ECD8A13521

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR

DocuSigned by:

BY: _____
AUTHORIZED SIGNATURE

Printed Name: Patrick Bryan

Title: President

972-880-2286
PHONE NUMBER

patrick@durablespecialties.com
EMAIL ADDRESS

75-1963459
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:

BY: Marcella Lunn
4B070831B4AA438...

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

Signed by:

Scott McDonald
SIGNATURE

Scott McDonald
PRINTED NAME

Director
TITLE

Development Services
DEPARTMENT

Docusign Envelope ID: EC09C499-3023-4ED0-AB8A-D3ECD8A13521

Exhibit A
Special Terms and Conditions

1. Total Contract Amount
Durable Specialties, Inc., is pre-qualified for RFQ 8801 – Traffic Signal Construction Services. All pre-qualified contractors will be issued a Request for Cost that defines the scope of work, project material list, and project timeline dates. The pre-qualified contractors will have (5) days to respond to such Request for Cost. Thereafter, the City will select the pre-qualified contractor with the lowest price and ability to meet the City's timeline schedule requirements. If a response to the Request for Cost request is not received in the applicable time period, such pre-qualified contractor will be disqualified from that Request for Cost. The cumulative contract total for all awarded projects to all pre-qualified contractors for contract 8801 shall not exceed $7,100,000.

2. Contract Terms
The contract term will be three (3) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. Performance Liquidated Damages
Contractor recognizes that time is of the essence of this Agreement and that City will suffer financial loss if the Work is not completed within the times specified in each task order, plus any extension thereof allowed in accordance with Article 8.3 of the General Provisions. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City one thousand dollars ($1,000) for each day that expires after the time specified in each task order for Final Acceptance until the City issues the Final Letter of Acceptance.

4. Post Award Additional Requirements
Pre-Construction Meeting: Prior to commencement of the services, the City and the Contractor will conduct a pre-construction meeting to review the overall scope, schedule, deliverables, planning process, and to ensure that all relevant parties to the project are introduced.

List of Subcontractors: Prior to commencement of the services, the respondent awarded the task order will submit to the City for approval a list of all Subcontractors, and/or his major Subcontractors, proposed to use. This list will include each Subcontractor's correct name, mailing address and phone number.

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Contractor's Superintendent: The Contractor shall submit the name and qualifications of the person designated as Project Superintendent within ten (10) days of the receipt of the Notice of Award Letter.

Environmental Hazards: There are no known safety or environmental hazards existing on the project site at the time of issue of this solicitation. The City does not warrant or guarantee against the possibility that safety or environmental hazards or potential hazards may exist at the City's facilities. The Contractor shall be responsible for identifying any hazardous conditions and notifying the City verbally of such conditions as soon as possible after discovery and shall follow up in writing within 10 days of such discovery. The costs for necessary investigations or any potential corrective actions will be negotiated between the City and the Contractor.

Contractor Standards of Performance: The contractor shall prosecute the work diligently with skilled craftsmen and with state-of-the-art methods to complete the work within the time stated in the Request for Cost or such time extensions as may be granted.

Monthly Reports: The Contractor awarded the task order shall provide to the City of Denton, detailed reports of daily work conditions, daily man power availability, equipment problems, and work accomplished on a monthly basis.

Safety: All contractors to the City of Denton are required to ensure absolute safety standards are applied and enforced. The City of Denton will not be responsible for individual contractor safety, and the awarded contractor shall not hold the City of Denton responsible. Known hazards shall immediately be reported to the Project Manager and all safety precautions shall be taken to prevent potential safety issues from occurring.

5. Disposal of Material

All costs associated with the removal of trash and debris, including but not limited to rental of special equipment, open top containers, dumpsters, and trailers as well as payment of landfill fees, must be included in the unit pricing.

a) The City of Denton is the EXCLUSIVE provider of Solid Waste Services for the City of Denton. Consistent with the City of Denton Code of Ordinances: Ord. No. 23-386
   a. All Waste must be transported to the City of Denton Landfill (1527 S Mayhill Rd., Denton TX) for Disposal
   b. Contractor must use Contractor Employees and haul materials in contractor-owned equipment, should they wish to haul material themselves for disposal at the City of Denton Landfill.
   c. Should the Contractor choose to use a third party to supply and haul containers to the landfill, the Contractor MUST contract with the City of Denton, Solid Waste and Recycling Department to provide equipment and services. Cost may be found online at https://tx-denton.civicplus.com/DocumentCenter/View/4255/Fiscal-Year-2024---2025-Solid-Waste-Rate-Ordinance?bidId=
   d. Service requests are made to the City of Denton Customer Service by calling 940-349-8400.

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EXHIBIT C
GENERAL PROVISIONS- TERMS AND CONDITIONS FOR FACILITY CONSTRUCTION SERVICES

Invoices, Payments, and Releases

1. INVOICES AND PAYMENT PROCESSING:

Payment processing: The City review, inspection, and processing procedures for invoices ordinarily require thirty (30) days after receipt of invoices, materials, or services. Proposals which call for payment before thirty (30) days from receipt of invoice, or cash discounts given on such payment, will be considered only if, in the opinion of the Purchasing Manager, the review, inspection, and processing procedures can be completed as specified. It is the intention of the City of Denton to make payment within thirty (30) days after receipt of valid invoices for which items or services have been received unless unusual circumstances arise. The thirty (30) day processing period for invoices will begin on the date the invoice is received or the date the items or services are received, **whichever date is later**.

Direct deposit for payments: Prime Contractors are encouraged to arrange for receiving payments through direct deposit. Information regarding direct deposit payments is available from the City of Denton Purchasing website: www.dentonpurchasing.com.

Invoices: Invoices shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299 with a copy to the attention of Pritam Deshmukh, City of Denton Traffic Department emailed to pritam.deshmukh@cityofdenton.com. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.** Invoices for partial payments on construction projects should normally be presented for payment within the first five (5) days of the month, and submitted on the Pay Application Form.

2. TAX EXEMPTION:

The City of Denton qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. Any Prime Contractor performing work under this Contract for the City of Denton may purchase materials and supplies and rent or lease equipment sales tax free. This is accomplished by issuing exemption certificates to suppliers. Certificates must comply with State Comptroller's ruling #95-0.07 and #95-0.09.

3. PAYMENTS TO CONTRACTORS:

A. Upon presentation of valid invoices, which should be within the first week of each month, the Owner shall make partial payments to the Prime Contractor for construction accomplished during the preceding calendar month on the basis of completed construction certified to by the Prime Contractor and approved by the Owner and Architect/Engineer solely for the purposes of payment. Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety-five percent (95%) of each payment request approved during the construction of the project shall be paid by the Owner to the Prime Contractor prior to completion of the Project. Upon the approval by the Owner of the Prime Contractor's "Final Invoice for Payment" showing the total cost of the construction performed, the Owner shall make payment to the Prime Contractor of all

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amounts to which the Prime Contractor shall be entitled there under which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of completion of construction of the Project, as specified in the Final Invoice for Payment, unless withheld because of the fault of the Prime Contractor.

B. The Prime Contractor shall be paid on the basis of the percentage of the work actually completed for each construction item. The total amount paid for periodic billings shall not exceed the maximum Contract price for the construction of the project as set forth in the Contract, unless such excess shall have been approved in writing by the Purchasing Agent as part of a change order.

C. No payment shall be due while the Prime Contractor is in default in respect of any of the provisions of this Contract, and the Owner may withhold from the Prime Contractor the amount of any claim by any third party against either the Prime Contractor or the Owner based upon an alleged failure of the Prime Contractor to perform the work hereunder in accordance with the provisions of this Contract. This includes, without limitation, the alleged failure of the Prime Contractor to make payments to subcontractors.

4. RELEASE OF LIENS AND CERTIFICATE OF CONTRACTOR:

Upon award of the Contract, the Prime Contractor shall inform the Owner of the subcontractors and material sources that will be used. Upon the completion by the Prime Contractor of the construction of the Project, but prior to final payment to the Prime Contractor, the Prime Contractor shall deliver to the Owner releases of all liens, and of rights to claim any lien, from all manufacturers, materialmen and subcontractors furnishing services or materials for the Project, to the effect that all materials or services used on or for the Project have been paid for and indicating that the Owner is fully released from all such claims.

5. PAYMENTS TO MATERIALMEN AND SUBCONTRACTORS:

The Prime Contractor shall pay each materialman, and each subcontractor, if any, not later than five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Contractor for and on account of materials furnished or construction performed by each materialman or each subcontractor.

6. REMEDIES:

A. Completion of Prime Contractor's Default
If default shall be made by the Prime Contractor or by any subcontractor in the performance of any of the terms of this proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Prime Contractor and the Surety or Sureties upon the Prime Contractor's bond or bonds a written notice requiring the Prime Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Prime Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner and/or Architect/Engineer shall be made by the Prime Contractor or its Surety or Sureties, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Prime Contractor, and the Prime Contractor and its Surety or Sureties shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Prime Contractor or any

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of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Prime Contractor may have against third persons in connection with this Contract and for such purpose the Prime Contractor does hereby assign, transfer and set over unto the Owner all such rights claims and demands.

B. Cumulative Remedies

Every right or remedy herein conferred upon or reserved to the Owner shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election. Provided, however, that the provisions of the **REMEDIES SECTION** shall be the exclusive measure of damages for failure by the Prime Contractor to complete the construction of the Project within the time herein agreed upon.

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CITY OF DENTON GENERAL CONDITIONS FOR CONSTRUCTION
ARTICLE 1 GENERAL PROVISIONS

GENERAL DEFINITIONS

1.1 THE FOLLOWING DEFINITIONS APPLY THROUGHOUT THESE GENERAL CONDITIONS AND TO THE OTHER CONTRACT DOCUMENTS:

a) THE CONTRACT DOCUMENTS

The Contract Documents consist of the formal Building Construction Services Agreement between the Owner and the Prime Contractor, these General Conditions and other supplementary conditions included by special provisions or addenda, drawings, specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract, and Amendments issued after execution of the Contract. For purposes of these General Conditions, an Amendment is:

(1) a written Supplemental Agreement to the Contract signed by authorized representatives of both parties;

(2) a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1(b) and Subparagraph 7.1(e); or

(3) a written order for a minor change in the Work issued by the Architect/Engineer as described in Paragraph 7.3.

The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Prime Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Prime Contractor.

b) THE CONTRACT

The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and made a part of the formal Building Construction Services Agreement between the Owner and the Prime Contractor by reference in this Paragraph and Paragraph 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Prime Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

(1) between the Architect/Engineer and Prime Contractor;

(2) between the Owner and a Subcontractor or -subcontractor; or

(3) between any persons or entities other than the Owner and Prime Contractor.

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The Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect/Engineer's duties.

c) THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Prime Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Prime Contractor is responsible, to fulfill the Prime Contractor's obligations. The Work may constitute the whole or a part of the Project.

d) THE PROJECT

The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

e) THE DRAWINGS

The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, 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, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

g) THE PROJECT MANUAL

The Project Manual is the volume or volumes which contain the bidding requirements, sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

h) ALTERNATE

An Alternate is a variation in the Work on which the Owner requires a price separate from the City Building General Conditions Base Bid. If an Alternate is accepted by the Owner,

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the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted prior to any Work under the alternate being performed or materials delivered to the Project site, the Owner will be entitled to a credit in the full value of the alternate as priced in the Prime Contractor's Bid.

i) BASE BID

The Base Bid is the price quoted for the Work before Alternates are considered.

j) HAZARDOUS SUBSTANCE

The term Hazardous Substance is defined to include the following:

(1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable;

(2) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

(3) radon;

(4) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

(5) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

(6) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(7) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

(8) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

k) OTHER DEFINITIONS

As used in the Contract Documents, the following additional terms have the following meanings:

(1) "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;

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(2) “shall” means the action of the party to which reference is being made is mandatory;

(3) “as required” means as prescribed in the Contract Documents; and

(4) “as necessary” means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.2 EXECUTION, CORRELATION AND INTENT

(a) The Building Construction Services Agreement shall be signed by duly authorized representatives of the Owner and Prime Contractor as provided in the Agreement.

(b) Execution of the Building Construction Services Agreement by the Prime Contractor is a representation that the Prime Contractor has visited the site, has become familiar with local conditions, including but not limited to subsurface conditions, under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

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

(d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Prime Contractor in dividing the Work among Subcontractor(s) or in establishing the extent of Work to be performed by any trade.

(e) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

(f) The Drawings and Specifications are intended to agree with one another, and Work called for by Drawings and not mentioned in Specifications, or vice versa, shall be furnished as if set forth by both. Specifications shall govern materials, methods and quality of work. In the event of a conflict on the Drawings between scale and dimension, figured dimensions shall govern over scale dimensions and large scale drawings shall govern over small scale drawings. Conflict between two or more dimensions applying to a common point shall be referred to the Architect/Engineer/Engineer for final adjustment. If discrepancies or conflicts occur within or between the Drawings and Specifications regarding the Work, or within or between other Contract Documents, the Prime Contractor shall not perform such Work without having obtained a clarification from the Architect/Engineer and resolution by the Owner. The Owner's decision as to the appropriate resolution of a conflict or discrepancy shall be final. Should the Drawings or the Specifications disagree within themselves or with each other; the Base Bid will be based on the most expensive combination of quality and quantity of Work indicated.

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(g) Deviations from Contract Documents shall be made only after written approval is obtained from Architect/Engineer and Owner, as provided in Article 7.

(h) The intention of the Contract Documents is to include all materials, labor, tools, equipment, utilities, appliances, accessories, services, transportation, and supervision required to completely perform the fabrication, erection and execution of the Work in its final position.

(i) The most recently issued Drawing or Specification takes precedence over previous issues of the same Drawing or Specification. In the event of a conflict, the order of precedence of interpretation of the Contract Documents is as follows:

(1) Amendments (see Paragraph 7.2 for order of precedence between Amendments);

(2) the Building Construction Services Agreement;

(3) addenda, with those addenda of later date having precedence over those of an earlier date;

(4) the Supplementary General Conditions and Special Provisions, if any;

(5) the General Conditions for Building Construction;

(6) 0the Specifications and Drawings.

1.3 OWNERSHIP AND USE OF ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications, and copies thereof furnished by the Architect/Engineer are and shall remain the property of the Owner and are, with the exception of the Contract set for each party, to be returned to the Owner upon request at the completion of the Work.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are:

(1) specifically defined in these General Conditions (except the terms defined in Subparagraph 1.1(j), which terms are of common grammatical usage and are not normally capitalized);

(2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses;

(3) the titles of other documents published or used by the Owner as manuals or official policy statements; or

(4) proper nouns or other words required under standard grammatical rules to be capitalized.

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ARTICLE 2 - THE OWNER

2.1 DEFINITION OF OWNER

The Owner is the City of Denton, a Texas municipal corporation, and is identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

(a) The Owner shall furnish the most recent survey describing the physical characteristics, legal limits, utility locations, and a permanent benchmark for the site of the Project. The Owner shall also furnish any environmental site assessments that may have been given to the Owner or conducted for the property upon which the Project is to be constructed. THIS INFORMATION IS FURNISHED TO THE PRIME CONTRACTOR ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.

(b) Except for permits and fees which are provided for in Subparagraph 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.

(c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Prime Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval, as required in Paragraph 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Prime Contractor as scheduled and Prime Contractor is not prepared to accept or act on such information or services, then Prime Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

(d) Unless otherwise provided in the Contract Documents, the Prime Contractor will be furnished electronic copies of the Drawings and Specifications for bid purposes and one hard copy approved by Building Inspections upon execution of the Contract. Prime Contractor may obtain additional copies by paying the cost of additional printing or reproduction.

(e) The obligations described above are in addition to other duties and responsibilities of the Owner enumerated in the Contract Documents and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

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(f) The Owner shall forward all instructions to the Prime Contractor through the Architect/Engineer, except for the Owner's Notice to Proceed and the Owner's decision to carry out Work as described in Paragraph 2.4.

(g) The Owner's employees, agents, and consultants may be present at the Project site during performance of the Work to assist the Architect/Engineer in the performance of the Architect/Engineer's duties and to verify the Prime Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, the equipment used in the performance of the Work, and for purpose of verification of Prime Contractor's Applications for Payment.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Prime Contractor fails to correct any portion of the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or refuses or fails to carry out all or any part of the Work in accordance with the Contract Documents, the Owner, by written order, may order the Prime Contractor to stop the Work, or any portion of the Work, until the cause for the order has been eliminated. The right of the Owner however, to stop the Work shall not create or imply a duty on the part of the Owner to exercise this right for the benefit of the Prime Contractor or any other person or entity. The rights of the Owner under this Paragraph 2.3 shall be in addition to, and not in restriction of, the Owner's rights under Paragraph 12.2.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Prime Contractor fails or refuses to carry out the Work or perform any of the terms, covenants, or obligations of the Contract Documents, and fails or refuses to correct any failure or refusal with diligence and promptness within fourteen (14) days after receipt of written notice from the Owner, the Owner may correct the Prime Contractor's failure or refusal or cause such failure or refusal to be corrected, without affecting, superseding, or waiving any other contractual, legal, or equitable remedies the Owner has, including but not limited to the Owner's termination rights under Article 13. In that case, an appropriate Change Order will be issued deducting the Owner's cost of correction, including Architect/Engineer's compensation for additional services and expenses made necessary by the failure or refusal of the Prime Contractor from payments then or thereafter due to the Prime Contractor. The cost of correction is subject to verification (but not approval) by the Architect/Engineer. If payments then or thereafter due the Prime Contractor are not sufficient to cover the cost of correction, the Prime Contractor shall pay the difference to the Owner.

ARTICLE 3 - THE CONTRACTOR

3.1 DEFINITION OF CONTRACTOR

The Prime Contractor is the person or business entity identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Prime Contractor" means the Prime Contractor or the Prime Contractor's authorized employees or representatives.

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3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

(a) The Prime Contractor shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Architect/Engineer in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Prime Contractor may discover. The Prime Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Prime Contractor will be held responsible for any subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the Prime Contractor continues to work on an item where an inconsistency, ambiguity, error, omission, conflict, or discrepancy exists without obtaining such clarification or resolution or commences an item of the Work without giving written notice of an error, omission, conflict, or discrepancy that might have been avoided by the check, study, and comparison required above, it shall be deemed that the Prime Contractor bid and intended to execute the more stringent, higher quality, or state of the art requirement, or accepted the condition “as is” in the Contract Documents, without any increase to the Contract Sum or Contract Time. The Prime Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Prime Contractor's failure to give notice of and obtain a clarification or resolution of any error, omission, conflict, or discrepancy, without any right to any increase to the Contract Sum or Contract Time.

(b) The Prime Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

(a) The Prime Contractor shall supervise and direct the Work, using the Prime Contractor’s best skill and attention. The Prime 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, unless the Contract Documents set forth specific instructions concerning these matters.

(b) The Prime Contractor shall be responsible to the Owner for the acts and omissions of the Prime Contractor’s employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Prime Contractor, or with any Subcontractor, and all other persons or entities for which the Prime Contractor is legally responsible. All labor shall be performed by mechanics that are trained and skilled in their respective trades. Standards of work required throughout shall be of a quality that will bring only first class results. Mechanics whose work is unsatisfactory, or who are considered careless, incompetent, unskilled, or otherwise objectionable shall be dismissed promptly from the Work and immediately replaced with competent, skilled personnel. Any part of the Work adversely affected by the acts or omissions of incompetent, unskilled, careless, or objectionable personnel shall be immediately corrected by the Prime Contractor.

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(c) The Prime Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Prime Contractor.

(d) The Prime Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Prime Contractor's responsibility under this paragraph will not in any way eliminate the Architect/Engineer's responsibility to the Owner under the Architect/Engineer/Owner Agreement.

(e) Any Prime Contractor, Subcontractor, Sub-subcontractor, or separate contractor who commences Work over, in, or under any surface prepared by the Owner or by any other contractor, subcontractor, sub-subcontractor or any separate contractor, without the Prime Contractor having given written notice to the Architect/Engineer of the existence of any faulty surface or condition in the surface that prevents achieving the quality of workmanship specified by the Contract Documents and without having obtained the prior approval of the Architect/Engineer and the Owner to proceed is deemed to have accepted the surface or condition in the surface as satisfactory at the commencement of such Work. Any unsatisfactory Work subsequently resulting from such a faulty surface or condition in the surface that was not pre-approved by the Architect/Engineer or the Owner after notice as provided above may be rejected and replacement required, without any increase to the Contract Sum or Contract Time.

(f) All grades, lines, levels, and benchmarks shall be established and maintained on an ongoing basis by the Prime Contractor. The Prime Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Contractor shall verify all grades, lines, levels, and dimensions as indicated on Drawings. He shall report any errors, omissions, conflicts, or inconsistencies to Architect/Engineer before commencing any Work affected by these conditions. Contractor shall establish and safeguard benchmarks in at least two widely separated places and, as Work progresses, establish benchmarks at each level and lay out partitions on rough floor in exact locations as guides to all trades. The Contractor shall, from the permanent benchmark provided by the Owner, establish and maintain adequate horizontal and vertical control.

3.4 LABOR AND MATERIALS

(a) Except as is otherwise specifically provided in the Contract Documents as being the responsibility of the Owner, the Prime 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.

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(b) The Prime Contractor shall enforce strict discipline and good order among the Prime Contractor's employees and all other persons carrying out the Contract. The Prime Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

(c) The Prime Contractor shall give preference, when qualified labor is available to perform the Work to which the employment relates, to all labor hired for the Project in the following order:

(1) residents of the City of Denton, Texas;

(2) residents of the County of Denton, Texas;

3.5 WARRANTY

(a) General Warranty. The Contractor warrants to the Owner that all Work shall be accomplished in a good and workmanlike manner and that all materials and equipment furnished under the Contract will be of good quality, new (unless otherwise specified), and free from faults or defects, and that the Work will otherwise conform to the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective or nonconforming. The Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The commencement date, duration, and other conditions related to the scope of this general warranty are established in Subparagraphs 9.9 (a) and 12.2(b) of these General Conditions. THE GENERAL WARRANTY PROVIDED IN THIS SUBPARAGRAPH IS IN ADDITION TO AND DOES NOT LIMIT OR DISCLAIM ANY OTHER WARRANTY OR REMEDY REQUIRED OR PROVIDED BY LAW OR THE CONTRACT DOCUMENTS AND SUCH WARRANTY SHALL REQUIRE THE CONTRACTOR TO REPLACE DEFECTIVE MATERIALS AND RE-EXECUTE DEFECTIVE WORK THAT IS DISCLOSED BY THE OWNER TO THE CONTRACTOR WITHIN A PERIOD OF TWO (2) YEARS AFTER SUBSTANTIAL COMPLETION OF THE ENTIRE WORK; OR, IF A LATENT DEFECT IS DISCOVERED WITHIN TWO YEARS OF SUBSTATIONAL COMPLETION OF THE ENTIRE WORK.

(b) Special Warranties. The Contractor shall assign to the Owner in writing, as a condition precedent to final payment, the terms and conditions of all special warranties required under the Contract Documents.

3.6 TAXES

The Owner qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the Owner shall not be liable for, or pay the Contractor's cost of, such sales and use taxes which would

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otherwise be payable in connection with the purchase of tangible personal property furnished and incorporated into the real property being improved under the Contract Documents or the purchase of materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for performance of the Contract which is to be completely consumed at the job site. The Contractor shall issue an exemption certificate in lieu of the tax on such purchases.

3.7 PERMITS, FEES AND NOTICES

(a) The Architect/Engineer will apply and arrange for the issuance of the City of Denton Building Permit. The Prime Contractor and Subcontractors will apply and arrange for the issuance of all other required permits, and will not be required to pay a fee for any City of Denton permits required for the Project. The Owner will pay all service extension charges, including tap fees, assessed by the Water Utilities Department.

(b) The Prime Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of governmental entities or agencies applying to performance of the Work.

(c) Except as provided in Subparagraph (d) below, it is not the Prime Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Prime Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Prime Contractor shall promptly notify the Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.

(d) If the Prime Contractor performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Architect/Engineer and the Owner, the Prime Contractor shall assume full responsibility for the Work and shall bear the attributable costs of the correction of the Work and any other Work in place that may be adversely affected by the corrective work.

3.8 ALLOWANCES

(a) The Prime Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for the amounts identified in the Contract and by persons or entities as the Owner may direct, but the Prime Contractor shall not be required to employ persons or entities against which the Prime Contractor makes reasonable objection.

(b) Unless otherwise provided in the Contract Documents:

(1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

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(2) the amount of each allowance shall cover the cost to the Prime Contractor of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts;

(3) the amount of each allowance includes the Prime Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance Work;

(4) 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:

(i) the difference between actual costs and the allowances under Clause (b) (2); and

(ii) changes in Contractor's costs under Clause (b) (3);

(5) the Owner retains the right to review and approve Subcontractors selected by the Prime Contractor to perform work activities covered by allowances.

3.9 SUPERINTENDENT

The Prime Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Prime Contractor, and communications given to the superintendent shall be as binding as if given to the Prime Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to request that the Prime Contractor replace its superintendent at any time and the Prime Contractor will replace said superintendent at the Owner's direction.

3.10 PRIME CONTRACTOR'S CONSTRUCTION SCHEDULES

(a) The Prime Contractor shall, immediately after award of the Contract and before submittal of the first Application for Payment, prepare and submit the construction schedule for the Architect/Engineer's and Owner's information, review, and approval in accordance with the following provisions:

(1) Unless otherwise approved in writing by the Owner, the construction schedule shall not exceed the Contract Time limits currently in effect under the Contract Documents and shall provide for expeditious and practicable execution of the Work.

(2) The construction schedule shall include all shop drawing and submittal data requirements, indicating for each:
(i) the latest date to be submitted by the Prime Contractor; and
(ii) the latest date for approval by the Architect/Engineer.

(3) The construction schedule shall be in the form of a critical path management schedule, and shall indicate each critical task (the "predecessor") of all the major construction activities of the Work in a logical and sequential order (the "project network") which

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requires completion prior to commencement of the task next following (the "successor"). Each task shall be identified with:

(i) actual work time, exclusive of slack time, for accomplishment;

(ii) the latest start date;

(iii) the latest finish date;

(iv) the amount of float associated with each task;

(v) the amount of labor, material, and equipment associated with each task; and

(vi) the percentage of completion as of the date of the current schedule.

(4) The construction schedule shall be revised and updated monthly to reflect the actual status of the Work and shall be submitted with each Application for Payment.

(5) On or before the first day of each month, following the date of commencement of the Work as stated in the notice to proceed, the Prime Contractor shall prepare and submit to the Architect/Engineer and the Owner an up-to-date status report of the progress of the various construction phases of the Work in the form of an updated construction schedule. This status report shall consist of a time scale drawing indicating actual progress of the various phases of the Work and the percentage of completion of the entire Work. The original construction schedule shall be updated or changed to indicate any adjustments to the Contract Time granted by the Owner. The updated schedule must be submitted with the Prime Contractor's Application for Payment. No such application will be certified without a satisfactory update to the construction schedule.

(6) The construction schedule will also be revised to show the effect of change orders and other events on Contract Time. No request for an increase in Contract Time will be considered unless it is accompanied by a schedule revision demonstrating the amount of time related to the cause of the request. If the Contractor's status schedules reflect that the Prime Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Prime Contractor shall prepare a recovery schedule demonstrating how it intends to bring its progress back within the Contract Time. This recovery schedule shall be in a form acceptable to the Owner.

(7) Costs incurred by the Prime Contractor in preparing and maintaining the required construction schedule, any updated schedule, and any recovery schedule required by the Owner will not be paid as an additional or extra cost and shall be included in the Contract Sum.

(8) The Contract Sum is deemed to be based upon a construction schedule requiring the full Contract Time. NO CLAIM FOR ADDITIONAL COMPENSATION SHALL BE ALLOWED AS A RESULT OF THE PRIME CONTRACTOR BASING HIS BID ON

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AN EARLY COMPLETION SCHEDULE, OR AS A RESULT OF DELAYS AND COSTS ATTRIBUTABLE TO COMPLETION LATER THAN THE PLANNED EARLY COMPLETION DATE.

(b) The Prime Contractor shall also prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Prime Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.

(c) The Prime Contractor shall conform to the most recent schedules approved as to form by the Architect/Engineer and the Owner. Any subsequent revisions made by the Prime Contractor to schedules in effect shall conform to the provisions of Subparagraph 3.10(a)

(d) If the Work falls behind the approved construction schedule, the Prime Contractor shall take such steps as may be necessary to improve his progress, and the Architect/Engineer and the Owner may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, and to submit for approval revised schedules in the form required above in order to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

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, materialmen, manufacturer(s), supplier(s), or distributor(s) 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 which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Paragraph 4.2.

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(e) The Prime Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents 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. Submittals made by the Prime Contractor which are not required by the Contract Documents may be returned without action.

(f) The Prime Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect/Engineer. Work requiring this submittal and review shall be in accordance with approved submittals and any identified exceptions noted by the Architect/Engineer.

(g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Prime Contractor represents that the Prime Contractor has determined and verified materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within submittals with the requirements of the Work and of the Contract Documents. The Prime Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.

(h) The Prime Contractor shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Prime Contractor has specifically informed the Architect/Engineer in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Architect/Engineer, subject to a formal Change Order signed by the Owner, Architect/Engineer and Prime Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Prime Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect/Engineer's approval thereof. Further, notwithstanding any approval of a submittal by the Architect/Engineer, the Prime Contractor shall be responsible for all associated Project costs, including costs of coordination’s, modifications, or impacts, direct or indirect, resulting from any and all substitutions, changes, additions, deletions, omissions, or deviations, whether or not specifically identified by the Prime Contractor to the Architect/Engineer at the time of the above-mentioned submittals, including additional consulting fees, if any, in any and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.

(i) The Prime Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to additional revisions other than those requested by the Architect/Engineer on previous submittals. In the absence of such written notice, the Architect/Engineer’s approval of a resubmission shall not apply to the additional revisions not requested.

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(j) Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.

(k) When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF THE PROJECT SITE

The Prime Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

3.14 CUTTING AND PATCHING

(a) The Prime Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Prime Contractor shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering the construction, or by excavating. The Prime Contractor shall not cut or otherwise alter the construction by the Owner or a separate contractor except with the written consent of the Owner and of the separate contractor; consent shall not be unreasonably withheld. The Prime Contractor shall not unreasonably withhold from the Owner or a separate contractor the Prime Contractor's consent to cutting or otherwise altering the Work.

(c) A "Hot Work Permit" must be obtained from the City of Denton's Facilities Management Department, 869 S. Woodrow Lane, Denton, Texas (940 349-7200) for any temporary operation involving open flames or producing heat and/or sparks. This includes, but is not limited to: Brazing, Cutting, Grinding, Soldering, Torch Applied Roofing and Welding.

3.15 CLEANING UP

(a) The Prime Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon the completion of the Work the Prime Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Prime Contractor's tools, construction equipment, machinery, and surplus materials.

(b) If the Prime Contractor fails to clean up as provided in the Contract Documents, the Owner may, at Owner's option, clean up the Project site, and the Owner's cost of cleaning up shall be charged to the Contractor.

3.16 ACCESS TO WORK

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The Prime Contractor shall provide the Owner and the Architect/Engineer access to the Work in preparation and progress wherever located during the course of construction.

3.17 TESTS AND INSPECTIONS

(a) Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of governmental entities or agencies having jurisdiction over the Work shall be made at appropriate times. Unless otherwise provided, the Prime 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 governmental entity or agency, and the Prime Contractor shall bear all related costs of tests, inspections, and approvals. The Prime Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals which become requirements after bids or proposals are received.

(b) If the Architect/Engineer, the Owner or other public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 3.17(a), the Architect/Engineer will, upon written authorization from the Owner, instruct the Prime Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Prime Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so that the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 3.17(c).

(c) If procedures for testing, inspection, or approval under Subparagraphs 3.17(a) and 3.17(b) reveal deficiencies or nonconformities in the Work, the Prime Contractor shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Architect/Engineer's services and expenses, if any. The Prime Contractor shall bear the costs of any subsequent testing, inspection, or approval of the corrected Work.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Prime Contractor and promptly delivered to the Architect/Engineer.

(e) If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing or inspection.

(f) Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

3.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. CONTRACTOR SHALL

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COMPLETELY DEFEND, INDEMNIFY AND HOLD OWNER AND ARCHITECT/ENGINEER HARMLESS FROM ANY AND ALL LIABILITIES, SUITS OR CLAIMS FOR INFRINGEMENT OF PATENT RIGHTS, REGARDLESS OF WHETHER OR NOT THE OWNER OR THE ARCHITECT/ENGINEER SPECIFIED A PARTICULAR DESIGN, PROCESS OR PRODUCT IN THE CONTRACT DOCUMENTS THAT MAY BE THE SUBJECT OF A PATENT INFRINGEMENT OR OTHERWISE ACTIVELY INDUCED OR CONTRIBUTED TO THE PATENT INFRINGEMENT. In the event the Prime Contractor has reason to believe that a particular design, process or product specified infringes a patent, the Prime Contractor shall immediately notify the Owner and the Architect/Engineer of same.

3.19 INDEMNIFICATION

(a) THE PRIME CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT/ENGINEER, HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITIES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE PRIME CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE PRIME CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR OF THE ARCHITECT/ENGINEER, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CONTRACTOR, THE OWNER, AND THE ARCHITECT/ENGINEER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW, AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER THIRD PERSON OR ENTITY.

(b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Prime Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.19 shall not be limited by a limitation on amount or type of damages,

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compensation or benefits payable by or for the Prime Contractor or any Subcontractor, under workers compensation acts, disability benefit acts or other employee benefit acts.

(c) Indemnification under this Paragraph 3.19 shall include, but is not limited to, liability which could result to or be created for the Owner, its officers, agents, or employees, or the Architect/Engineer pursuant to State or Federal laws or regulations relating to pollution of the environment and State or Federal laws or regulations relating to the occupational safety and health of workers. The Prime Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Prime Contractor and that the obligations of the Owner, its officers, agents, and employees, and the Architect/Engineer under the above-mentioned laws and regulations are secondary to those of the Prime Contractor.

ARTICLE 4 - CONTRACT ADMINISTRATION

4.1 THE DESIGN PROFESSIONAL (ARCHITECT/ENGINEER)

(a) The design professional is the person lawfully licensed to practice architecture or engineering or a firm or other business entity lawfully practicing architecture/engineering identified as such in the formal Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect/Engineer" means the Architect/Engineer or the Architect/Engineer's authorized representative. The Owner may, at its option, designate a qualified Owner representative to serve as the Architect/Engineer on the Project instead of an outside firm or person. In such event, the references in these General Conditions that refer to the Architect/Engineer shall apply to the Owner-designated Architect/Engineer representative and the Owner-designated Architect/Engineer representative shall be accorded that same status by the Prime Contractor.

(b) In the event the Architect/Engineer is an outside person or firm and the Architect/Engineer's employment is terminated, the Owner may, at its option, contract with a new outside Architect/Engineer to replace the former, or may designate a qualified Owner representative to serve as the Architect/Engineer. The replacement Architect/Engineer, whether an Owner representative, an independent Architect/Engineer or any other qualified person or entity, shall be regarded as the Architect/Engineer for all purposes under the Contract Documents and shall be accorded that same status by the Prime Contractor. Any dispute in connection with such appointment shall be reviewed and settled by the Owner, whose decision shall be final and binding.

(c) Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect/Engineer's Construction Phase responsibility. Similarly, from time to time the Owner may expand or reduce the Owner's delegation of powers to the Architect/Engineer, with the Owner notifying the Prime Contractor of any such changes. The Architect/Engineer shall not be construed as a third party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth in this Subparagraph (c). In no event, however, shall the Owner have control over charge of, or be responsible for, construction means, methods, techniques,

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sequences, or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of Prime Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2 ARCHITECT/ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION

(a) The Architect/Engineer will administer the Contract as described in the Contract Documents and in accordance with the terms of the Architect/Engineer's agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Prime Contractor, the provisions of the Owner/Architect/Engineer Agreement will be made available to the Prime Contractor.

(b) The Architect/Engineer shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent necessary to personally familiarize themselves with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents. The Architect/Engineer shall not, however, be required to make continuous on-site inspections to check the Work. Field reports of each visit shall be prepared by the Architect/Engineer and submitted to the Owner. The Architect/Engineer shall employ all reasonable measures to safeguard the Owner against defects and nonconformities in the Work. The Architect/Engineer shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Work. The Architect/Engineer will, however, immediately inform the Owner whenever defects or nonconformities in the Work are observed, or when any observed actions or omissions are undertaken by the Prime Contractor or any Subcontractor which are not in the best interests of the Owner or the Project.

(c) The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Prime Contractor's responsibility as provided in Paragraph 4.3. The Architect/Engineer and the Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Prime Contractor, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Prime Contractor is responsible.

(d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Prime Contractor shall endeavor to communicate through the Architect/Engineer. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Prime Contractor.

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Communications by and with separate contractors will be through the Owner. The Prime Contractor shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Architect/Engineer.

(e) Based on the Architect/Engineer's observations and evaluations of the Prime Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Prime Contractor and will issue Certificates for Payment in such amounts.

(f) The Architect/Engineer and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 3.17(b) and 3.17(c), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer to the Prime Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

(g) The Architect/Engineer will review and approve or take other appropriate action upon the Prime Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such reasonable promptness as to not delay the Work or the activities of the Owner, Contractor, or separate contractors. 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 Prime Contractor as required by the Contract Documents. The Architect/Engineer's review of the Prime Contractor's submittals shall not relieve the Prime Contractor of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work as provided in Paragraph 7.3.

(i) The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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 Prime Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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(j) If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more Project representatives to assist in carrying out the Architect/Engineer'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 into the Contract Documents.

(k) The Architect/Engineer will interpret and make recommendations to the Owner concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Architect/Engineer shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Prime Contractor which change the scope of the Work or which modify or change the terms and conditions of any of the Contract Documents.

(l) Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by the Prime Contractor.

(m) The Architect/Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents; provided that the Architect/Engineer has the prior written approval of the Owner.

4.3 CLAIMS AND DISPUTES

(a) Definition; General Notice of Claim Procedure. As used in these General Conditions, a "Claim" means a demand or assertion by one of the parties to the Contract seeking an adjustment of the terms of the Contract Documents, of the Contract Sum, of the Contract Time, or some other relief in respect to the terms of the Contract Documents. The term also includes all other disputes between the Owner and the Contractor arising out of or relating to the Project or the Contract Documents, including but not limited to claims that work was outside the scope of the Contract Documents. The responsibility to substantiate the Claim and the burden of demonstrating compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, WITHOUT EXCEPTION, MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT/ENGINEER AND TO THE OWNER WITHIN FOURTEEN (14) DAYS IMMEDIATELY AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM. Every Claim of the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Prime Contractor by his signature) of the Prime Contractor, verifying the truth and accuracy of the Claim. THE PRIME CONTRACTOR SHALL BE CONCLUSIVELY DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURES AND TIME LIMITS SET OUT IN THIS PARAGRAPH.

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(b) Referral to the Architect/Engineer. Claims, disputes, and other matters in question between the Prime Contractor and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Architect/Engineer for recommendation to the Owner, which recommendation the Architect/Engineer will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Prime Contractor to submit the Claim to the Architect/Engineer for rendering of a recommendation to the Owner shall constitute a waiver of the Claim.

(c) Continuing Contract Performance. Pending final resolution of a claim the Prime Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents.

(d) Claims for Concealed or Unknown Conditions. No adjustment in the Contract Sum or Time associated with concealed or unknown conditions will normally be considered or allowed; provided, however, that the Contract Sum or Time may be adjusted by the Owner in such circumstances only if:

(1) a concealed subsurface condition is encountered in the course of performance of the Work;
(2) a concealed or unknown condition in an existing structure is at variance with conditions indicated by the Contract Documents; or
(3) an unknown physical condition is encountered below the surface of the ground or in an existing structure which is of an unusual nature and materially different from those ordinarily encountered and generally recognized as inherent in the character of the Work; and
(4) a notice of claim with proper and adequate substantiation is presented pursuant to Subparagraph 4.3(a) of these General Conditions; and
(5) the Owner and the Architect/Engineer determine that:

(i) prior to submitting its bid for the Work, the Contractor used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and

(ii) the work caused or required by the concealed or unknown condition at issue can be considered extra work to the extent that additional new Drawings must be prepared and issued and new construction beyond the scope of the Contract Documents is required.

(e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE ARCHITECT/ENGINEER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE PRIME CONTRACTOR AT THE PRIME CONTRACTOR'S OWN RISK. THE OWNER AND THE ARCHITECT/ENGINEER DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.

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(f) Claims for Additional Cost. If the Prime Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided in this Paragraph 4.3 shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. In addition, the Prime Contractor's request for an increase in the Contract Sum for any reason (other than work performed under emergency conditions) shall be made far enough in advance of required work to allow the Owner and the Architect/Engineer a sufficient amount of time, without adversely affecting the construction schedule, to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates or proposals and to negotiate, execute and distribute a Change Order for the required work if the Prime Contractor believes that additional cost is involved for reasons including but not limited to:

(1) a written interpretation from the Architect/Engineer;

(2) a written order for a minor change in the Work issued by the Architect/Engineer;

(3) failure of payment by the Owner;

(4) termination of the Contract by the Owner;

(5) the Owner's temporary suspension of all or any portion of the Work where the Prime Contractor was not at fault; or

(6) other reasonable grounds.

(g) Injury or Damage to Person or Property. If the Prime Contractor suffers injury or damages to person or property because of an act or omission of the Owner, or of any of the Owner's officers, employees or agents, written, sworn-to notice of any claim for damages or injury shall be given as provided in Subparagraph 4.3(a). The notice shall provide sufficient detail to enable the Architect/Engineer and the Owner to investigate the matter.

(h) Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Prime Contractor asserts a claim to the Prime Contractor, that the Prime Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the Prime Contractor to submit and assert the claim against the Owner shall be subject to:

(1) the requirements of Paragraph 4.3 of these General Conditions; and

(2) the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Prime Contractor to seek and assert such claim against the Owner:

(ii) The Prime Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Prime Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Prime

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Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Prime Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Prime Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Prime Contractor in the claim submittal materials.

(ii) The Prime Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Prime Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Prime Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed by the Contractor to be valid.

(iii) The Subcontractor making the claim to the Prime Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Prime Contractor in the claim submittal materials made by Contractor to the Owner..

(3) Any failure of the Prime Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim against Owner.

(4) Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or by applicable law.

(i) Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part. The Prime Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If the Prime Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Prime Contractor to develop a recovery schedule as described in Paragraph 3.10 or to accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as the Owner may reasonably direct and, upon receipt, the Prime Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Prime Contractor to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).

(2) In the event that the Prime Contractor is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance

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with Subparagraph 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to the Prime Contractor provided within fourteen (14) days after receipt of the Prime Contractor's Claim. If the Owner denies the Prime Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Prime Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(3) If the Prime Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by the Owner if not for the need and right to accelerate, the Prime Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Prime Contractor under Subparagraph 4.3(a) above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance; provided however, not to exceed five (5%) per cent, will be allowed on the claimed acceleration costs. NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM. The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (i)(3).

(i) Waiver of Claims; Final Payment. The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

(1) claims, security interests, purported liens, or other attempted encumbrances arising out of the Contract and remaining unsettled;

(2) defective or nonconforming Work appearing after Substantial Completion;

(3) latent defects, as defined in Subparagraph 12.2(d), appearing after Final Completion; or

(4) the terms of general and special warranties required by the Contract Documents or allowed or implied by law.

(k) THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING.

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(l) No Waiver of Governmental Immunity. NOTHING IN THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY APPLICABLE STATE LAW.

ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS OF SUBCONTRACTOR

(a) A Subcontractor is person or entity who has a direct Contract with the Prime Contractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Prime Contractor by purchase or lease for use in performance of or incorporation into the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(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 Project site or to supply materials or equipment to the Subcontractor or another Sub-subcontractor by purchase or lease for use in performance of or incorporation into the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

(a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Prime Contractor and the Owner, the Prime Contractor shall furnish to the Architect/Engineer in writing, for acceptance by the Owner and the Architect/Engineer, a list of the names, addresses, telephone numbers, M/WBE certification numbers (where applicable), and type of work of the Subcontractors (including those who are to furnish materials or equipment fabricated to a special design), proposed for the principal portions of the Work, including furnishings when made a part of the Contract. The Prime Contractor shall immediately notify the Owner in writing of any changes in the list as they occur. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.

(b) The Prime Contractor shall not Contract with a proposed person or entity to whom the Owner or Architect/Engineer has made reasonable and timely objection.

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(c) Architect/Engineer's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Prime Contractor of his responsibility for performance of Work as called for under the Contract Documents, and shall not provide a basis for any claim for additional time or money on the part of the Prime Contractor. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the Owner or Architect/Engineer. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.

(d) The Prime Contractor shall not change a Subcontractor previously selected if the Owner or Architect/Engineer makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

(a) By appropriate agreement, written where legally required for validity, the Prime Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Prime Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Prime Contractor all the obligations and responsibilities which the Prime Contractor, by the Contract Documents, assumes toward the Owner and the Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Contract Documents (including but not limited to these General Conditions) with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the rights of the Owner and the Architect/Engineer. Where appropriate, the Prime Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Prime Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.

(b) The Prime Contractor is solely responsible for making payments properly to the Prime Contractor’s Subcontractors on the Project. During performance of the Work, the Prime Contractor shall comply with the following additional rules regarding Subcontractor payments:

(1) The Prime Contractor shall submit, beginning with the Second Application and Certificate for Payment, a Subcontractor Payment Report (the "Report") with each Application and Certificate for Payment. The Report shall show all payments made to date by the Prime Contractor (plus existing retainage) to each Subcontractor involved in the Project. The Report shall be made on a form approved and supplied by the Owner. As an alternative to the Report, the Prime Contractor may furnish Affidavits of Payment Received with the Application and Certificate for Payment, which affidavits shall be executed by each Subcontractor owed money and paid by Subcontractor during the previous progress payment period for work or materials furnished on the Project. RECEIPT BY THE OWNER OF THE REPORT OR AFFIDAVITS OF PAYMENT RECEIVED SHALL BE A CONDITION PRECEDENT TO PAYMENT ON ANY APPLICATION FOR PAYMENT .

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(2) If, for any reason, the Prime Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Prime Contractor shall note the amount withheld and further note that the payment is in dispute. The Owner may, in its sole discretion, require the Prime Contractor to document and verify the dispute or other problem in question.

(3) The Owner reserves the right in its sole discretion, to withhold payment to the Prime Contractor pursuant to Paragraph 9.5(a) of the General Conditions, should it appear from the Report, statements of payment received or other information furnished to the Owner that:

(i) the Report has not been properly completed;

(ii) the Prime Contractor has knowingly provided false information regarding payment of any Subcontractor; or

(iii) the Prime Contractor has otherwise failed to make payments properly to any Subcontractor.

(4) THE PRIME CONTRACTOR SHALL NOT HAVE ANY RIGHT TO MAKE A CLAIM FOR ADDITIONAL TIME OR ADDITIONAL COMPENSATION AS A RESULT OF THE OWNER'S OR ARCHITECT/ENGINEER'S ENFORCEMENT OF THIS SUBPARAGRAPH 5.3(b). NO PROVISION OF THIS SUBPARAGRAPH OR ANY OF THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO CREATE A CONTRACTUAL RELATIONSHIP, EXPRESS OR IMPLIED, BETWEEN ANY SUBCONTRACTOR AND EITHER THE OWNER OR THE ARCHITECT/ENGINEER AND SHALL NOT BE CONSTRUED TO MAKE ANY SUBCONTRACTOR OR ANY OTHER PERSON OR ENTITY, A THIRD-PARTY BENEFICIARY OF THE CONTRACT BETWEEN THE OWNER AND THE PRIME CONTRACTOR.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of a termination of this Contract by the Owner under Article 14, the Prime Contractor shall, if requested in writing by the Owner, within fifteen (15) days after the date notice of termination is sent, deliver and assign to Owner, or any person or entity acting on the Owner's behalf, any or all subcontracts made by Prime Contractor in the performance of the Work, and deliver to the Owner true and correct originals and copies of the subcontract documents. In the event assignment is not requested by the Owner, Prime Contractor shall terminate all subcontracts to the extent that Owner has not directed assignment of same and to the extent that they relate to the performance of Work terminated by the notice of termination.

ARTICLE 6 - CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE

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CONTRACTS

(a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Prime Contractor claims that delay or additional cost is involved because of such action by the Owner, the Prime Contractor shall make a claim as provided elsewhere in, and in accordance with the Contract Documents.

(b) When separate Contracts are awarded for different portions of the Project or other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Building Construction Services Agreement with the Owner.

(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 Prime Contractor, who shall cooperate with them. The Prime Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Prime Contractor shall, with the approval of the Owner, make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Prime Contractor, separate contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Prime Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Prime Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Prime Contractor's Change Order proposal is denied by the Owner, the Prime Contractor must submit any Claim pursuant to Paragraph 4.3 of the General Conditions.

(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, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Prime Contractor under these General Conditions, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

(a) The Prime Contractor shall afford the Owner and separate contractors' reasonable opportunity for access to and storage of their materials and equipment and the performance of their activities and shall coordinate the Prime Contractor's construction and operations with the separate contractors as required by the Contract Documents.

(b) If part of the Prime Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Prime Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in the other construction that would

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render it unsuitable for proper execution and results. Failure of the Prime Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Prime Contractor's Work, except as to defects not then reasonably discoverable.

(c) The Owner shall not be liable to the prime Contractor for damages suffered by the Prime Contractor due to the fault or negligence of a separate contractor or through failure of a separate contractor to carry out the directions of the Owner or the Architect/Engineer. Should any interference occur between the Prime Contractor and a separate contractor, the Architect/Engineer or the Owner may furnish the Prime Contractor with written instructions designating priority of effort or change in methods, whereupon the Prime Contractor shall immediately comply with such direction. In such event, the Prime Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Prime Contractor.

(d) The Prime Contractor shall promptly remedy damage wrongfully caused by the Prime Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2(e).

(e) Should the Prime Contractor cause damage to the work or property of any separate contractor on the Project, the Prime Contractor shall, upon due notice, settle with the separate contractor by agreement, if the separate contractor will so settle. If the separate contractor sues the Owner or submits a claim on account of any damage alleged to have been so sustained, the Owner shall notify the Prime Contractor who shall defend such proceedings, at the Prime Contractor's sole expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Prime Contractor shall fully pay or satisfy it and shall reimburse the Owner for any and all attorney's fees and costs which the Owner has incurred.

(f) The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Prime Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project Site and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up, but is not obligated to do so, and Owner shall allocate the cost among those parties responsible, as the Architect/Engineer recommends to be just.

ARTICLE 7 - AMENDMENTS

7.1 CHANGE ORDERS

(a) A Change Order is a written order to the Contractor, signed by the Owner and the Architect/Engineer, issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, or an adjustment to the Contract Time, consistent

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with other applicable provisions of this Contract. The Owner, without invalidating the Contract and without requiring notice of any kind to the sureties, may order changes to the scope of Work under the Contract by additions, deletions, or other revisions, the Contract Sum and Contract Time to be adjusted consistent with other applicable provisions of this Contract. All Change Orders shall be executed on a Change Order form approved by the Owner and the Owner's City Attorney.

(b) In addition to the Owner and the Architect/Engineer, the Contractor shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Contractor refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Architect/Engineer to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Contractor indicates his agreement with all of the changes approved, including the adjustment in the Contract Sum or the Contract Time. EACH CHANGE ORDER SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. The Contractor forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on other Work.

(c) No extra work (except under emergency conditions) or changes shall be made nor shall any substitutions, changes or additions to or omissions or deviations from the requirements of the Drawings and Specifications be made unless pursuant to a written Change Order signed by the Owner and the Architect/Engineer, it being expressly understood that the Owner shall not be liable for the cost of extra work or any substitution, change, addition, omission or deviation from the requirements of the Drawings or Specifications unless the same shall have been authorized in writing by the Owner and the Architect/Engineer in a written change order or other Amendment. The provisions of this Paragraph 7.1 shall control in the event of any inconsistency between such provisions and the other provisions of this Article 7. See Subparagraph 10.3(a) of the General Conditions for Change Orders under emergency conditions.

(d) The method of determining the cost or credit to the Owner for any change in the Work shall be one of the following:

(1) mutual acceptance of a not-to-exceed lump-sum amount properly itemized and supported by sufficient substantiating data to permit evaluation; or

(2) unit prices stated in the Contract Documents or subsequently agreed upon; or

(3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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(4) the force account method provided in Subparagraph 7.1(e)

(e) If the parties cannot agree to one of the methods of calculating cost provided in Clauses (d) (1), (d) (2), or (d) (3), or if the parties agree to a method but cannot agree on a final dollar figure; or if the Contractor for whatever reason refuses to sign the Change Order in question; the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of the Work involved shall then be calculated on the basis of the reasonable jobsite expenditures and savings of those performing the Work attributable to the changes, including a reasonable allowance for overhead and profit, such allowance in any case never to exceed fifteen (15%) per cent. In such case, the Contractor shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Architect/Engineer and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to the Architect/Engineer each day during the performance of force account work, with copies to the Owner.

FAILURE OF THE CONTRACTOR TO SUBMIT THE SWORN-TO ITEMIZED ACCOUNTING DAILY AS REQUIRED HEREIN SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY RIGHT TO DISPUTE THE OWNER'S DETERMINATION OF THE AMOUNT DUE THE CONTRACTOR FOR FORCE ACCOUNT WORK. Costs to be charged under this Subparagraph for force account work are limited to the following:

(1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker’s compensation insurance;

(2) costs of materials, supplies and equipment (but not to include off-site storage unless approved in writing by the Owner), 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 related to the Work; and

(5) additional costs of supervision and field office personnel directly attributable to the changed Work. Pending final determination of cost to the Owner, payment of undisputed amounts on force account shall be included on the Architect/Engineer's Certificate of Payment as work is completed.

(f) The amount of credit to be allowed to the Owner for any deletion of Work or any other change which results in a net decrease of the Contract Sum shall be the amount of actual net cost confirmed by the Architect/Engineer plus the stated percentage for overhead and profit. When both additions and deletions or credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease with respect to that change.

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7.2 SUPPLEMENTAL AGREEMENTS

A written Supplemental Agreement can also be used to implement changes in the Work instead of a Change Order form, including but not limited to situations involving partial occupancy of the Work under Paragraph 9.8, a change made to the Drawings or the Specifications without an increase in the Contract Sum, or special circumstances where it is necessary or more appropriate for the Owner to use a Supplemental Agreement. Written Supplemental Agreements shall have a status equal to that of Change Orders for purposes of priority of Contract Documents interpretation, except that to the extent of a conflict, later Supplemental Agreements in time control over earlier Supplemental Agreements, and the latest Change Order or Supplemental Agreement in time controls over earlier dated Change Orders and Supplemental Agreements. The rules of Subparagraphs 7.1(b) through (f) shall also apply to the negotiation and execution of Supplemental Agreements.

7.3 MINOR CHANGES IN THE WORK

The Architect/Engineer, after notifying the Owner, shall be authorized to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Minor changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly. These written orders shall not be deemed to change or impact the Contract Sum or the Contract Time. Contractor shall have no Claim for any minor change ordered to the Work under this Paragraph 7.3 unless the Contractor submits its change proposal, prior to complying with the minor change ordered and in no event later than ten (10) working days from the date the minor change was ordered, to the Owner for approval.

7.4 TIME REQUIRED TO PROCESS AMENDMENTS

(a) All of the Contractor’s responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Architect/Engineer a minimum of thirty (30) calendar days after receipt by the Architect/Engineer to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. All of the Prime Contractor's responses to proposal requests shall include a statement that the cost described in the response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation under the Contract Documents, without reservation or further recourse.

(b) All Amendments require approval by either the City Council or, where authorized by the State law and City ordinance, by the City Manager pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution, Ordinance or Administrative Action. THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE

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CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS. Pending the approval described above, the Contractor will proceed with the work under a pending Amendment only if directed in writing by the Owner.

ARTICLE 8 - CONTRACT TIME

8.1 DEFINITIONS

(a) Unless otherwise provided, the 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 Notice to Proceed from the Owner. The date of commencement shall not be postponed by the failure of the Prime Contractor, or of persons or entities for whom the Prime Contractor is responsible to act promptly to commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed, through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable extension of the Contract Time; the Contract Sum shall remain unchanged.

(c) The date of Substantial Completion is the date certified by the Architect/Engineer in accordance with Paragraph 9.7.

(d) The term “day” as used in the Contract Documents shall mean a calendar day, beginning and ending at 12:00 midnight, unless otherwise specifically defined by special provision.

8.2 PROGRESS AND COMPLETION

(a) **Time limits stated in the Contract Documents are of the essence of the Contract**. By executing the Building Construction Services Agreement, the Prime Contractor confirms that the Contract Time is a reasonable period for performing the Work.

(b) The Prime Contractor shall not knowingly, except by agreement with or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance to be furnished by the Prime Contractor as required by Article 11. The date of commencement of the Work shall not be changed by the effective date of insurance required by Article 11.

8.3 DELAYS AND EXTENSIONS OF TIME

(a) If the Prime Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Prime Contractor’s control, or by delay authorized by the Owner pending a claim, or by other causes which the Architect/Engineer determines may justify delay, then the

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Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer and Owner may determine.

(b) Claims relating to Contract Time and time extensions shall be made in accordance with the applicable provisions of Paragraph 4.3.

(c) No Damages for Delay. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, INCLUDING THE GENERAL CONDITIONS, NO ADJUSTMENT SHALL BE MADE TO THE CONTRACT SUM AND THE PRIME CONTRACTOR SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR UNFORESEEN, WHICH INCREASES THE TIME TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE ARCHITECT/ENGINEER, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE PRIME CONTRACTOR’S SOLE REMEDY.

(d) The Owner shall have the right to occupy, without prejudice to the right of either party, any completed or largely completed portions of the structure or Work, notwithstanding the fact that the Contract Time for completing all or a portion of the Work may not have expired. Partial occupancy and use shall not be deemed as an acceptance of the Work taken or used.

(e) The Prime Contractor shall promptly suspend the Work when either the Prime Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Prime Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Prime Contractor will also not be liable to the Owner for a delay caused in fact by the Work being suspended by a court order.

(f) The Architect/Engineer, with the consent of the Owner, shall have the authority to suspend the Work, in whole or in part, for such period or periods as the Architect/Engineer deems necessary due to unusual or severe weather conditions as are considered unfavorable for the suitable prosecution of the Work, or due to failure on the part of the Prime Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop the Work for an indefinite period, the Prime Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way, and shall take every precaution to prevent damage or deterioration of the Work performed. In cases of suspension of the Work under this Subparagraph, the Prime Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Prime Contractor shall not suspend the Work in whole or in part without written authority from the Architect/Engineer or the Owner, and shall resume the Work promptly when notified by the Architect/Engineer or the Owner to resume operations.

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(g) In the event of a delay that is the responsibility of the Prime Contractor or any of the Subcontractors, for which the Prime Contractor is not entitled to a time extension under the provisions of this Contract, the Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts, or resequencing. This acceleration shall be at no cost to the Owner and will continue until the Contract Time is restored. In the event of a delay for which the Prime Contractor is entitled to a time extension, as determined by the Architect/Engineer, Owner may similarly direct acceleration and the Prime Contractor agrees to perform same on the basis that the Prime Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). THE PRIME CONTRACTOR EXPRESSLY WAIVES ANY OTHER COMPENSATION RESULTING FROM ACCELERATION, SUCH AS LOSS OF LABOR PRODUCTIVITY OR EFFICIENCY.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Building Construction Services Agreement and, including authorized adjustments, is the total amount of compensation payable by the Owner to the Prime Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Prime Contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, when approved by the Architect/Engineer and the Owner, shall be used as a basis for the Prime Contractor's Application for Payment. The schedule of values shall follow the trade division of the Specifications. Prime Contractor's Application for Payment shall be filed on the current version of AIA Form G702 (Application and Certificate for Payment), as approved by the Owner.

9.3 APPLICATIONS FOR PAYMENT

(a) At least ten (10) days before the date established for each progress payment, the Prime Contractor shall submit to the Architect/Engineer an itemized Application for Payment for Work completed in accordance with the schedule of values. The Application shall be notarized, if required, and supported by data substantiating the Prime Contractor’s right to payment as the Owner or Architect/Engineer may require, including but not limited to copies of requisitions from Subcontractors and material suppliers, and reflecting the applicable retainage as required in the Contract Documents. Prime Contractor's Application for Payment shall also provide other supporting documentation as the Owner or the other applicable provisions of the Contract Documents may require.

(b) Applications for Payment may not include requests for payment of amounts the Prime Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Prime Contractor complies with Clause 5.3(b) (2) of these General Conditions and the

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Prime Contractor's Payment Bond Surety consents in writing to payment to the Prime Contractor of the funds deemed to be in dispute.

(c) Unless otherwise provided in the Contract Documents, progress payments shall include payment for materials and equipment delivered and suitably stored at the Project site for subsequent incorporation into the Work within thirty (30) days after delivery to the Project site. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored away from the Project site at a location agreed upon in writing. Payment for costs incurred in storage of materials or equipment away from the Project site will NOT be made by Owner unless:

(1) the Owner has given prior approval of such off-site storage in writing;
(2) the materials or equipment are stored in a bonded warehouse located in Denton County and identified with the Project for which they are stored, as evidenced by warehouse receipts and appropriate documents of title; and
(3) the materials or equipment stored off-site will be incorporated into the Work within thirty (30) days after delivery. STORAGE IN FACILITIES OF THE MANUFACTURER OR THE PRIME CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.

(d) The Prime Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Prime 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 Prime Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

(e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an "early delivery." All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Prime Contractor shall, at Prime Contractor's expense or at the expense of the responsible Subcontractor or Supplier, cause such early delivery to be removed from the Project site and stored off-site until required at the Project site. All costs of labor, transportation and storage will be included as part of the expense. If the Prime Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Prime Contractor's sole expense, and amounts may be withheld from the Prime Contractor's Application for Payment to reimburse the Owner for any costs incurred in removing unauthorized early delivery materials. OWNER WILL NOT BE RESPONSIBLE FOR THE PROTECTION OF OR RISK OF LOSS ON ANY EARLY DELIVERY MATERIALS OR EQUIPMENT, NOR WILL OWNER BE LIABLE FOR ANY PAYMENT FOR THE EARLY DELIVERY MATERIALS OR EQUIPMENT. Any materials or equipment classified as early delivery will not be approved for payment as stored materials prior to thirty (30) days before the incorporation

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of the materials or equipment into the Work, unless storage and payment at an earlier date is expressly approved in writing by the Owner.

(f) If the Contract Sum is equal to or less than $25,000, and if performance and payment bonds are not furnished by the Contractor, then no payment applied for will be payable under the Contract until the Work has been finally completed and accepted.

9.4 CERTIFICATES FOR PAYMENT

(a) The Architect/Engineer will, within ten (10) days after receipt of the Prime Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Prime Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Prime Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in:
   (a) City of Denton "General Conditions for Building Construction."
   (b) Subparagraph 9.5(a). The Certificate for Payment shall be issued on the current version of AIA Form G702 (Application and Certificate for Payment) as approved by the Owner.
   (c) The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Final Completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Prime Contractor is entitled to payment in the amount certified, subject to the Owner's approval. The issuance of a Certificate for Payment is not a representation that the Architect/Engineer has:

      (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

      (2) reviewed construction means, methods, techniques, sequences or procedures;

      (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Prime Contractor's right to payment; or

      (4) made examination to ascertain how or for what purpose the Prime Contractor has used money previously paid on account of the Contract Sum.

   (d) Whenever the Application for Payment for Work done since the last previous Application for Payment exceeds one hundred dollars ($100.00) in amount, Owner will pay a percentage of the Application, less applicable retainage, to the Prime Contractor

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within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Architect/Engineer. The Application may include acceptable nonperishable materials delivered to the Work or stored as provided for in Paragraph 9.3(c) and the payment will be allowed on the net invoice value, less taxes and applicable retainage.

(e) The City is required to withhold five percent (5%) retainage for public works contracts in which the total contract price estimate at the time of execution is more than $400,000; however, this requirement is applied by the City for all public works contracts in excess of $50,000. The retainage will be withheld by the Owner from each progress payment until final completion of the Work by the Contractor, approval of final completion by the Architect/Engineer, and final acceptance of the Work by the Owner. Unless otherwise required by state law, the retainage percentage as specified above is based upon the original Contract Sum, and will not be affected in the event the original Contract Sum is subsequently increased by Change Order.

(f) No progress payments shall be made on contracts where performance and payment bonds are not required or furnished. In such instances, payment for the Work performed will be made upon final completion and acceptance by the Owner of all Work.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

(a) The Architect/Engineer or the Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner's interest, if in the Architect/Engineer's or Owner's opinion the representations to the Owner required by Subparagraph 9.4(b) cannot be made. If the Architect/Engineer or the Owner is unable to certify payment in the amount of the Application, the Architect/Engineer or the Owner will notify the Prime Contractor as provided in Subparagraph 9.4(a). If the Prime Contractor and Architect/Engineer or the Owner cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make the required representations to the Owner. The Architect/Engineer or the Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary, in the Architect/Engineer's or Owner's opinion, to protect the Owner from loss because of:

(1) defective or nonconforming Work not remedied;

(2) third-party claims filed or reasonable evidence indicating probable filing of such claims;

(3) failure of the Prime Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;

(4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

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(5) damage to the Owner or another 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 damages for the anticipated delay;

(7) persistent failure to carry out the Work in accordance with the Contract Documents; or

(8) mathematical or other errors that are discovered in the Application for Payment.

(b) When all of the above reasons that existed for withholding certification are removed or remedied, then, at that time, certification will be made for amounts previously withheld.

(c) The Owner may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to the Owner from the Prime Contractor, regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise, and regardless of whether or not the debt due to the Owner has been reduced to judgment by a court.

9.6 PROGRESS PAYMENTS

(a) After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect/Engineer. The Owner shall not be liable for interest on any late or delayed progress payment or final payment caused by any claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the Application for Payment or as a precondition to payment under the Contract Documents, or due to any payment the Owner or the Architect/Engineer has a right to withhold or not certify under the Contract Documents. Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contract Documents, including but not limited to those defaults set forth in Subparagraph 9.5(a), Clauses (1) through (7). The Owner shall not be deemed in default by reason of withholding payment while any Prime Contractor default remains uncured.

(b) The Prime Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Prime Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Prime Contractor on account of such Subcontractors portion of the Work. The Prime Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

(c) The Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Prime

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Contractor and action taken thereon by the Architect/Engineer and the Owner on account of portions of the Work done by such Subcontractor.

(d) Neither the Owner nor the Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. That obligation belongs to the Prime Contractor or, in the event of the Prime Contractor's failure to pay a Subcontractor, to the Surety on the Payment Bond as required under Paragraph 11.3.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6(b), (c), and (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 Work not performed in accordance with the Contract Documents.

9.7 SUBSTANTIAL COMPLETION

(a) The Date of Substantial Completion of the Work, or designated portion of the Work, is the date certified by the Architect/Engineer when construction is sufficiently completed in accordance with the City Of Denton General Conditions For Building Construction.

(a) the Contract Documents such that the Owner may beneficially occupy and use the Work, or designated portions of the Work, for the purposes for which it is intended and only trivial and insignificant items remain which do not affect the Work as a whole.

(b) When the Prime Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Prime Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The Prime Contractor shall proceed promptly to complete and correct items on the list (hereinafter called the "punch list"). Failure to include an item on the punch list does not alter the responsibility of the Prime Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Architect/Engineer will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Architect/Engineer's inspection discloses any item, whether or not included on the punch list, which is not in accordance with the requirements of the Contract Documents and which renders the Work inspected not Substantially Complete the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Architect/Engineer. The Prime Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and the Prime Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Prime Contractor shall finish all items on the punch list accompanying the Certificate.

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(c) The Certificate of Substantial Completion shall be submitted to the Owner and the Prime Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

(d) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Prime Contractor and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

9.8 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 Supplemental Agreement with the Prime Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.2(e) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Prime 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 Prime Contractor considers a portion Substantially Complete, the Prime Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Prime 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 Prime Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

(b) Immediately prior to such partial occupancy or use, the Owner, Prime Contractor, and Architect/Engineer 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.

9.9 FINAL COMPLETION AND FINAL PAYMENT

(a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer, accompanied by the Owner's representative, will promptly make final inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Prime Contractor and

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noted in said final Certificate is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9(b) as a condition precedent to the Prime Contractor's being entitled to final payment have been fulfilled. Owner will normally make final payment within thirty (30) days after Owner's receipt and approval of the final Certificate for Payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided by separate agreement between the Owner and the Prime Contractor.

(b) Neither final payment nor any remaining retained percentage shall become due until the Prime Contractor submits to the Architect/Engineer:

(1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
(2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;
(3) a written statement that the Prime Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
(4) a consent of surety to final payment; and
(5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

(c) As a precondition to final payment by the Owner under this Contract, the Prime Contractor's affidavit under Clause (b)(1) shall state that the Prime Contractor has paid each of his subcontractors, laborers or materialmen in full for all labor and materials provided to Contractor for the Work performed under this Contract. In the event the Prime Contractor has not paid each of his subcontractors, laborers or materialmen in full, the Prime Contractor shall state in the affidavit the amount owed and the name of each subcontractor, laborer or materialmen to whom such payment is owed. IN ANY EVENT, THE PRIME CONTRACTOR SHALL BE REQUIRED TO EXECUTE THE OWNER'S STANDARD AFFIDAVIT OF FINAL PAYMENT AND RELEASE AS A PRECONDITION TO RECEIPT OF FINAL PAYMENT.

(d) If, after Substantial Completion of the Work, final completion of the Work is materially delayed through no fault of the Prime Contractor or by issuance of Change Orders affecting final completion and the Architect/Engineer confirms the delay, the Owner shall, upon application by the Prime Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion

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of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of payment. Payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

(e) The acceptance by the Prime Contractor of the final payment shall operate as and shall be a complete release of the Owner from all claims or liabilities under the Contract, for anything done or furnished or relating to the Work or the Project, or for any act or neglect of the Owner relating to or connected with the Work or the Project.

ARTICLE 10 SAFETY, SECURITY AND UTILITY PROVISIONS; ENVIRONMENTAL COMPLIANCE

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Prime Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and will comply with all applicable City, County, State and Federal health and safety regulations.

10.2 SAFETY OF PERSONS AND PROPERTY

(a) The Prime Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(1) employees on the Work and other persons who may be affected thereby;

(2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Prime Contractor or the Prime Contractor's Subcontractors or Sub-subcontractors; and

(3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Prime Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

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(e) USE OF EXPLOSIVES - CLAIMS AND TOTAL INDEMNIFICATION. The Owner shall have the right to pre-approve the use of any explosives on the Project; the Prime Contractor shall not assume in its bid that permission to use explosives will be granted. The Owner shall NOT be liable for any claim for additional time or compensation as a result of the Owner's denial of permission to use explosives. Where use of explosives is permitted by the Owner, the Prime Contractor EXPRESSLY AGREES TO BE SOLELY RESPONSIBLE for the determination as to whether explosives shall actually be used, and for any result from the use, handling or storage of explosives, and shall INDEMNIFY, DEFEND AND HOLD COMPLETELY HARMLESS the Owner, its officers, agents and employees, and the Architect/Engineer against any and all claims, lawsuits, judgments, costs or expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, as the result of the use, handling or storage of the explosives by the Prime Contractor or any Subcontractor, REGARDLESS OF WHETHER SAID USE, HANDLING OR STORAGE WAS NEGLIGENT OR NOT, AND REGARDLESS OF WHETHER THE DAMAGE OR INJURY WAS CONTRIBUTED TO IN ANY WAY BY THE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES, OR THE ARCHITECT/ENGINEER AND ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. In the event of conflict with any other indemnity paragraph in this Contract, this paragraph controls. This indemnity paragraph is intended solely for the benefit of the parties to this Contract and is not intended to create or grant any rights, contractual or otherwise, to or for any other person or entity. The Prime Contractor shall furnish the Owner and the Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury, which insurance shall either include the Owner and the Architect/Engineer as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Architect/Engineer. All explosives shall be stored in a safe and secure manner, under the care of a competent watchman at all times, and all storage places shall be marked clearly and conspicuously: "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives and highly flammable materials shall conform to Federal and State laws, City of Denton ordinances, and the City of Denton Fire Department regulations. The Prime Contractor shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Prime Contractor’s intention to use explosives, and such notice shall be given sufficiently in advance to enable the telecommunications and public utility companies and private property owners to take such steps as they may deem necessary to protect their property from injury. The notice shall not relieve the Prime Contractor of any responsibility for damage resulting from any blasting operations.

(f) The Prime 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 Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the Prime Contractor, a 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 Prime Contractor is responsible under Clauses 10.2(a)(2) and 10.2(a)(3), except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of

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them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Prime Contractor or any of its Subcontractors. The foregoing obligations of the Prime Contractor are in addition to the Prime Contractor's obligations under Paragraph 3.l9. To the extent that any such damage or loss may be covered by property insurance or other insurance required by the Contract Documents, the Owner and the Prime Contractor shall exercise their best efforts to make a claim and obtain recovery from the insurers to provide for the cost, in whole or in part, of the repair work or to provide for reimbursement for such damage or loss.

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

(h) The Prime Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In an emergency affecting safety, health, or security of persons or property, the Prime Contractor shall act, at the Prime Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Prime Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.4 PUBLIC CONVENIENCE AND SAFETY

(a) The Prime Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

(b) The Owner reserves the right to remedy any neglect on the part of the Prime Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Prime Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Prime Contractor's neglect shall be deducted from the Contract Sum. The Prime Contractor shall notify the City Traffic Control Department when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the

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extent necessary for the safety and benefit of the traveling public. The Prime Contractor shall, when directed by the Architect/Engineer or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Prime Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Prime Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN

If the Work is carried on or adjacent to any street, alley or public place, the Prime Contractor shall, at the Prime Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon the Prime Contractor's name and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Paragraph, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Prime Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect the Work. Whenever evidence is found of such damage, the Architect/Engineer may order the damaged portion immediately removed and replaced by the Prime Contractor at Prime Contractor's cost and expense. The Prime Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect/Engineer. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Prime Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Prime Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, the Prime Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Prime Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers; for this purpose, the Prime Contractor shall provide and maintain, at the Prime Contractor's own

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expense, adequate pumping facilities and temporary outlets or diversions. The Prime Contractor shall, at the Prime Contractor's own expense, construct such troughs, pipes, or other structures necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Architect/Engineer. All storm water and sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT

(a) When the Prime Contractor desires to use the Owner's water in connection with the Work, the Prime Contractor shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the Prime Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the Denton Water Utilities Department.

(b) The Prime Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner or with Denton Municipal Electric in the event that separately metered electrical connections are required for the Project. The Prime Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Prime Contractor through the City of Denton.

10.9 USE OF FIRE HYDRANTS

The Prime Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the Denton Water Utilities Department in accordance with the Denton City Code.

10.10 ENVIRONMENTAL COMPLIANCE

(a) The Prime Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic

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Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

(b) In the event the Prime Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Prime Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Architect/Engineer and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a Change Order with the Prime Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Prime Contractor or any of its Subcontractors, the Prime Contractor shall be responsible for remediating the condition at the sole expense of the Prime Contractor in accordance with the Prime Contractor's APPROVED Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Paragraph 4.3 and Article 8.

(c) The Prime Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Prime Contractor or any Subcontractor or Supplier. The Prime Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Architect/Engineer so that they may observe the activities; provided, however, that it shall be the Prime Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

(d) Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Prime Contractor shall submit to the Owner for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Prime Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include

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methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Owner's Project Manager or other designated representative. The Prime Contractor shall not commence any field work prior to approval of such plan by the Owner. The following additional rules shall apply with respect to spills caused by the Prime Contractor or a Subcontractor:

(1) The Prime Contractor shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the Prime Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.

(2) The Prime Contractor shall immediately respond in accordance with the SPRP in the event of a spill.

(3) The Prime Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the Prime Contractor shall use only those transporters and disposal facilities that are approved in advance in writing by the Owner. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request of the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter. ALL COSTS OF COLLECTION, CONTAINMENT, AND DISPOSAL OF SPILLED MATERIALS SHALL BE THE SOLE RESPONSIBILITY OF THE PRIME CONTRACTOR.

(4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.

(e) Clean Air Management Plan. The Prime Contractor shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the contractor selection process. The Owner reserves the right, at the Prime Contractor's sole expense, to require the removal or retrofitting of any equipment used in the course of construction that does not comply with the Plan submitted to and approved by the Owner.

(f) The Prime Contractor shall deposit surplus or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Prime Contractor shall submit to the Owner for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon

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request to the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter.

(g) The Prime Contractor is responsible for obtaining all TXPDES Storm Water Permits from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities promulgated by EPA, including but not limited to cleaning, grading, and excavation that disturb the applicable amount of total land area. In addition, the Prime Contractor shall comply with all regulations of the Owner relating to storm water and storm water runoff management at the Project site pursuant to Chapter 19, Article IX, Denton City Code, as amended.

(h) The Prime Contractor shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable.

(i) The Owner reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the Owner and without an extension of the Contract Time, in the event the Prime Contractor fails or refuses after seven (7) days advance written notice from the Owner to comply with the provisions of this Paragraph 10.10, the terms of the SPRP, the terms of the Clean Air Management Plan, any storm water permit or other environmental permit issued in connection with the Work, or any applicable environmental law, rule, regulation, or ordinance:

(1) suspend all or any portion of the Work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the Prime Contractor and approved by the Owner;

(2) if the Prime Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and backcharge the Prime Contractor for the cost of the remediation or correction; or

(3) terminate the Contract for cause as provided in Article 13.

ARTICLE 11 INSURANCE AND BONDS

11.1 PRIME CONTRACTOR'S INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

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11.2 PROPERTY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.3 'UMBRELLA' LIABILITY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.4 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.5 PERFORMANCE AND PAYMENT BONDS

(a) Subject to the provisions of Subparagraph 11.5(b), the Prime Contractor shall furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses (a)(1) and (a)(2) below, which surety bonds shall be in accordance with the Charter of the City of Denton and the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Prime Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.5(c) and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:

(1) Performance Bond. A good and sufficient bond in an amount equal to 100% of the total awarded task order, guaranteeing the full and faithful execution of the work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any Amendments thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of final completion and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

(2) Payment Bond. A good and sufficient bond in an amount equal to 100% of the total awarded task order, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract

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Documents and any Amendments thereto, and for the use and protection of each claimant.

(b) No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Prime Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Denton County, Texas. Each surety shall designate an agent resident in Denton County, Texas to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

Contractor will be required to furnish original performance and payment bonds for 100% of the total submission price before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms are attached and shall be returned upon notice of each awarded project task order by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from task order award. Upon approval, a purchase order will be issued.

(c) The failure of the Contractor to deliver the required statutory bonds and evidence of insurance within fourteen (14) calendar days after the task order is awarded shall constitute a material breach of the Prime Contractor’s bid proposal and the Owner may rescind the task order award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Prime Contractor's failure to execute and furnish the statutory bonds within fourteen (14) calendar days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.5(e). In the event the Owner should re-advertise for bids, the defaulting Prime Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this Paragraph.

ARTICLE 12 DEFECTIVE AND NONCONFORMING WORK

12.1 UNCOVERING OF WORK

(a) If a portion of the Work is covered contrary to the Architect/Engineer’s request or to requirements specifically expressed in the Contract Documents, the Work must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer’s

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observation and be replaced at the Prime Contractor's expense without change in the Contract Time.

(b) If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to it being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Prime Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If any Work is not in accordance with the Contract Documents, the Prime Contractor shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

(a) The Prime Contractor shall promptly correct Work rejected by the Architect/Engineer as failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Prime Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby.

(b) If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Prime Contractor shall correct it promptly after receipt of written notice from the Architect/Engineer or the Owner to do so unless the Owner has previously given the Prime Contractor a written acceptance or waiver of the defect or nonconformity. The Prime Contractor's obligation to correct defective or nonconforming Work remains in effect for:

(1) one year after the date of Substantial Completion of the Work or designated portion of the Work;

(2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or

(3) the stipulated duration of any applicable special warranty required by the Contract Documents.

(c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.

(d) The obligations of the Prime Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Prime Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Clauses (b)(1) and (b)(2) does not limit the ability of the Owner to require the Prime Contractor to correct latent defects or

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nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect/Engineer at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one year period also does not relieve the Prime Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

(e) The Prime Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Prime Contractor nor accepted by the Owner.

(f) If the Prime Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.4. If the Prime Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Prime Contractor's expense. If the Prime Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Prime Contractor, including compensation for the Architect/Engineer's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover costs which the Prime Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Prime Contractor then or thereafter are not sufficient to cover the deficiency, the Prime Contractor shall pay the difference to the Owner.

(g) The Prime Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Prime Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

(h) Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Prime Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2(b) relates only to the specific obligation of the Prime 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 Prime Contractor's liability with respect to the Prime Contractor's obligations other than specifically to correct the Work.

(i) Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

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The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13 COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 FINAL COMPLETION OF CONTRACT

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Architect/Engineer, and final acceptance and final payment is made by the Owner.

13.2 WARRANTY FULFILLMENT

Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Architect/Engineer will make a detailed inspection of the Work and will advise the Prime Contractor and the Prime Contractor's Surety of the items that require correction. The Architect/Engineer will make a subsequent inspection and if the corrections have been properly performed, the Architect/Engineer will issue a letter of release on the maintenance stipulations to the Prime Contractor and the Surety. If for any reason the Prime Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

(a) Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Prime Contractor, including but not limited to the following causes:

(1) Failure or refusal of the Prime Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

(2) A reasonable belief that the progress of the Work being made by the Prime Contractor is insufficient to complete the Work within the specified time.

(3) Failure or refusal of the Prime Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

(4) A reasonable belief that the Prime Contractor has abandoned the Work.

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(5) A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

(6) Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect/Engineer or the Owner as provided for in the Contract Documents.

(7) Failure or refusal of the Prime Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect/Engineer.

(8) A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.

(9) Repeated and flagrant violation of safe working procedures.

(10) The filing by the Prime Contractor of litigation against the Owner prior to completion of the Work.

(b) When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3(e), the Prime Contractor shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Prime Contractor and the surety or its authorized agents, assume the obligations of the Prime Contractor for the Work or that portion of the Work which the Owner has ordered the Prime Contractor to discontinue and may:

(1) perform the Work with forces employed by the surety;

(2) with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

(3) with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming Work, and compensate the Owner for any other loss sustained as a result of Prime Contractor's default.

In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the Prime Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms

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of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Architect/Engineer and attorneys fees, as a result of such termination.

(c) The balance of the Contract Sum remaining at the time of the Prime Contractor's default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Subparagraph 13.3(b), exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Prime Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Prime Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Prime Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Prime Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Prime Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of the Architect/Engineer and attorney's fees), and damages incurred as a result of the termination.

(d) The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3(c), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Prime Contractor, then the Owner may pay to the Prime Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Prime Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Prime Contractor, then the Prime Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the Prime Contractor shall continue the remainder of the Work in conformity with the terms of the Contract, and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

(e) The unconditional right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of termination for convenience to the Prime Contractor.

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Upon the Prime Contractor's receipt of such written notice, the Prime Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Prime Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Prime Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Prime Contractor for lost or anticipated profits.

13.4 TEMPORARY SUSPENSION OF THE WORK

(a) The Work or any portion of the Work may be temporarily suspended by the Owner immediately upon written notice to the Prime Contractor for any reason, including but not limited to:
(1) the causes described in Clauses 13.1(a)(1) through (a)(10) above;

(2) where other provisions in the Contract Documents require or permit temporary suspension of the Work;

(3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or

(4) other unforeseen conditions or circumstances.

(b) The Prime Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Prime Contractor arising from a temporary suspension due to a cause described in Clause (a)(1) above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses (a)(2) through (a)(4), where the Prime Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Prime Contractor under Subparagraph 4.3 of these General Conditions:

(1) an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Architect/Engineer and the Owner;

(2) an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and

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(3) if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

(a) This Contract shall be in all things governed by the laws of the State of Texas without regard to conflict of laws principles.

(b) The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Prime Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Prime Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without written consent of the Owner. If the Prime Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Prime Contractor, except where assignment is compelled or allowed by court order, the terms of the Contract Documents, or other operation of law.

14.3 WRITTEN NOTICE

Except as otherwise provided in Article 16, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid to the Project Manager or Superintendent of either party, or to an officer, partner, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

(a) The duties and obligations imposed on the Prime Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.

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(b) No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Prime Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

14.5 INTEREST

The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Paragraph 9.6(a) of these General Conditions.

14.6 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

No officer or employee of the Owner shall have a financial interest, direct or indirect, in any Contract with the Owner, or be financially interested, directly or indirectly, in the sale to the Owner of any land, materials, supplies or services, except on behalf of the Owner as an officer or employee. Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.7 VENUE

This Contract is deemed to be performed in Denton County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Denton County, Texas.

14.8 INDEPENDENT CONTRACTOR

In performing the Work under this Contract, the relationship between the Owner and the Prime Contractor is that of an independent contractor. The Prime Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Prime Contractor an agent, servant, or employee of the Owner, or making the Prime Contractor or any of the Prime Contractor’s employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

14.9 NONDISCRIMINATION

As a condition of this Contract, the Prime Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Prime Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex,

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sexual orientation, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Prime Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Prime Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.10 GIFTS TO PUBLIC SERVANTS

(a) The Owner may terminate this Contract immediately if the Prime Contractor has offered, conferred, or agreed to confer any benefit on a City of Denton employee or official that the City of Denton employee or official is prohibited by law from accepting.

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

(c) Notwithstanding any other legal remedies, the Owner may require the Prime Contractor to remove any employee of the Prime Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Prime Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.

ARTICLE 15 RIGHT TO AUDIT CONTRACTOR'S RECORDS

By execution of the Building Construction Services Agreement, the Prime Contractor grants the Owner the right to audit, at the Owner's election, all of the Prime Contractor's records and billings relating to the performance of the Work under the Contract Documents. The Prime Contractor agrees to retain its Project records for a minimum of five (5) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Prime Contractor under this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City’s rights as may be disclosed by an audit under this section.

ARTICLE 16 NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of the Denton City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Prime Contractor shall comply with the requirements of this ordinance as a precondition of any litigation relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

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EXHIBIT D
PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The Contractor will be required to furnish Payment and Performance Bonds for 100% of the total awarded project task order before work is to commence. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms are attached and shall be returned upon notice of each project task order award by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from notice of task order award. Upon approval, a purchase order will be issued.

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Exhibit E

INSURANCE REQUIREMENTS

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.

As soon as practicable after notification of contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- or better**.

- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees, and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- Liability policies shall be endorsed to provide the following:

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- Name as Additional Insured the City of Denton, its Officials, Agents, Employees, and volunteers.

- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

A. <u>COMMERCIAL GENERAL LIABILITY INSURANCE</u>

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum

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combined bodily injury (including death) and property damage limits of $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: $100,000.00 Each Accident
Bodily Injury by Disease: $100,000.00 Each Employee
Bodily Injury by Disease: $500,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. INSTALLATION FLOATER POLICY

Providing **All-Risk** coverage including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft in an amount equal to one hundred percent (100%) of the contract cost of the project in question. The policy shall include materials delivered and labor performed for the project in question. The policy shall be written jointly in the names of the City of Denton, Contractor teams, subcontractors, and sub-subcontractors as their interests may appear.

The policy shall have endorsements as follows:

a) This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
a) Loss, if any, shall be adjusted with and made payable to the City of Denton as Trustee for the insureds as their interests may appear.

D. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including

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death) and property damage limit of $1,000,000.00 per occurrence.

NOTE:

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

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Exhibit F
Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at : https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

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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.**

Durable Specialties, Inc.

2

[X] **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 relations hip 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:
A7123D0849E84D7...
Signature of vendor doing business with the governmental entity

6/25/2025
Date

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CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

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

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

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

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

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

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

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

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

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

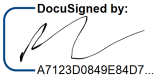
Certificate Of Completion

Envelope Id: EC09C499-3023-4ED0-AB8A-D3ECD8A13521
Status: Sent
Subject: Please DocuSign: City Council Contract 8801 Prequalification for Traffic Signal Construction Durable
Source Envelope:
Document Pages: 81
Signatures: 4
Initials: 1
Certificate Pages: 6
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Gabby Leeper
901B Texas Street
Denton, TX 76209
Gabby.Leeper@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
6/16/2025 4:41:26 PM
Holder: Gabby Leeper
Gabby.Leeper@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Gabby Leeper gabby.leeper@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 6/16/2025 4:44:12 PM Viewed: 6/16/2025 4:44:22 PM Signed: 6/16/2025 4:45:00 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DS Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 6/16/2025 4:45:03 PM Viewed: 6/16/2025 4:51:37 PM Signed: 6/16/2025 4:53:44 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by: 4B070831B4AA438... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 6/16/2025 4:53:48 PM Viewed: 6/19/2025 11:25:55 PM Signed: 6/19/2025 11:27:24 PM
Patrick Bryan patrick@durablespecialties.com President Durable Specialties, Inc. Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 6/24/2025 8:39:25 PM ID: 13eca5e7-1e2c-4dd0-8eb9-c6a44a1dd626	DocuSigned by:  A7123D0849E84D7... Signature Adoption: Drawn on Device Using IP Address: 12.198.158.162	Sent: 6/19/2025 11:27:27 PM Resent: 6/24/2025 10:22:06 AM Resent: 6/25/2025 2:11:09 PM Viewed: 6/25/2025 3:32:06 PM Signed: 6/25/2025 3:32:45 PM

Signer Events	Signature	Timestamp
Scott McDonlald scott.mcdonald@cityofdenton.com Director Security Level: Email, Account Authentication (None)	Signed by: D4585119F060407... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 6/25/2025 3:32:49 PM Resent: 6/30/2025 10:53:07 AM Resent: 7/2/2025 10:10:47 AM Resent: 7/8/2025 9:52:52 AM Viewed: 7/8/2025 12:32:58 PM Signed: 7/8/2025 12:33:26 PM
Electronic Record and Signature Disclosure: Accepted: 7/8/2025 12:32:58 PM ID: 9d3d6c2e-28f5-4573-a18c-57f6554a93b0		
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 7/8/2025 12:33:30 PM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 6/16/2025 4:45:03 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 7/8/2025 12:33:30 PM Viewed: 7/15/2025 3:05:07 PM

Carbon Copy Events	Status	Timestamp
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		
James Andrews james.andrews@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Accepted: 10/9/2024 5:32:03 PM ID: 4f7ee8fd-93df-452a-ad9d-25bcc34ba748		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/16/2025 4:44:12 PM
Envelope Updated	Security Checked	6/25/2025 2:11:08 PM
Envelope Updated	Security Checked	6/25/2025 2:11:08 PM
Envelope Updated	Security Checked	6/25/2025 2:11:08 PM
Envelope Updated	Security Checked	6/27/2025 10:01:19 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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

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 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 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 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:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** 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.

Docusign Envelope ID: A022AAD6-B993-4275-AB53-C63B98F5DF3B

Docusign City Council Transmittal Coversheet

RFQ	8801
File Name	Prequalification for Traffic Signal Construction-Mastec
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

DS
LH

Docusign Envelope ID: A022AAD6-B993-4275-AB53-C63B98F5DF3B

CONTRACT BY AND BETWEEN CITY OF DENTON, TEXAS AND MASTEC NORTH AMERICA, INC. (CONTRACT 8801)

THIS CONTRACT is made and entered into this date _____, by and between **MasTec North America, Inc.,** a Florida corporation, whose address is 4351 Dale Earnhardt Way Northlake, TX 76262 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide products and/or services in accordance with the City's document RFQ 8801 – Prequalification for Traffic Signal Construction Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFQ 8801 **(Exhibit "B" on File at the Office of the Purchasing Agent);**
(c) General Provisions – Standard Terms and Conditions **(Exhibit "C");**
(d) Payment and Performance Bond Requirements **(Exhibit "D");**
(e) Insurance Requirements **(Exhibit "E");**
(f) Certificate of Interested Parties Electronic Filing **(Exhibit "F");**
(g) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "G");**

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

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.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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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.

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.

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.

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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR

BY: DocuSigned by: Glenn Travis
AUTHORIZED SIGNATURE

Printed Name: Glenn Travis

Title: Regional Vice President

2145357235
PHONE NUMBER

glenn.travis@mastec.com
EMAIL ADDRESS

2025-1324928
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: DocuSigned by: Marcella Lunn
4B070831B4AA438...

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

Signed by: Scott McDonald
SIGNATURE

Scott McDonald
PRINTED NAME

Director
TITLE

Development Services
DEPARTMENT

Docusign Envelope ID: A022AAD6-B993-4275-AB53-C63B98F5DF3B

Exhibit A
Special Terms and Conditions

1. Total Contract Amount
MasTec North America, Inc., is pre-qualified for RFQ 8801 – Traffic Signal Construction Services. All pre-qualified contractors will be issued a Request for Cost that defines the scope of work, project material list, and project timeline dates. The pre-qualified contractors will have (5) days to respond to such Request for Cost. Thereafter, the City will select the pre-qualified contractor with the lowest price and ability to meet the City's timeline schedule requirements. If a response to the Request for Cost request is not received in the applicable time period, such pre-qualified contractor will be disqualified from that Request for Cost. The cumulative contract total for all awarded projects to all pre-qualified contractors for contract 8801 shall not exceed $7,100,000.

2. Contract Terms
The contract term will be three (3) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. Performance Liquidated Damages
Contractor recognizes that time is of the essence of this Agreement and that City will suffer financial loss if the Work is not completed within the times specified in each task order, plus any extension thereof allowed in accordance with Article 8.3 of the General Provisions. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City one thousand dollars ($1,000) for each day that expires after the time specified in each task order for Final Acceptance until the City issues the Final Letter of Acceptance.

4. Post Award Additional Requirements
Pre-Construction Meeting: Prior to commencement of the services, the City and the Contractor will conduct a pre-construction meeting to review the overall scope, schedule, deliverables, planning process, and to ensure that all relevant parties to the project are introduced.

List of Subcontractors: Prior to commencement of the services, the respondent awarded the task order will submit to the City for approval a list of all Subcontractors, and/or his major Subcontractors, proposed to use. This list will include each Subcontractor's correct name, mailing address and phone number.

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Contractor's Superintendent: The Contractor shall submit the name and qualifications of the person designated as Project Superintendent within ten (10) days of the receipt of the Notice of Award Letter.

Environmental Hazards: There are no known safety or environmental hazards existing on the project site at the time of issue of this solicitation. The City does not warrant or guarantee against the possibility that safety or environmental hazards or potential hazards may exist at the City's facilities. The Contractor shall be responsible for identifying any hazardous conditions and notifying the City verbally of such conditions as soon as possible after discovery and shall follow up in writing within 10 days of such discovery. The costs for necessary investigations or any potential corrective actions will be negotiated between the City and the Contractor.

Contractor Standards of Performance: The contractor shall prosecute the work diligently with skilled craftsmen and with state-of-the-art methods to complete the work within the time stated in the Request for Cost or such time extensions as may be granted.

Monthly Reports: The Contractor awarded the task order shall provide to the City of Denton, detailed reports of daily work conditions, daily man power availability, equipment problems, and work accomplished on a monthly basis.

Safety: All contractors to the City of Denton are required to ensure absolute safety standards are applied and enforced. The City of Denton will not be responsible for individual contractor safety, and the awarded contractor shall not hold the City of Denton responsible. Known hazards shall immediately be reported to the Project Manager and all safety precautions shall be taken to prevent potential safety issues from occurring.

5. Disposal of Material

All costs associated with the removal of trash and debris, including but not limited to rental of special equipment, open top containers, dumpsters, and trailers as well as payment of landfill fees, must be included in the unit pricing.

a) The City of Denton is the EXCLUSIVE provider of Solid Waste Services for the City of Denton. Consistent with the City of Denton Code of Ordinances: Ord. No. 23-386
   a. All Waste must be transported to the City of Denton Landfill (1527 S Mayhill Rd., Denton TX) for Disposal
   b. Contractor must use Contractor Employees and haul materials in contractor-owned equipment, should they wish to haul material themselves for disposal at the City of Denton Landfill.
   c. Should the Contractor choose to use a third party to supply and haul containers to the landfill, the Contractor MUST contract with the City of Denton, Solid Waste and Recycling Department to provide equipment and services. Cost may be found online at https://tx-denton.civicplus.com/DocumentCenter/View/4255/Fiscal-Year-2024---2025-Solid-Waste-Rate-Ordinance?bidId=
   d. Service requests are made to the City of Denton Customer Service by calling 940-349-8400.

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EXHIBIT C
GENERAL PROVISIONS- TERMS AND CONDITIONS FOR FACILITY CONSTRUCTION SERVICES

Invoices, Payments, and Releases

1. INVOICES AND PAYMENT PROCESSING:

Payment processing: The City review, inspection, and processing procedures for invoices ordinarily require thirty (30) days after receipt of invoices, materials, or services. Proposals which call for payment before thirty (30) days from receipt of invoice, or cash discounts given on such payment, will be considered only if, in the opinion of the Purchasing Manager, the review, inspection, and processing procedures can be completed as specified. It is the intention of the City of Denton to make payment within thirty (30) days after receipt of valid invoices for which items or services have been received unless unusual circumstances arise. The thirty (30) day processing period for invoices will begin on the date the invoice is received or the date the items or services are received, **whichever date is later**.

Direct deposit for payments: Prime Contractors are encouraged to arrange for receiving payments through direct deposit. Information regarding direct deposit payments is available from the City of Denton Purchasing website: www.dentonpurchasing.com.

Invoices: Invoices shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299 with a copy to the attention of Pritam Deshmukh, City of Denton Traffic Department emailed to pritam.deshmukh@cityofdenton.com. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.** Invoices for partial payments on construction projects should normally be presented for payment within the first five (5) days of the month, and submitted on the Pay Application Form.

2. TAX EXEMPTION:

The City of Denton qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. Any Prime Contractor performing work under this Contract for the City of Denton may purchase materials and supplies and rent or lease equipment sales tax free. This is accomplished by issuing exemption certificates to suppliers. Certificates must comply with State Comptroller's ruling #95-0.07 and #95-0.09.

3. PAYMENTS TO CONTRACTORS:

A. Upon presentation of valid invoices, which should be within the first week of each month, the Owner shall make partial payments to the Prime Contractor for construction accomplished during the preceding calendar month on the basis of completed construction certified to by the Prime Contractor and approved by the Owner and Architect/Engineer solely for the purposes of payment. Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety-five percent (95%) of each payment request approved during the construction of the project shall be paid by the Owner to the Prime Contractor prior to completion of the Project. Upon the approval by the Owner of the Prime Contractor's "Final Invoice for Payment" showing the total cost of the construction performed, the Owner shall make payment to the Prime Contractor of all

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amounts to which the Prime Contractor shall be entitled there under which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of completion of construction of the Project, as specified in the Final Invoice for Payment, unless withheld because of the fault of the Prime Contractor.

B. The Prime Contractor shall be paid on the basis of the percentage of the work actually completed for each construction item. The total amount paid for periodic billings shall not exceed the maximum Contract price for the construction of the project as set forth in the Contract, unless such excess shall have been approved in writing by the Purchasing Agent as part of a change order.

C. No payment shall be due while the Prime Contractor is in default in respect of any of the provisions of this Contract, and the Owner may withhold from the Prime Contractor the amount of any claim by any third party against either the Prime Contractor or the Owner based upon an alleged failure of the Prime Contractor to perform the work hereunder in accordance with the provisions of this Contract. This includes, without limitation, the alleged failure of the Prime Contractor to make payments to subcontractors.

4. RELEASE OF LIENS AND CERTIFICATE OF CONTRACTOR:

Upon award of the Contract, the Prime Contractor shall inform the Owner of the subcontractors and material sources that will be used. Upon the completion by the Prime Contractor of the construction of the Project, but prior to final payment to the Prime Contractor, the Prime Contractor shall deliver to the Owner releases of all liens, and of rights to claim any lien, from all manufacturers, materialmen and subcontractors furnishing services or materials for the Project, to the effect that all materials or services used on or for the Project have been paid for and indicating that the Owner is fully released from all such claims.

5. PAYMENTS TO MATERIALMEN AND SUBCONTRACTORS:

The Prime Contractor shall pay each materialman, and each subcontractor, if any, not later than five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Contractor for and on account of materials furnished or construction performed by each materialman or each subcontractor.

6. REMEDIES:

A. Completion of Prime Contractor’s Default

If default shall be made by the Prime Contractor or by any subcontractor in the performance of any of the terms of this proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Prime Contractor and the Surety or Sureties upon the Prime Contractor's bond or bonds a written notice requiring the Prime Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Prime Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner and/or Architect/Engineer shall be made by the Prime Contractor or its Surety or Sureties, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Prime Contractor, and the Prime Contractor and its Surety or Sureties shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Prime Contractor or any

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of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Prime Contractor may have against third persons in connection with this Contract and for such purpose the Prime Contractor does hereby assign, transfer and set over unto the Owner all such rights claims and demands.

B. Cumulative Remedies

Every right or remedy herein conferred upon or reserved to the Owner shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election. Provided, however, that the provisions of the **REMEDIES SECTION** shall be the exclusive measure of damages for failure by the Prime Contractor to complete the construction of the Project within the time herein agreed upon.

CITY OF DENTON GENERAL CONDITIONS FOR CONSTRUCTION
ARTICLE 1 GENERAL PROVISIONS

GENERAL DEFINITIONS

1.1 THE FOLLOWING DEFINITIONS APPLY THROUGHOUT THESE GENERAL CONDITIONS AND TO THE OTHER CONTRACT DOCUMENTS:

a) THE CONTRACT DOCUMENTS

The Contract Documents consist of the formal Building Construction Services Agreement between the Owner and the Prime Contractor, these General Conditions and other supplementary conditions included by special provisions or addenda, drawings, specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract, and Amendments issued after execution of the Contract. For purposes of these General Conditions, an Amendment is:

(1) a written Supplemental Agreement to the Contract signed by authorized representatives of both parties;

(2) a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1(b) and Subparagraph 7.1(e); or

(3) a written order for a minor change in the Work issued by the Architect/Engineer as described in Paragraph 7.3.

The Contract Documents also include bid documents such as the Owner’s Instructions to Bidders, sample forms, the Prime Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Prime Contractor.

b) THE CONTRACT

The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and

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made a part of the formal Building Construction Services Agreement between the Owner and the Prime Contractor by reference in this Paragraph and Paragraph 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Prime Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

(1) between the Architect/Engineer and Prime Contractor;

(2) between the Owner and a Subcontractor or -subcontractor; or

(3) between any persons or entities other than the Owner and Prime Contractor.

The Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect/Engineer's duties.

c) THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Prime Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Prime Contractor is responsible, to fulfill the Prime Contractor's obligations. The Work may constitute the whole or a part of the Project.

d) THE PROJECT

The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

e) THE DRAWINGS

The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, 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, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

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g) THE PROJECT MANUAL

The Project Manual is the volume or volumes which contain the bidding requirements, sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

h) ALTERNATE

An Alternate is a variation in the Work on which the Owner requires a price separate from the City Building General Conditions Base Bid. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted prior to any Work under the alternate being performed or materials delivered to the Project site, the Owner will be entitled to a credit in the full value of the alternate as priced in the Prime Contractor's Bid.

i) BASE BID

The Base Bid is the price quoted for the Work before Alternates are considered.

j) HAZARDOUS SUBSTANCE

The term Hazardous Substance is defined to include the following:

(1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable;

(2) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

(3) radon;

(4) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

(5) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

(6) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(7) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

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(8) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

k) OTHER DEFINITIONS

As used in the Contract Documents, the following additional terms have the following meanings:

(1) "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;

(2) "shall" means the action of the party to which reference is being made is mandatory;

(3) "as required" means as prescribed in the Contract Documents; and

(4) "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.2 EXECUTION, CORRELATION AND INTENT

(a) The Building Construction Services Agreement shall be signed by duly authorized representatives of the Owner and Prime Contractor as provided in the Agreement.

(b) Execution of the Building Construction Services Agreement by the Prime Contractor is a representation that the Prime Contractor has visited the site, has become familiar with local conditions, including but not limited to subsurface conditions, under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

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

(d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Prime Contractor in dividing the Work among Subcontractor(s) or in establishing the extent of Work to be performed by any trade.

(e) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

(f) The Drawings and Specifications are intended to agree with one another, and Work called for by Drawings and not mentioned in Specifications, or vice versa, shall be furnished as if set forth by both. Specifications shall govern materials, methods and quality of work. In the event of a conflict on the Drawings between scale and dimension, figured dimensions shall govern over scale dimensions and large scale drawings shall govern over small scale

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drawings. Conflict between two or more dimensions applying to a common point shall be referred to the Architect/Engineer/Engineer for final adjustment. If discrepancies or conflicts occur within or between the Drawings and Specifications regarding the Work, or within or between other Contract Documents, the Prime Contractor shall not perform such Work without having obtained a clarification from the Architect/Engineer and resolution by the Owner. The Owner's decision as to the appropriate resolution of a conflict or discrepancy shall be final. Should the Drawings or the Specifications disagree within themselves or with each other; the Base Bid will be based on the most expensive combination of quality and quantity of Work indicated.

(g) Deviations from Contract Documents shall be made only after written approval is obtained from Architect/Engineer and Owner, as provided in Article 7.

(h) The intention of the Contract Documents is to include all materials, labor, tools, equipment, utilities, appliances, accessories, services, transportation, and supervision required to completely perform the fabrication, erection and execution of the Work in its final position.

(i) The most recently issued Drawing or Specification takes precedence over previous issues of the same Drawing or Specification. In the event of a conflict, the order of precedence of interpretation of the Contract Documents is as follows:

(1) Amendments (see Paragraph 7.2 for order of precedence between Amendments);

(2) the Building Construction Services Agreement;

(3) addenda, with those addenda of later date having precedence over those of an earlier date;

(4) the Supplementary General Conditions and Special Provisions, if any;

(5) the General Conditions for Building Construction;

(6) 0the Specifications and Drawings.

1.3 OWNERSHIP AND USE OF ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications, and copies thereof furnished by the Architect/Engineer are and shall remain the property of the Owner and are, with the exception of the Contract set for each party, to be returned to the Owner upon request at the completion of the Work.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are:

(1) specifically defined in these General Conditions (except the terms defined in Subparagraph 1.1(j), which terms are of common grammatical usage and are not normally capitalized);

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(2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses;

(3) the titles of other documents published or used by the Owner as manuals or official policy statements; or

(4) proper nouns or other words required under standard grammatical rules to be capitalized.

ARTICLE 2 - THE OWNER

2.1 DEFINITION OF OWNER

The Owner is the City of Denton, a Texas municipal corporation, and is identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

(a) The Owner shall furnish the most recent survey describing the physical characteristics, legal limits, utility locations, and a permanent benchmark for the site of the Project. The Owner shall also furnish any environmental site assessments that may have been given to the Owner or conducted for the property upon which the Project is to be constructed. THIS INFORMATION IS FURNISHED TO THE PRIME CONTRACTOR ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.

(b) Except for permits and fees which are provided for in Subparagraph 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.

(c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Prime Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval, as required in Paragraph 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Prime Contractor as scheduled and Prime Contractor is not prepared to accept or act on such information or services, then Prime Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

(d) Unless otherwise provided in the Contract Documents, the Prime Contractor will be furnished electronic copies of the Drawings and Specifications for bid purposes and one hard copy approved by Building Inspections upon execution of the Contract. Prime

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Contractor may obtain additional copies by paying the cost of additional printing or reproduction.

(e) The obligations described above are in addition to other duties and responsibilities of the Owner enumerated in the Contract Documents and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

(f) The Owner shall forward all instructions to the Prime Contractor through the Architect/Engineer, except for the Owner's Notice to Proceed and the Owner's decision to carry out Work as described in Paragraph 2.4.

(g) The Owner's employees, agents, and consultants may be present at the Project site during performance of the Work to assist the Architect/Engineer in the performance of the Architect/Engineer's duties and to verify the Prime Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, the equipment used in the performance of the Work, and for purpose of verification of Prime Contractor's Applications for Payment.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Prime Contractor fails to correct any portion of the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or refuses or fails to carry out all or any part of the Work in accordance with the Contract Documents, the Owner, by written order, may order the Prime Contractor to stop the Work, or any portion of the Work, until the cause for the order has been eliminated. The right of the Owner however, to stop the Work shall not create or imply a duty on the part of the Owner to exercise this right for the benefit of the Prime Contractor or any other person or entity. The rights of the Owner under this Paragraph 2.3 shall be in addition to, and not in restriction of, the Owner's rights under Paragraph 12.2.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Prime Contractor fails or refuses to carry out the Work or perform any of the terms, covenants, or obligations of the Contract Documents, and fails or refuses to correct any failure or refusal with diligence and promptness within fourteen (14) days after receipt of written notice from the Owner, the Owner may correct the Prime Contractor's failure or refusal or cause such failure or refusal to be corrected, without affecting, superseding, or waiving any other contractual, legal, or equitable remedies the Owner has, including but not limited to the Owner's termination rights under Article 13. In that case, an appropriate Change Order will be issued deducting the Owner's cost of correction, including Architect/Engineer's compensation for additional services and expenses made necessary by the failure or refusal of the Prime Contractor from payments then or thereafter due to the Prime Contractor. The cost of correction is subject to verification (but not approval) by the Architect/Engineer. If payments then or thereafter due the Prime Contractor are not sufficient to cover the cost of correction, the Prime Contractor shall pay the difference to the Owner.

ARTICLE 3 - THE CONTRACTOR

3.1 DEFINITION OF CONTRACTOR

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The Prime Contractor is the person or business entity identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Prime Contractor" means the Prime Contractor or the Prime Contractor's authorized employees or representatives.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

(a) The Prime Contractor shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Architect/Engineer in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Prime Contractor may discover. The Prime Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Prime Contractor will be held responsible for any subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the Prime Contractor continues to work on an item where an inconsistency, ambiguity, error, omission, conflict, or discrepancy exists without obtaining such clarification or resolution or commences an item of the Work without giving written notice of an error, omission, conflict, or discrepancy that might have been avoided by the check, study, and comparison required above, it shall be deemed that the Prime Contractor bid and intended to execute the more stringent, higher quality, or state of the art requirement, or accepted the condition "as is" in the Contract Documents, without any increase to the Contract Sum or Contract Time. The Prime Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Prime Contractor's failure to give notice of and obtain a clarification or resolution of any error, omission, conflict, or discrepancy, without any right to any increase to the Contract Sum or Contract Time.

(b) The Prime Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

(a) The Prime Contractor shall supervise and direct the Work, using the Prime Contractor's best skill and attention. The Prime 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, unless the Contract Documents set forth specific instructions concerning these matters.

(b) The Prime Contractor shall be responsible to the Owner for the acts and omissions of the Prime Contractor's employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Prime Contractor, or with any Subcontractor, and all other persons or entities for which the Prime Contractor is legally responsible. All labor shall be performed by mechanics that are trained and skilled in their respective trades. Standards of work required throughout shall be of a quality that will bring only first class results. Mechanics whose work is unsatisfactory, or who are considered careless, incompetent, unskilled, or otherwise objectionable shall be dismissed promptly from the Work and immediately

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replaced with competent, skilled personnel. Any part of the Work adversely affected by the acts or omissions of incompetent, unskilled, careless, or objectionable personnel shall be immediately corrected by the Prime Contractor.

(c) The Prime Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Prime Contractor.

(d) The Prime Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Prime Contractor's responsibility under this paragraph will not in any way eliminate the Architect/Engineer's responsibility to the Owner under the Architect/Engineer/Owner Agreement.

(e) Any Prime Contractor, Subcontractor, Sub-subcontractor, or separate contractor who commences Work over, in, or under any surface prepared by the Owner or by any other contractor, subcontractor, sub-subcontractor or any separate contractor, without the Prime Contractor having given written notice to the Architect/Engineer of the existence of any faulty surface or condition in the surface that prevents achieving the quality of workmanship specified by the Contract Documents and without having obtained the prior approval of the Architect/Engineer and the Owner to proceed is deemed to have accepted the surface or condition in the surface as satisfactory at the commencement of such Work. Any unsatisfactory Work subsequently resulting from such a faulty surface or condition in the surface that was not pre-approved by the Architect/Engineer or the Owner after notice as provided above may be rejected and replacement required, without any increase to the Contract Sum or Contract Time.

(f) All grades, lines, levels, and benchmarks shall be established and maintained on an ongoing basis by the Prime Contractor. The Prime Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Contractor shall verify all grades, lines, levels, and dimensions as indicated on Drawings. He shall report any errors, omissions, conflicts, or inconsistencies to Architect/Engineer before commencing any Work affected by these conditions. Contractor shall establish and safeguard benchmarks in at least two widely separated places and, as Work progresses, establish benchmarks at each level and lay out partitions on rough floor in exact locations as guides to all trades. The Contractor shall, from the permanent benchmark provided by the Owner, establish and maintain adequate horizontal and vertical control.

3.4 LABOR AND MATERIALS

(a) Except as is otherwise specifically provided in the Contract Documents as being the responsibility of the Owner, the Prime 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.

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(b) The Prime Contractor shall enforce strict discipline and good order among the Prime Contractor's employees and all other persons carrying out the Contract. The Prime Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

(c) The Prime Contractor shall give preference, when qualified labor is available to perform the Work to which the employment relates, to all labor hired for the Project in the following order:

(1) residents of the City of Denton, Texas;

(2) residents of the County of Denton, Texas;

3.5 WARRANTY

(a) General Warranty. The Contractor warrants to the Owner that all Work shall be accomplished in a good and workmanlike manner and that all materials and equipment furnished under the Contract will be of good quality, new (unless otherwise specified), and free from faults or defects, and that the Work will otherwise conform to the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective or nonconforming. The Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The commencement date, duration, and other conditions related to the scope of this general warranty are established in Subparagraphs 9.9 (a) and 12.2(b) of these General Conditions. THE GENERAL WARRANTY PROVIDED IN THIS SUBPARAGRAPH IS IN ADDITION TO AND DOES NOT LIMIT OR DISCLAIM ANY OTHER WARRANTY OR REMEDY REQUIRED OR PROVIDED BY LAW OR THE CONTRACT DOCUMENTS AND SUCH WARRANTY SHALL REQUIRE THE CONTRACTOR TO REPLACE DEFECTIVE MATERIALS AND RE-EXECUTE DEFECTIVE WORK THAT IS DISCLOSED BY THE OWNER TO THE CONTRACTOR WITHIN A PERIOD OF TWO (2) YEARS AFTER SUBSTANTIAL COMPLETION OF THE ENTIRE WORK; OR, IF A LATENT DEFECT IS DISCOVERED WITHIN TWO YEARS OF SUBSTATIONAL COMPLETION OF THE ENTIRE WORK.

(b) Special Warranties. The Contractor shall assign to the Owner in writing, as a condition precedent to final payment, the terms and conditions of all special warranties required under the Contract Documents.

3.6 TAXES

The Owner qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the Owner shall not be liable for, or pay the Contractor's cost of, such sales and use taxes which would otherwise be payable in connection with the purchase of tangible personal property furnished and incorporated into the real property being improved under the Contract Documents or the

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purchase of materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for performance of the Contract which is to be completely consumed at the job site. The Contractor shall issue an exemption certificate in lieu of the tax on such purchases.

3.7 PERMITS, FEES AND NOTICES

(a) The Architect/Engineer will apply and arrange for the issuance of the City of Denton Building Permit. The Prime Contractor and Subcontractors will apply and arrange for the issuance of all other required permits, and will not be required to pay a fee for any City of Denton permits required for the Project. The Owner will pay all service extension charges, including tap fees, assessed by the Water Utilities Department.

(b) The Prime Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of governmental entities or agencies applying to performance of the Work.

(c) Except as provided in Subparagraph (d) below, it is not the Prime Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Prime Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Prime Contractor shall promptly notify the Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.

(d) If the Prime Contractor performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Architect/Engineer and the Owner, the Prime Contractor shall assume full responsibility for the Work and shall bear the attributable costs of the correction of the Work and any other Work in place that may be adversely affected by the corrective work.

3.8 ALLOWANCES

(a) The Prime Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for the amounts identified in the Contract and by persons or entities as the Owner may direct, but the Prime Contractor shall not be required to employ persons or entities against which the Prime Contractor makes reasonable objection.

(b) Unless otherwise provided in the Contract Documents:

(1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

(2) the amount of each allowance shall cover the cost to the Prime Contractor of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts;

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(3) the amount of each allowance includes the Prime Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance Work;

(4) 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:

(i) the difference between actual costs and the allowances under Clause (b) (2); and

(ii) changes in Contractor's costs under Clause (b) (3);

(5) the Owner retains the right to review and approve Subcontractors selected by the Prime Contractor to perform work activities covered by allowances.

3.9 SUPERINTENDENT

The Prime Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Prime Contractor, and communications given to the superintendent shall be as binding as if given to the Prime Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to request that the Prime Contractor replace its superintendent at any time and the Prime Contractor will replace said superintendent at the Owner's direction.

3.10 PRIME CONTRACTOR'S CONSTRUCTION SCHEDULES

(a) The Prime Contractor shall, immediately after award of the Contract and before submittal of the first Application for Payment, prepare and submit the construction schedule for the Architect/Engineer's and Owner's information, review, and approval in accordance with the following provisions:

(1) Unless otherwise approved in writing by the Owner, the construction schedule shall not exceed the Contract Time limits currently in effect under the Contract Documents and shall provide for expeditious and practicable execution of the Work.

(2) The construction schedule shall include all shop drawing and submittal data requirements, indicating for each:
(i) the latest date to be submitted by the Prime Contractor; and
(ii) the latest date for approval by the Architect/Engineer.

(3) The construction schedule shall be in the form of a critical path management schedule, and shall indicate each critical task (the "predecessor") of all the major construction activities of the Work in a logical and sequential order (the "project network") which requires completion prior to commencement of the task next following (the "successor"). Each task shall be identified with:

(i) actual work time, exclusive of slack time, for accomplishment;

(ii) the latest start date;

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(iii) the latest finish date;

(iv) the amount of float associated with each task;

(v) the amount of labor, material, and equipment associated with each task; and

(vi) the percentage of completion as of the date of the current schedule.

(4) The construction schedule shall be revised and updated monthly to reflect the actual status of the Work and shall be submitted with each Application for Payment.

(5) On or before the first day of each month, following the date of commencement of the Work as stated in the notice to proceed, the Prime Contractor shall prepare and submit to the Architect/Engineer and the Owner an up-to-date status report of the progress of the various construction phases of the Work in the form of an updated construction schedule. This status report shall consist of a time scale drawing indicating actual progress of the various phases of the Work and the percentage of completion of the entire Work. The original construction schedule shall be updated or changed to indicate any adjustments to the Contract Time granted by the Owner. The updated schedule must be submitted with the Prime Contractor's Application for Payment. No such application will be certified without a satisfactory update to the construction schedule.

(6) The construction schedule will also be revised to show the effect of change orders and other events on Contract Time. No request for an increase in Contract Time will be considered unless it is accompanied by a schedule revision demonstrating the amount of time related to the cause of the request. If the Contractor's status schedules reflect that the Prime Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Prime Contractor shall prepare a recovery schedule demonstrating how it intends to bring its progress back within the Contract Time. This recovery schedule shall be in a form acceptable to the Owner.

(7) Costs incurred by the Prime Contractor in preparing and maintaining the required construction schedule, any updated schedule, and any recovery schedule required by the Owner will not be paid as an additional or extra cost and shall be included in the Contract Sum.

(8) The Contract Sum is deemed to be based upon a construction schedule requiring the full Contract Time. NO CLAIM FOR ADDITIONAL COMPENSATION SHALL BE ALLOWED AS A RESULT OF THE PRIME CONTRACTOR BASING HIS BID ON AN EARLY COMPLETION SCHEDULE, OR AS A RESULT OF DELAYS AND COSTS ATTRIBUTABLE TO COMPLETION LATER THAN THE PLANNED EARLY COMPLETION DATE.

(b) The Prime Contractor shall also prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Prime Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.

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(c) The Prime Contractor shall conform to the most recent schedules approved as to form by the Architect/Engineer and the Owner. Any subsequent revisions made by the Prime Contractor to schedules in effect shall conform to the provisions of Subparagraph 3.10(a)

(d) If the Work falls behind the approved construction schedule, the Prime Contractor shall take such steps as may be necessary to improve his progress, and the Architect/Engineer and the Owner may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, and to submit for approval revised schedules in the form required above in order to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

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, materialmen, manufacturer(s), supplier(s), or distributor(s) 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 which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Paragraph 4.2.

(e) The Prime Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents 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. Submittals made by the Prime Contractor which are not required by the Contract Documents may be returned without action.

(f) The Prime Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect/Engineer. Work requiring this submittal and

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review shall be in accordance with approved submittals and any identified exceptions noted by the Architect/Engineer.

(g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Prime Contractor represents that the Prime Contractor has determined and verified materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within submittals with the requirements of the Work and of the Contract Documents. The Prime Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.

(h) The Prime Contractor shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Prime Contractor has specifically informed the Architect/Engineer in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Architect/Engineer, subject to a formal Change Order signed by the Owner, Architect/Engineer and Prime Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Prime Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect/Engineer's approval thereof. Further, notwithstanding any approval of a submittal by the Architect/Engineer, the Prime Contractor shall be responsible for all associated Project costs, including costs of coordination's, modifications, or impacts, direct or indirect, resulting from any and all substitutions, changes, additions, deletions, omissions, or deviations, whether or not specifically identified by the Prime Contractor to the Architect/Engineer at the time of the above-mentioned submittals, including additional consulting fees, if any, in any and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.

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

(j) Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.

(k) When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF THE PROJECT SITE

The Prime Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

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3.14 CUTTING AND PATCHING

(a) The Prime Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Prime Contractor shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering the construction, or by excavating. The Prime Contractor shall not cut or otherwise alter the construction by the Owner or a separate contractor except with the written consent of the Owner and of the separate contractor; consent shall not be unreasonably withheld. The Prime Contractor shall not unreasonably withhold from the Owner or a separate contractor the Prime Contractor's consent to cutting or otherwise altering the Work.

(c) A "Hot Work Permit" must be obtained from the City of Denton's Facilities Management Department, 869 S. Woodrow Lane, Denton, Texas (940 349-7200) for any temporary operation involving open flames or producing heat and/or sparks. This includes, but is not limited to: Brazing, Cutting, Grinding, Soldering, Torch Applied Roofing and Welding.

3.15 CLEANING UP

(a) The Prime Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon the completion of the Work the Prime Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Prime Contractor's tools, construction equipment, machinery, and surplus materials.

(b) If the Prime Contractor fails to clean up as provided in the Contract Documents, the Owner may, at Owner's option, clean up the Project site, and the Owner's cost of cleaning up shall be charged to the Contractor.

3.16 ACCESS TO WORK

The Prime Contractor shall provide the Owner and the Architect/Engineer access to the Work in preparation and progress wherever located during the course of construction.

3.17 TESTS AND INSPECTIONS

(a) Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of governmental entities or agencies having jurisdiction over the Work shall be made at appropriate times. Unless otherwise provided, the Prime 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 governmental entity or agency, and the Prime Contractor shall bear all related costs of tests, inspections, and approvals. The Prime Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear

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costs of tests, inspections, or approvals which become requirements after bids or proposals are received.

(b) If the Architect/Engineer, the Owner or other public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 3.17(a), the Architect/Engineer will, upon written authorization from the Owner, instruct the Prime Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Prime Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so that the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 3.17(c).

(c) If procedures for testing, inspection, or approval under Subparagraphs 3.17(a) and 3.17(b) reveal deficiencies or nonconformities in the Work, the Prime Contractor shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Architect/Engineer's services and expenses, if any. The Prime Contractor shall bear the costs of any subsequent testing, inspection, or approval of the corrected Work.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Prime Contractor and promptly delivered to the Architect/Engineer.

(e) If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing or inspection.

(f) Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

3.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. CONTRACTOR SHALL COMPLETELY DEFEND, INDEMNIFY AND HOLD OWNER AND ARCHITECT/ENGINEER HARMLESS FROM ANY AND ALL LIABILITIES, SUITS OR CLAIMS FOR INFRINGEMENT OF PATENT RIGHTS, REGARDLESS OF WHETHER OR NOT THE OWNER OR THE ARCHITECT/ENGINEER SPECIFIED A PARTICULAR DESIGN, PROCESS OR PRODUCT IN THE CONTRACT DOCUMENTS THAT MAY BE THE SUBJECT OF A PATENT INFRINGEMENT OR OTHERWISE ACTIVELY INDUCED OR CONTRIBUTED TO THE PATENT INFRINGEMENT. In the event the Prime Contractor has reason to believe that a particular design, process or product specified infringes a patent, the Prime Contractor shall immediately notify the Owner and the Architect/Engineer of same.

3.19 INDEMNIFICATION

(a) THE PRIME CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT/ENGINEER, HARMLESS AGAINST ANY AND ALL CLAIMS,

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LIABILITIES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE PRIME CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE PRIME CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR OF THE ARCHITECT/ENGINEER, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CONTRACTOR, THE OWNER, AND THE ARCHITECT/ENGINEER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW, AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER THIRD PERSON OR ENTITY.

(b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Prime Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.19 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Prime Contractor or any Subcontractor, under workers compensation acts, disability benefit acts or other employee benefit acts.

(c) Indemnification under this Paragraph 3.19 shall include, but is not limited to, liability which could result to or be created for the Owner, its officers, agents, or employees, or the Architect/Engineer pursuant to State or Federal laws or regulations relating to pollution of the environment and State or Federal laws or regulations relating to the occupational safety and health of workers. The Prime Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Prime Contractor and that the obligations of the Owner, its officers, agents, and employees, and the Architect/Engineer under the above-mentioned laws and regulations are secondary to those of the Prime Contractor.

ARTICLE 4 - CONTRACT ADMINISTRATION

4.1 THE DESIGN PROFESSIONAL (ARCHITECT/ENGINEER)

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(a) The design professional is the person lawfully licensed to practice architecture or engineering or a firm or other business entity lawfully practicing architecture/engineering identified as such in the formal Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect/Engineer" means the Architect/Engineer or the Architect/Engineer's authorized representative. The Owner may, at its option, designate a qualified Owner representative to serve as the Architect/Engineer on the Project instead of an outside firm or person. In such event, the references in these General Conditions that refer to the Architect/Engineer shall apply to the Owner-designated Architect/Engineer representative and the Owner-designated Architect/Engineer representative shall be accorded that same status by the Prime Contractor.

(b) In the event the Architect/Engineer is an outside person or firm and the Architect/Engineer's employment is terminated, the Owner may, at its option, contract with a new outside Architect/Engineer to replace the former, or may designate a qualified Owner representative to serve as the Architect/Engineer. The replacement Architect/Engineer, whether an Owner representative, an independent Architect/Engineer or any other qualified person or entity, shall be regarded as the Architect/Engineer for all purposes under the Contract Documents and shall be accorded that same status by the Prime Contractor. Any dispute in connection with such appointment shall be reviewed and settled by the Owner, whose decision shall be final and binding.

(c) Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect/Engineer's Construction Phase responsibility. Similarly, from time to time the Owner may expand or reduce the Owner's delegation of powers to the Architect/Engineer, with the Owner notifying the Prime Contractor of any such changes. The Architect/Engineer shall not be construed as a third party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth in this Subparagraph (c). In no event, however, shall the Owner have control over charge of, or be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of Prime Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2 ARCHITECT/ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION

(a) The Architect/Engineer will administer the Contract as described in the Contract Documents and in accordance with the terms of the Architect/Engineer's agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Prime Contractor, the provisions of the Owner/Architect/Engineer Agreement will be made available to the Prime Contractor.

(b) The Architect/Engineer shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent necessary to personally familiarize themselves with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract

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Documents. The Architect/Engineer shall not, however, be required to make continuous on-site inspections to check the Work. Field reports of each visit shall be prepared by the Architect/Engineer and submitted to the Owner. The Architect/Engineer shall employ all reasonable measures to safeguard the Owner against defects and nonconformities in the Work. The Architect/Engineer shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Work. The Architect/Engineer will, however, immediately inform the Owner whenever defects or nonconformities in the Work are observed, or when any observed actions or omissions are undertaken by the Prime Contractor or any Subcontractor which are not in the best interests of the Owner or the Project.

(c) The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Prime Contractor's responsibility as provided in Paragraph 4.3. The Architect/Engineer and the Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Prime Contractor, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Prime Contractor is responsible.

(d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Prime Contractor shall endeavor to communicate through the Architect/Engineer. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Prime Contractor. Communications by and with separate contractors will be through the Owner. The Prime Contractor shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Architect/Engineer.

(e) Based on the Architect/Engineer's observations and evaluations of the Prime Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Prime Contractor and will issue Certificates for Payment in such amounts.

(f) The Architect/Engineer and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 3.17(b) and 3.17(c), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer to the Prime Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

(g) The Architect/Engineer will review and approve or take other appropriate action upon the Prime Contractor's submittals such as Shop Drawings, Product Data, and Samples, but

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only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such reasonable promptness as to not delay the Work or the activities of the Owner, Contractor, or separate contractors. 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 Prime Contractor as required by the Contract Documents. The Architect/Engineer's review of the Prime Contractor's submittals shall not relieve the Prime Contractor of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work as provided in Paragraph 7.3.

(i) The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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 Prime Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

(j) If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more Project representatives to assist in carrying out the Architect/Engineer'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 into the Contract Documents.

(k) The Architect/Engineer will interpret and make recommendations to the Owner concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Architect/Engineer shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Prime Contractor which change the scope of the Work or which modify or change the terms and conditions of any of the Contract Documents.

(l) Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by the Prime Contractor.

(m) The Architect/Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents; provided that the Architect/Engineer has the prior written approval of the Owner.

4.3 CLAIMS AND DISPUTES

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(a) Definition; General Notice of Claim Procedure. As used in these General Conditions, a "Claim" means a demand or assertion by one of the parties to the Contract seeking an adjustment of the terms of the Contract Documents, of the Contract Sum, of the Contract Time, or some other relief in respect to the terms of the Contract Documents. The term also includes all other disputes between the Owner and the Contractor arising out of or relating to the Project or the Contract Documents, including but not limited to claims that work was outside the scope of the Contract Documents. The responsibility to substantiate the Claim and the burden of demonstrating compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, WITHOUT EXCEPTION, MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT/ENGINEER AND TO THE OWNER WITHIN FOURTEEN (14) DAYS IMMEDIATELY AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM. Every Claim of the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Prime Contractor by his signature) of the Prime Contractor, verifying the truth and accuracy of the Claim. THE PRIME CONTRACTOR SHALL BE CONCLUSIVELY DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURES AND TIME LIMITS SET OUT IN THIS PARAGRAPH.

(b) Referral to the Architect/Engineer. Claims, disputes, and other matters in question between the Prime Contractor and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Architect/Engineer for recommendation to the Owner, which recommendation the Architect/Engineer will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Prime Contractor to submit the Claim to the Architect/Engineer for rendering of a recommendation to the Owner shall constitute a waiver of the Claim.

(c) Continuing Contract Performance. Pending final resolution of a claim the Prime Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents.

(d) Claims for Concealed or Unknown Conditions. No adjustment in the Contract Sum or Time associated with concealed or unknown conditions will normally be considered or allowed; provided, however, that the Contract Sum or Time may be adjusted by the Owner in such circumstances only if:

(1) a concealed subsurface condition is encountered in the course of performance of the Work;
(2) a concealed or unknown condition in an existing structure is at variance with conditions indicated by the Contract Documents; or
(3) an unknown physical condition is encountered below the surface of the ground or in an existing structure which is of an unusual nature and materially different from those ordinarily encountered and generally recognized as inherent in the character of the Work; and

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(4) a notice of claim with proper and adequate substantiation is presented pursuant to Subparagraph 4.3(a) of these General Conditions; and
(5) the Owner and the Architect/Engineer determine that:

(i) prior to submitting its bid for the Work, the Contractor used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and

(ii) the work caused or required by the concealed or unknown condition at issue can be considered extra work to the extent that additional new Drawings must be prepared and issued and new construction beyond the scope of the Contract Documents is required.

(e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE ARCHITECT/ENGINEER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE PRIME CONTRACTOR AT THE PRIME CONTRACTOR'S OWN RISK. THE OWNER AND THE ARCHITECT/ENGINEER DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.

(f) Claims for Additional Cost. If the Prime Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided in this Paragraph 4.3 shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. In addition, the Prime Contractor's request for an increase in the Contract Sum for any reason (other than work performed under emergency conditions) shall be made far enough in advance of required work to allow the Owner and the Architect/Engineer a sufficient amount of time, without adversely affecting the construction schedule, to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates or proposals and to negotiate, execute and distribute a Change Order for the required work if the Prime Contractor believes that additional cost is involved for reasons including but not limited to:

(1) a written interpretation from the Architect/Engineer;

(2) a written order for a minor change in the Work issued by the Architect/Engineer;

(3) failure of payment by the Owner;

(4) termination of the Contract by the Owner;

(5) the Owner's temporary suspension of all or any portion of the Work where the Prime Contractor was not at fault; or

(6) other reasonable grounds.

(g) Injury or Damage to Person or Property. If the Prime Contractor suffers injury or damages to person or property because of an act or omission of the Owner, or of any of the Owner's

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officers, employees or agents, written, sworn-to notice of any claim for damages or injury shall be given as provided in Subparagraph 4.3(a). The notice shall provide sufficient detail to enable the Architect/Engineer and the Owner to investigate the matter.

(h) Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Prime Contractor asserts a claim to the Prime Contractor, that the Prime Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the Prime Contractor to submit and assert the claim against the Owner shall be subject to:

(1) the requirements of Paragraph 4.3 of these General Conditions; and

(2) the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Prime Contractor to seek and assert such claim against the Owner:

(ii) The Prime Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Prime Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Prime Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Prime Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Prime Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Prime Contractor in the claim submittal materials.

(ii) The Prime Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Prime Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Prime Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed by the Contractor to be valid.

(iii) The Subcontractor making the claim to the Prime Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Prime Contractor in the claim submittal materials made by Contractor to the Owner..

(3) Any failure of the Prime Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim against Owner.

(4) Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or by applicable law.

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(i) Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part. The Prime Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If the Prime Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Prime Contractor to develop a recovery schedule as described in Paragraph 3.10 or to accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as the Owner may reasonably direct and, upon receipt, the Prime Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Prime Contractor to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).

(2) In the event that the Prime Contractor is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Subparagraph 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to the Prime Contractor provided within fourteen (14) days after receipt of the Prime Contractor's Claim. If the Owner denies the Prime Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Prime Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(3) If the Prime Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by the Owner if not for the need and right to accelerate, the Prime Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Prime Contractor under Subparagraph 4.3(a) above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance; provided however, not to exceed five (5%) per cent, will be allowed on the claimed acceleration costs. NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM. The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (i)(3).

(i) Waiver of Claims; Final Payment. The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

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(1) claims, security interests, purported liens, or other attempted encumbrances arising out of the Contract and remaining unsettled;

(2) defective or nonconforming Work appearing after Substantial Completion;

(3) latent defects, as defined in Subparagraph 12.2(d), appearing after Final Completion; or

(4) the terms of general and special warranties required by the Contract Documents or allowed or implied by law.

(k) THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING.

(l) No Waiver of Governmental Immunity. NOTHING IN THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY APPLICABLE STATE LAW.

ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS OF SUBCONTRACTOR

(a) A Subcontractor is person or entity who has a direct Contract with the Prime Contractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Prime Contractor by purchase or lease for use in performance of or incorporation into the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(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 Project site or to supply materials or equipment to the Subcontractor or another Sub-subcontractor by purchase or lease for use in performance of or incorporation into the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

(a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Prime Contractor and the Owner, the Prime Contractor shall furnish to the Architect/Engineer in writing, for acceptance by the Owner and the Architect/Engineer, a list of the names, addresses, telephone numbers, M/WBE certification numbers (where applicable), and type of work of the Subcontractors

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(including those who are to furnish materials or equipment fabricated to a special design), proposed for the principal portions of the Work, including furnishings when made a part of the Contract. The Prime Contractor shall immediately notify the Owner in writing of any changes in the list as they occur. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.

(b) The Prime Contractor shall not Contract with a proposed person or entity to whom the Owner or Architect/Engineer has made reasonable and timely objection.

(c) Architect/Engineer's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Prime Contractor of his responsibility for performance of Work as called for under the Contract Documents, and shall not provide a basis for any claim for additional time or money on the part of the Prime Contractor. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the Owner or Architect/Engineer. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.

(d) The Prime Contractor shall not change a Subcontractor previously selected if the Owner or Architect/Engineer makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

(a) By appropriate agreement, written where legally required for validity, the Prime Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Prime Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Prime Contractor all the obligations and responsibilities which the Prime Contractor, by the Contract Documents, assumes toward the Owner and the Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Contract Documents (including but not limited to these General Conditions) with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the rights of the Owner and the Architect/Engineer. Where appropriate, the Prime Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Prime Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.

(b) The Prime Contractor is solely responsible for making payments properly to the Prime Contractor’s Subcontractors on the Project. During performance of the Work, the Prime Contractor shall comply with the following additional rules regarding Subcontractor payments:

(1) The Prime Contractor shall submit, beginning with the Second Application and Certificate for Payment, a Subcontractor Payment Report (the "Report") with each

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Application and Certificate for Payment. The Report shall show all payments made to date by the Prime Contractor (plus existing retainage) to each Subcontractor involved in the Project. The Report shall be made on a form approved and supplied by the Owner. As an alternative to the Report, the Prime Contractor may furnish Affidavits of Payment Received with the Application and Certificate for Payment, which affidavits shall be executed by each Subcontractor owed money and paid by Subcontractor during the previous progress payment period for work or materials furnished on the Project. RECEIPT BY THE OWNER OF THE REPORT OR AFFIDAVITS OF PAYMENT RECEIVED SHALL BE A CONDITION PRECEDENT TO PAYMENT ON ANY APPLICATION FOR PAYMENT .

(2) If, for any reason, the Prime Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Prime Contractor shall note the amount withheld and further note that the payment is in dispute. The Owner may, in its sole discretion, require the Prime Contractor to document and verify the dispute or other problem in question.

(3) The Owner reserves the right in its sole discretion, to withhold payment to the Prime Contractor pursuant to Paragraph 9.5(a) of the General Conditions, should it appear from the Report, statements of payment received or other information furnished to the Owner that:

(i) the Report has not been properly completed;

(ii) the Prime Contractor has knowingly provided false information regarding payment of any Subcontractor; or

(iii) the Prime Contractor has otherwise failed to make payments properly to any Subcontractor.

(4) THE PRIME CONTRACTOR SHALL NOT HAVE ANY RIGHT TO MAKE A CLAIM FOR ADDITIONAL TIME OR ADDITIONAL COMPENSATION AS A RESULT OF THE OWNER'S OR ARCHITECT/ENGINEER'S ENFORCEMENT OF THIS SUBPARAGRAPH 5.3(b). NO PROVISION OF THIS SUBPARAGRAPH OR ANY OF THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO CREATE A CONTRACTUAL RELATIONSHIP, EXPRESS OR IMPLIED, BETWEEN ANY SUBCONTRACTOR AND EITHER THE OWNER OR THE ARCHITECT/ENGINEER AND SHALL NOT BE CONSTRUED TO MAKE ANY SUBCONTRACTOR OR ANY OTHER PERSON OR ENTITY, A THIRD-PARTY BENEFICIARY OF THE CONTRACT BETWEEN THE OWNER AND THE PRIME CONTRACTOR.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of a termination of this Contract by the Owner under Article 14, the Prime Contractor shall, if requested in writing by the Owner, within fifteen (15) days after the date notice of termination is sent, deliver and assign to Owner, or any person or entity acting on the Owner's behalf, any or all subcontracts made by Prime Contractor in the performance of the Work, and deliver to the Owner true and correct originals and copies

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of the subcontract documents. In the event assignment is not requested by the Owner, Prime Contractor shall terminate all subcontracts to the extent that Owner has not directed assignment of same and to the extent that they relate to the performance of Work terminated by the notice of termination.

ARTICLE 6 - CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

(a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Prime Contractor claims that delay or additional cost is involved because of such action by the Owner, the Prime Contractor shall make a claim as provided elsewhere in, and in accordance with the Contract Documents.

(b) When separate Contracts are awarded for different portions of the Project or other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Building Construction Services Agreement with the Owner.

(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 Prime Contractor, who shall cooperate with them. The Prime Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Prime Contractor shall, with the approval of the Owner, make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Prime Contractor, separate contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Prime Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Prime Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Prime Contractor's Change Order proposal is denied by the Owner, the Prime Contractor must submit any Claim pursuant to Paragraph 4.3 of the General Conditions.

(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, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Prime Contractor under these General Conditions, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

(a) The Prime Contractor shall afford the Owner and separate contractors' reasonable opportunity for access to and storage of their materials and equipment and the performance

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of their activities and shall coordinate the Prime Contractor's construction and operations with the separate contractors as required by the Contract Documents.

(b) If part of the Prime Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Prime Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for proper execution and results. Failure of the Prime Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Prime Contractor's Work, except as to defects not then reasonably discoverable.

(c) The Owner shall not be liable to the prime Contractor for damages suffered by the Prime Contractor due to the fault or negligence of a separate contractor or through failure of a separate contractor to carry out the directions of the Owner or the Architect/Engineer. Should any interference occur between the Prime Contractor and a separate contractor, the Architect/Engineer or the Owner may furnish the Prime Contractor with written instructions designating priority of effort or change in methods, whereupon the Prime Contractor shall immediately comply with such direction. In such event, the Prime Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Prime Contractor.

(d) The Prime Contractor shall promptly remedy damage wrongfully caused by the Prime Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2(e).

(e) Should the Prime Contractor cause damage to the work or property of any separate contractor on the Project, the Prime Contractor shall, upon due notice, settle with the separate contractor by agreement, if the separate contractor will so settle. If the separate contractor sues the Owner or submits a claim on account of any damage alleged to have been so sustained, the Owner shall notify the Prime Contractor who shall defend such proceedings, at the Prime Contractor's sole expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Prime Contractor shall fully pay or satisfy it and shall reimburse the Owner for any and all attorney's fees and costs which the Owner has incurred.

(f) The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Prime Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project Site and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up, but is not obligated to do so, and Owner shall allocate the cost among those parties responsible, as the Architect/Engineer recommends to be just.

ARTICLE 7 - AMENDMENTS

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7.1 CHANGE ORDERS

(a) A Change Order is a written order to the Contractor, signed by the Owner and the Architect/Engineer, issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, or an adjustment to the Contract Time, consistent with other applicable provisions of this Contract. The Owner, without invalidating the Contract and without requiring notice of any kind to the sureties, may order changes to the scope of Work under the Contract by additions, deletions, or other revisions, the Contract Sum and Contract Time to be adjusted consistent with other applicable provisions of this Contract. All Change Orders shall be executed on a Change Order form approved by the Owner and the Owner's City Attorney.

(b) In addition to the Owner and the Architect/Engineer, the Contractor shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Contractor refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Architect/Engineer to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Contractor indicates his agreement with all of the changes approved, including the adjustment in the Contract Sum or the Contract Time. EACH CHANGE ORDER SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. The Contractor forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on other Work.

(c) No extra work (except under emergency conditions) or changes shall be made nor shall any substitutions, changes or additions to or omissions or deviations from the requirements of the Drawings and Specifications be made unless pursuant to a written Change Order signed by the Owner and the Architect/Engineer, it being expressly understood that the Owner shall not be liable for the cost of extra work or any substitution, change, addition, omission or deviation from the requirements of the Drawings or Specifications unless the same shall have been authorized in writing by the Owner and the Architect/Engineer in a written change order or other Amendment. The provisions of this Paragraph 7.1 shall control in the event of any inconsistency between such provisions and the other provisions of this Article 7. See Subparagraph 10.3(a) of the General Conditions for Change Orders under emergency conditions.

(d) The method of determining the cost or credit to the Owner for any change in the Work shall be one of the following:

(1) mutual acceptance of a not-to-exceed lump-sum amount properly itemized and supported by sufficient substantiating data to permit evaluation; or

(2) unit prices stated in the Contract Documents or subsequently agreed upon; or

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(3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

(4) the force account method provided in Subparagraph 7.1(e)

(e) If the parties cannot agree to one of the methods of calculating cost provided in Clauses (d) (1), (d) (2), or (d) (3), or if the parties agree to a method but cannot agree on a final dollar figure; or if the Contractor for whatever reason refuses to sign the Change Order in question; the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of the Work involved shall then be calculated on the basis of the reasonable jobsite expenditures and savings of those performing the Work attributable to the changes, including a reasonable allowance for overhead and profit, such allowance in any case never to exceed fifteen (15%) per cent. In such case, the Contractor shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Architect/Engineer and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to the Architect/Engineer each day during the performance of force account work, with copies to the Owner.

FAILURE OF THE CONTRACTOR TO SUBMIT THE SWORN-TO ITEMIZED ACCOUNTING DAILY AS REQUIRED HEREIN SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY RIGHT TO DISPUTE THE OWNER'S DETERMINATION OF THE AMOUNT DUE THE CONTRACTOR FOR FORCE ACCOUNT WORK. Costs to be charged under this Subparagraph for force account work are limited to the following:

(1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker’s compensation insurance;

(2) costs of materials, supplies and equipment (but not to include off-site storage unless approved in writing by the Owner), 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 related to the Work; and

(5) additional costs of supervision and field office personnel directly attributable to the changed Work. Pending final determination of cost to the Owner, payment of undisputed amounts on force account shall be included on the Architect/Engineer's Certificate of Payment as work is completed.

(f) The amount of credit to be allowed to the Owner for any deletion of Work or any other change which results in a net decrease of the Contract Sum shall be the amount of actual net cost confirmed by the Architect/Engineer plus the stated percentage for overhead and profit. When both additions and deletions or credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease with respect to that change.

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7.2 SUPPLEMENTAL AGREEMENTS

A written Supplemental Agreement can also be used to implement changes in the Work instead of a Change Order form, including but not limited to situations involving partial occupancy of the Work under Paragraph 9.8, a change made to the Drawings or the Specifications without an increase in the Contract Sum, or special circumstances where it is necessary or more appropriate for the Owner to use a Supplemental Agreement. Written Supplemental Agreements shall have a status equal to that of Change Orders for purposes of priority of Contract Documents interpretation, except that to the extent of a conflict, later Supplemental Agreements in time control over earlier Supplemental Agreements, and the latest Change Order or Supplemental Agreement in time controls over earlier dated Change Orders and Supplemental Agreements. The rules of Subparagraphs 7.1(b) through (f) shall also apply to the negotiation and execution of Supplemental Agreements.

7.3 MINOR CHANGES IN THE WORK

The Architect/Engineer, after notifying the Owner, shall be authorized to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Minor changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly. These written orders shall not be deemed to change or impact the Contract Sum or the Contract Time. Contractor shall have no Claim for any minor change ordered to the Work under this Paragraph 7.3 unless the Contractor submits its change proposal, prior to complying with the minor change ordered and in no event later than ten (10) working days from the date the minor change was ordered, to the Owner for approval.

7.4 TIME REQUIRED TO PROCESS AMENDMENTS

(a) All of the Contractor’s responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Architect/Engineer a minimum of thirty (30) calendar days after receipt by the Architect/Engineer to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. All of the Prime Contractor's responses to proposal requests shall include a statement that the cost described in the response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation under the Contract Documents, without reservation or further recourse.

(b) All Amendments require approval by either the City Council or, where authorized by the State law and City ordinance, by the City Manager pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution, Ordinance or Administrative Action. THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR

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INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS. Pending the approval described above, the Contractor will proceed with the work under a pending Amendment only if directed in writing by the Owner.

ARTICLE 8 - CONTRACT TIME

8.1 DEFINITIONS

(a) Unless otherwise provided, the 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 Notice to Proceed from the Owner. The date of commencement shall not be postponed by the failure of the Prime Contractor, or of persons or entities for whom the Prime Contractor is responsible to act promptly to commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed, through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable extension of the Contract Time; the Contract Sum shall remain unchanged.

(c) The date of Substantial Completion is the date certified by the Architect/Engineer in accordance with Paragraph 9.7.

(d) The term “day” as used in the Contract Documents shall mean a calendar day, beginning and ending at 12:00 midnight, unless otherwise specifically defined by special provision.

8.2 PROGRESS AND COMPLETION

(a) **Time limits stated in the Contract Documents are of the essence of the Contract**. By executing the Building Construction Services Agreement, the Prime Contractor confirms that the Contract Time is a reasonable period for performing the Work.

(b) The Prime Contractor shall not knowingly, except by agreement with or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance to be furnished by the Prime Contractor as required by Article 11. The date of commencement of the Work shall not be changed by the effective date of insurance required by Article 11.

8.3 DELAYS AND EXTENSIONS OF TIME

(a) If the Prime Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Prime Contractor’s control, or by delay authorized by the Owner pending a claim, or by other causes which the Architect/Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer and Owner may determine.

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(b) Claims relating to Contract Time and time extensions shall be made in accordance with the applicable provisions of Paragraph 4.3.

(c) No Damages for Delay. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, INCLUDING THE GENERAL CONDITIONS, NO ADJUSTMENT SHALL BE MADE TO THE CONTRACT SUM AND THE PRIME CONTRACTOR SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR UNFORESEEN, WHICH INCREASES THE TIME TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE ARCHITECT/ENGINEER, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE PRIME CONTRACTOR'S SOLE REMEDY.

(d) The Owner shall have the right to occupy, without prejudice to the right of either party, any completed or largely completed portions of the structure or Work, notwithstanding the fact that the Contract Time for completing all or a portion of the Work may not have expired. Partial occupancy and use shall not be deemed as an acceptance of the Work taken or used.

(e) The Prime Contractor shall promptly suspend the Work when either the Prime Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Prime Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Prime Contractor will also not be liable to the Owner for a delay caused in fact by the Work being suspended by a court order.

(f) The Architect/Engineer, with the consent of the Owner, shall have the authority to suspend the Work, in whole or in part, for such period or periods as the Architect/Engineer deems necessary due to unusual or severe weather conditions as are considered unfavorable for the suitable prosecution of the Work, or due to failure on the part of the Prime Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop the Work for an indefinite period, the Prime Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way, and shall take every precaution to prevent damage or deterioration of the Work performed. In cases of suspension of the Work under this Subparagraph, the Prime Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Prime Contractor shall not suspend the Work in whole or in part without written authority from the Architect/Engineer or the Owner, and shall resume the Work promptly when notified by the Architect/Engineer or the Owner to resume operations.

(g) In the event of a delay that is the responsibility of the Prime Contractor or any of the Subcontractors, for which the Prime Contractor is not entitled to a time extension under the provisions of this Contract, the Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts, or resequencing. This acceleration shall be at no cost to the Owner and will continue until the Contract Time is restored. In

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the event of a delay for which the Prime Contractor is entitled to a time extension, as determined by the Architect/Engineer, Owner may similarly direct acceleration and the Prime Contractor agrees to perform same on the basis that the Prime Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). THE PRIME CONTRACTOR EXPRESSLY WAIVES ANY OTHER COMPENSATION RESULTING FROM ACCELERATION, SUCH AS LOSS OF LABOR PRODUCTIVITY OR EFFICIENCY.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Building Construction Services Agreement and, including authorized adjustments, is the total amount of compensation payable by the Owner to the Prime Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Prime Contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, when approved by the Architect/Engineer and the Owner, shall be used as a basis for the Prime Contractor's Application for Payment. The schedule of values shall follow the trade division of the Specifications. Prime Contractor's Application for Payment shall be filed on the current version of AIA Form G702 (Application and Certificate for Payment), as approved by the Owner.

9.3 APPLICATIONS FOR PAYMENT

(a) At least ten (10) days before the date established for each progress payment, the Prime Contractor shall submit to the Architect/Engineer an itemized Application for Payment for Work completed in accordance with the schedule of values. The Application shall be notarized, if required, and supported by data substantiating the Prime Contractor’s right to payment as the Owner or Architect/Engineer may require, including but not limited to copies of requisitions from Subcontractors and material suppliers, and reflecting the applicable retainage as required in the Contract Documents. Prime Contractor's Application for Payment shall also provide other supporting documentation as the Owner or the other applicable provisions of the Contract Documents may require.

(b) Applications for Payment may not include requests for payment of amounts the Prime Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Prime Contractor complies with Clause 5.3(b) (2) of these General Conditions and the Prime Contractor’s Payment Bond Surety consents in writing to payment to the Prime Contractor of the funds deemed to be in dispute.

(c) Unless otherwise provided in the Contract Documents, progress payments shall include payment for materials and equipment delivered and suitably stored at the Project site for subsequent incorporation into the Work within thirty (30) days after delivery to the Project site. If approved in advance by the Owner, payment may similarly be made for materials

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and equipment suitably stored away from the Project site at a location agreed upon in writing. Payment for costs incurred in storage of materials or equipment away from the Project site will NOT be made by Owner unless:

(1) the Owner has given prior approval of such off-site storage in writing;
(2) the materials or equipment are stored in a bonded warehouse located in Denton County and identified with the Project for which they are stored, as evidenced by warehouse receipts and appropriate documents of title; and
(3) the materials or equipment stored off-site will be incorporated into the Work within thirty (30) days after delivery. STORAGE IN FACILITIES OF THE MANUFACTURER OR THE PRIME CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.

(d) The Prime Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Prime 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 Prime Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

(e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an "early delivery." All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Prime Contractor shall, at Prime Contractor's expense or at the expense of the responsible Subcontractor or Supplier, cause such early delivery to be removed from the Project site and stored off-site until required at the Project site. All costs of labor, transportation and storage will be included as part of the expense. If the Prime Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Prime Contractor's sole expense, and amounts may be withheld from the Prime Contractor's Application for Payment to reimburse the Owner for any costs incurred in removing unauthorized early delivery materials. OWNER WILL NOT BE RESPONSIBLE FOR THE PROTECTION OF OR RISK OF LOSS ON ANY EARLY DELIVERY MATERIALS OR EQUIPMENT, NOR WILL OWNER BE LIABLE FOR ANY PAYMENT FOR THE EARLY DELIVERY MATERIALS OR EQUIPMENT. Any materials or equipment classified as early delivery will not be approved for payment as stored materials prior to thirty (30) days before the incorporation of the materials or equipment into the Work, unless storage and payment at an earlier date is expressly approved in writing by the Owner.

(f) If the Contract Sum is equal to or less than $25,000, and if performance and payment bonds are not furnished by the Contractor, then no payment applied for will be payable under the Contract until the Work has been finally completed and accepted.

9.4 CERTIFICATES FOR PAYMENT

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(a) The Architect/Engineer will, within ten (10) days after receipt of the Prime Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Prime Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Prime Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in:
   (a) City of Denton "General Conditions for Building Construction."
   (b) Subparagraph 9.5(a). The Certificate for Payment shall be issued on the current version of AIA Form G702 (Application and Certificate for Payment) as approved by the Owner.
   (c) The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Final Completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Prime Contractor is entitled to payment in the amount certified, subject to the Owner's approval. The issuance of a Certificate for Payment is not a representation that the Architect/Engineer has:

      (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

      (2) reviewed construction means, methods, techniques, sequences or procedures;

      (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Prime Contractor's right to payment; or

      (4) made examination to ascertain how or for what purpose the Prime Contractor has used money previously paid on account of the Contract Sum.

   (d) Whenever the Application for Payment for Work done since the last previous Application for Payment exceeds one hundred dollars ($100.00) in amount, Owner will pay a percentage of the Application, less applicable retainage, to the Prime Contractor within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Architect/Engineer. The Application may include acceptable nonperishable materials delivered to the Work or stored as provided for in Paragraph 9.3(c) and the payment will be allowed on the net invoice value, less taxes and applicable retainage.

   (e) The City is required to withhold five percent (5%) retainage for public works contracts in which the total contract price estimate at the time of execution is more than $400,000; however, this requirement is applied by the City for all public works contracts in excess of $50,000. The retainage will be withheld by the Owner from each progress payment until final completion of the Work by the Contractor, approval of final completion by

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the Architect/Engineer, and final acceptance of the Work by the Owner. Unless otherwise required by state law, the retainage percentage as specified above is based upon the original Contract Sum, and will not be affected in the event the original Contract Sum is subsequently increased by Change Order.

(f) No progress payments shall be made on contracts where performance and payment bonds are not required or furnished. In such instances, payment for the Work performed will be made upon final completion and acceptance by the Owner of all Work.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

(a) The Architect/Engineer or the Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner's interest, if in the Architect/Engineer's or Owner's opinion the representations to the Owner required by Subparagraph 9.4(b) cannot be made. If the Architect/Engineer or the Owner is unable to certify payment in the amount of the Application, the Architect/Engineer or the Owner will notify the Prime Contractor as provided in Subparagraph 9.4(a). If the Prime Contractor and Architect/Engineer or the Owner cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make the required representations to the Owner. The Architect/Engineer or the Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary, in the Architect/Engineer's or Owner's opinion, to protect the Owner from loss because of:

(1) defective or nonconforming Work not remedied;

(2) third-party claims filed or reasonable evidence indicating probable filing of such claims;

(3) failure of the Prime Contractor to make payments properly to Subcontractors 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 another 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 damages for the anticipated delay;

(7) persistent failure to carry out the Work in accordance with the Contract Documents; or

(8) mathematical or other errors that are discovered in the Application for Payment.

(b) When all of the above reasons that existed for withholding certification are removed or remedied, then, at that time, certification will be made for amounts previously withheld.

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(c) The Owner may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to the Owner from the Prime Contractor, regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise, and regardless of whether or not the debt due to the Owner has been reduced to judgment by a court.

9.6 PROGRESS PAYMENTS

(a) After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect/Engineer. The Owner shall not be liable for interest on any late or delayed progress payment or final payment caused by any claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the Application for Payment or as a precondition to payment under the Contract Documents, or due to any payment the Owner or the Architect/Engineer has a right to withhold or not certify under the Contract Documents. Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contract Documents, including but not limited to those defaults set forth in Subparagraph 9.5(a), Clauses (1) through (7). The Owner shall not be deemed in default by reason of withholding payment while any Prime Contractor default remains uncured.

(b) The Prime Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Prime Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Prime Contractor on account of such Subcontractors portion of the Work. The Prime Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

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

(d) Neither the Owner nor the Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. That obligation belongs to the Prime Contractor or, in the event of the Prime Contractor's failure to pay a Subcontractor, to the Surety on the Payment Bond as required under Paragraph 11.3.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6(b), (c), and (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 Work not performed in accordance with the Contract Documents.

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9.7 SUBSTANTIAL COMPLETION

(a) The Date of Substantial Completion of the Work, or designated portion of the Work, is the date certified by the Architect/Engineer when construction is sufficiently completed in accordance with the City Of Denton General Conditions For Building Construction.

(a) the Contract Documents such that the Owner may beneficially occupy and use the Work, or designated portions of the Work, for the purposes for which it is intended and only trivial and insignificant items remain which do not affect the Work as a whole.

(b) When the Prime Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Prime Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The Prime Contractor shall proceed promptly to complete and correct items on the list (hereinafter called the "punch list"). Failure to include an item on the punch list does not alter the responsibility of the Prime Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Architect/Engineer will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Architect/Engineer's inspection discloses any item, whether or not included on the punch list, which is not in accordance with the requirements of the Contract Documents and which renders the Work inspected not Substantially Complete the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Architect/Engineer. The Prime Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and the Prime Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Prime Contractor shall finish all items on the punch list accompanying the Certificate.

(c) The Certificate of Substantial Completion shall be submitted to the Owner and the Prime Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

(d) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Prime Contractor and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

9.8 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 Supplemental Agreement with the Prime Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.2(e) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Prime Contractor have

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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 Prime Contractor considers a portion Substantially Complete, the Prime Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Prime 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 Prime Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

(b) Immediately prior to such partial occupancy or use, the Owner, Prime Contractor, and Architect/Engineer 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.

9.9 FINAL COMPLETION AND FINAL PAYMENT

(a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer, accompanied by the Owner's representative, will promptly make final inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Prime Contractor and noted in said final Certificate is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9(b) as a condition precedent to the Prime Contractor's being entitled to final payment have been fulfilled. Owner will normally make final payment within thirty (30) days after Owner's receipt and approval of the final Certificate for Payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided by separate agreement between the Owner and the Prime Contractor.

(b) Neither final payment nor any remaining retained percentage shall become due until the Prime Contractor submits to the Architect/Engineer:

(1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
(2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;

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(3) a written statement that the Prime Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
(4) a consent of surety to final payment; and
(5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

(c) As a precondition to final payment by the Owner under this Contract, the Prime Contractor's affidavit under Clause (b)(1) shall state that the Prime Contractor has paid each of his subcontractors, laborers or materialmen in full for all labor and materials provided to Contractor for the Work performed under this Contract. In the event the Prime Contractor has not paid each of his subcontractors, laborers or materialmen in full, the Prime Contractor shall state in the affidavit the amount owed and the name of each subcontractor, laborer or materialmen to whom such payment is owed. IN ANY EVENT, THE PRIME CONTRACTOR SHALL BE REQUIRED TO EXECUTE THE OWNER'S STANDARD AFFIDAVIT OF FINAL PAYMENT AND RELEASE AS A PRECONDITION TO RECEIPT OF FINAL PAYMENT.

(d) If, after Substantial Completion of the Work, final completion of the Work is materially delayed through no fault of the Prime Contractor or by issuance of Change Orders affecting final completion and the Architect/Engineer confirms the delay, the Owner shall, upon application by the Prime Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of payment. Payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

(e) The acceptance by the Prime Contractor of the final payment shall operate as and shall be a complete release of the Owner from all claims or liabilities under the Contract, for anything done or furnished or relating to the Work or the Project, or for any act or neglect of the Owner relating to or connected with the Work or the Project.

ARTICLE 10 SAFETY, SECURITY AND UTILITY PROVISIONS; ENVIRONMENTAL COMPLIANCE

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Prime Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and will comply with all applicable City, County, State and Federal health and safety regulations.

10.2 SAFETY OF PERSONS AND PROPERTY

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(a) The Prime Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(1) employees on the Work and other persons who may be affected thereby;

(2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Prime Contractor or the Prime Contractor's Subcontractors or Sub-subcontractors; and

(3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Prime Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

(e) USE OF EXPLOSIVES - CLAIMS AND TOTAL INDEMNIFICATION. The Owner shall have the right to pre-approve the use of any explosives on the Project; the Prime Contractor shall not assume in its bid that permission to use explosives will be granted. The Owner shall NOT be liable for any claim for additional time or compensation as a result of the Owner's denial of permission to use explosives. Where use of explosives is permitted by the Owner, the Prime Contractor EXPRESSLY AGREES TO BE SOLELY RESPONSIBLE for the determination as to whether explosives shall actually be used, and for any result from the use, handling or storage of explosives, and shall INDEMNIFY, DEFEND AND HOLD COMPLETELY HARMLESS the Owner, its officers, agents and employees, and the Architect/Engineer against any and all claims, lawsuits, judgments, costs or expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, as the result of the use, handling or storage of the explosives by the Prime Contractor or any Subcontractor, REGARDLESS OF WHETHER SAID USE, HANDLING OR STORAGE WAS NEGLIGENT OR NOT, AND REGARDLESS OF WHETHER THE DAMAGE OR INJURY WAS CONTRIBUTED TO IN ANY WAY BY THE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES, OR THE ARCHITECT/ENGINEER AND ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. In the event of conflict with any other indemnity paragraph in this Contract, this paragraph controls. This indemnity paragraph is intended solely for the benefit of the parties to this Contract and is not intended to create or grant any rights, contractual or otherwise, to or for any other person or entity.

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The Prime Contractor shall furnish the Owner and the Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury, which insurance shall either include the Owner and the Architect/Engineer as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Architect/Engineer. All explosives shall be stored in a safe and secure manner, under the care of a competent watchman at all times, and all storage places shall be marked clearly and conspicuously: "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives and highly flammable materials shall conform to Federal and State laws, City of Denton ordinances, and the City of Denton Fire Department regulations. The Prime Contractor shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Prime Contractor's intention to use explosives, and such notice shall be given sufficiently in advance to enable the telecommunications and public utility companies and private property owners to take such steps as they may deem necessary to protect their property from injury. The notice shall not relieve the Prime Contractor of any responsibility for damage resulting from any blasting operations.

(f) The Prime 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 Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the Prime Contractor, a 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 Prime Contractor is responsible under Clauses 10.2(a)(2) and 10.2(a)(3), except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer 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 Prime Contractor or any of its Subcontractors. The foregoing obligations of the Prime Contractor are in addition to the Prime Contractor's obligations under Paragraph 3.l9. To the extent that any such damage or loss may be covered by property insurance or other insurance required by the Contract Documents, the Owner and the Prime Contractor shall exercise their best efforts to make a claim and obtain recovery from the insurers to provide for the cost, in whole or in part, of the repair work or to provide for reimbursement for such damage or loss.

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

(h) The Prime Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In an emergency affecting safety, health, or security of persons or property, the Prime Contractor shall act, at the Prime Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Prime Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

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10.4 PUBLIC CONVENIENCE AND SAFETY

(a) The Prime Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

(b) The Owner reserves the right to remedy any neglect on the part of the Prime Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Prime Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Prime Contractor’s neglect shall be deducted from the Contract Sum. The Prime Contractor shall notify the City Traffic Control Department when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Prime Contractor shall, when directed by the Architect/Engineer or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Prime Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Prime Contractor’s responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN

If the Work is carried on or adjacent to any street, alley or public place, the Prime Contractor shall, at the Prime Contractor’s own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon the Prime Contractor's name and shall be illuminated by lights from sunset to sunrise. The term “lights,” as used in this Paragraph, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Prime Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect the Work. Whenever evidence is found of such damage, the Architect/Engineer may order the damaged portion immediately removed and replaced by the Prime Contractor at Prime Contractor's cost and expense. The Prime Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

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In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect/Engineer. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Prime Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Prime Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, the Prime Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Prime Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers; for this purpose, the Prime Contractor shall provide and maintain, at the Prime Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. The Prime Contractor shall, at the Prime Contractor's own expense, construct such troughs, pipes, or other structures necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Architect/Engineer. All storm water and sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT

(a) When the Prime Contractor desires to use the Owner's water in connection with the Work, the Prime Contractor shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the Prime Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the Denton Water Utilities Department.

(b) The Prime Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner or with Denton Municipal Electric in the event that separately metered electrical connections are required for the Project. The Prime Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Prime Contractor through the City of Denton.

10.9 USE OF FIRE HYDRANTS

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The Prime Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the Denton Water Utilities Department in accordance with the Denton City Code.

10.10 ENVIRONMENTAL COMPLIANCE

(a) The Prime Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

(b) In the event the Prime Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Prime Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Architect/Engineer and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a Change Order with the Prime Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Prime Contractor or any of its Subcontractors, the Prime Contractor shall be responsible for remediating the condition at the sole expense of the Prime Contractor in accordance with the Prime Contractor's APPROVED Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Paragraph 4.3 and Article 8.

(c) The Prime Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Prime Contractor or any Subcontractor or Supplier. The Prime Contractor shall obtain any and all permits necessary for the legal and proper handling,

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transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Architect/Engineer so that they may observe the activities; provided, however, that it shall be the Prime Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

(d) Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Prime Contractor shall submit to the Owner for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Prime Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Owner's Project Manager or other designated representative. The Prime Contractor shall not commence any field work prior to approval of such plan by the Owner. The following additional rules shall apply with respect to spills caused by the Prime Contractor or a Subcontractor:

(1) The Prime Contractor shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the Prime Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.

(2) The Prime Contractor shall immediately respond in accordance with the SPRP in the event of a spill.

(3) The Prime Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the Prime Contractor shall use only those transporters and disposal facilities that are approved in advance in writing by the Owner. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request of the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter. ALL COSTS OF COLLECTION, CONTAINMENT, AND DISPOSAL OF SPILLED MATERIALS SHALL BE THE SOLE RESPONSIBILITY OF THE PRIME CONTRACTOR.

(4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.

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(e) Clean Air Management Plan. The Prime Contractor shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the contractor selection process. The Owner reserves the right, at the Prime Contractor's sole expense, to require the removal or retrofitting of any equipment used in the course of construction that does not comply with the Plan submitted to and approved by the Owner.

(f) The Prime Contractor shall deposit surplus or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Prime Contractor shall submit to the Owner for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request to the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter.

(g) The Prime Contractor is responsible for obtaining all TXPDES Storm Water Permits from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities promulgated by EPA, including but not limited to cleaning, grading, and excavation that disturb the applicable amount of total land area. In addition, the Prime Contractor shall comply with all regulations of the Owner relating to storm water and storm water runoff management at the Project site pursuant to Chapter 19, Article IX, Denton City Code, as amended.

(h) The Prime Contractor shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable.

(i) The Owner reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the Owner and without an extension of the Contract Time, in the event the Prime Contractor fails or refuses after seven (7) days advance written notice from the Owner to comply with the provisions of this Paragraph 10.10, the terms of the SPRP, the terms of the Clean Air Management Plan, any storm water permit or other environmental permit issued in connection with the Work, or any applicable environmental law, rule, regulation, or ordinance:

(1) suspend all or any portion of the Work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the Prime Contractor and approved by the Owner;

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(2) if the Prime Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and backcharge the Prime Contractor for the cost of the remediation or correction; or

(3) terminate the Contract for cause as provided in Article 13.

ARTICLE 11 INSURANCE AND BONDS

11.1 PRIME CONTRACTOR'S INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.2 PROPERTY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.3 'UMBRELLA' LIABILITY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.4 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.5 PERFORMANCE AND PAYMENT BONDS

(a) Subject to the provisions of Subparagraph 11.5(b), the Prime Contractor shall furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses (a)(1) and (a)(2) below, which surety bonds shall be in accordance with the Charter of the City of Denton and the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Prime Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.5(c) and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:

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(1) Performance Bond. A good and sufficient bond in an amount equal to 100% of the total awarded task order, guaranteeing the full and faithful execution of the work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any Amendments thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of final completion and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

(2) Payment Bond. A good and sufficient bond in an amount equal to 100% of the total awarded task order, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract Documents and any Amendments thereto, and for the use and protection of each claimant.

(b) No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Prime Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Denton County, Texas. Each surety shall designate an agent resident in Denton County, Texas to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

Contractor will be required to furnish original performance and payment bonds for 100% of the total submission price before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms are attached and shall be returned upon notice of each awarded project task order by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from task order award. Upon approval, a purchase order will be issued.

(c) The failure of the Contractor to deliver the required statutory bonds and evidence of insurance within fourteen (14) calendar days after the task order is awarded shall constitute a material breach of the Prime Contractor’s bid proposal and the Owner may rescind the task order award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Prime Contractor's failure to execute and furnish the statutory bonds within fourteen (14) calendar days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.5(e). In the event the Owner should re-advertise for bids, the defaulting Prime Contractor shall not be eligible to bid, and the

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lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this Paragraph.

ARTICLE 12 DEFECTIVE AND NONCONFORMING WORK

12.1 UNCOVERING OF WORK

(a) If a portion of the Work is covered contrary to the Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, the Work must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer's observation and be replaced at the Prime Contractor's expense without change in the Contract Time.

(b) If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to it being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Prime Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If any Work is not in accordance with the Contract Documents, the Prime Contractor shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

(a) The Prime Contractor shall promptly correct Work rejected by the Architect/Engineer as failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Prime Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby.

(b) If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Prime Contractor shall correct it promptly after receipt of written notice from the Architect/Engineer or the Owner to do so unless the Owner has previously given the Prime Contractor a written acceptance or waiver of the defect or nonconformity. The Prime Contractor's obligation to correct defective or nonconforming Work remains in effect for:

(1) one year after the date of Substantial Completion of the Work or designated portion of the Work;

(2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or

(3) the stipulated duration of any applicable special warranty required by the Contract Documents.

(c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion

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by the period of time between Substantial Completion and the actual completion of the Work.

(d) The obligations of the Prime Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Prime Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Clauses (b)(1) and (b)(2) does not limit the ability of the Owner to require the Prime Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect/Engineer at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one year period also does not relieve the Prime Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

(e) The Prime Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Prime Contractor nor accepted by the Owner.

(f) If the Prime Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.4. If the Prime Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Prime Contractor's expense. If the Prime Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Prime Contractor, including compensation for the Architect/Engineer's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover costs which the Prime Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Prime Contractor then or thereafter are not sufficient to cover the deficiency, the Prime Contractor shall pay the difference to the Owner.

(g) The Prime Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Prime Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

(h) Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Prime Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2(b) relates only to the specific obligation of the Prime 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 Prime Contractor's

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liability with respect to the Prime Contractor's obligations other than specifically to correct the Work.

(i) Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13 COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 FINAL COMPLETION OF CONTRACT

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Architect/Engineer, and final acceptance and final payment is made by the Owner.

13.2 WARRANTY FULFILLMENT

Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Architect/Engineer will make a detailed inspection of the Work and will advise the Prime Contractor and the Prime Contractor's Surety of the items that require correction. The Architect/Engineer will make a subsequent inspection and if the corrections have been properly performed, the Architect/Engineer will issue a letter of release on the maintenance stipulations to the Prime Contractor and the Surety. If for any reason the Prime Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

(a) Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Prime Contractor, including but not limited to the following causes:

(1) Failure or refusal of the Prime Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

(2) A reasonable belief that the progress of the Work being made by the Prime Contractor is insufficient to complete the Work within the specified time.

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(3) Failure or refusal of the Prime Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

(4) A reasonable belief that the Prime Contractor has abandoned the Work.

(5) A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

(6) Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect/Engineer or the Owner as provided for in the Contract Documents.

(7) Failure or refusal of the Prime Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect/Engineer.

(8) A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.

(9) Repeated and flagrant violation of safe working procedures.

(10) The filing by the Prime Contractor of litigation against the Owner prior to completion of the Work.

(b) When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3(e), the Prime Contractor shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Prime Contractor and the surety or its authorized agents, assume the obligations of the Prime Contractor for the Work or that portion of the Work which the Owner has ordered the Prime Contractor to discontinue and may:

(1) perform the Work with forces employed by the surety;

(2) with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

(3) with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming Work, and compensate the Owner for any other loss sustained as a result of Prime Contractor's default.

In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety

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shall assume the Prime Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Architect/Engineer and attorneys fees, as a result of such termination.

(c) The balance of the Contract Sum remaining at the time of the Prime Contractor's default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Subparagraph 13.3(b), exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Prime Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Prime Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Prime Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Prime Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Prime Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of the Architect/Engineer and attorney's fees), and damages incurred as a result of the termination.

(d) The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3(c), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Prime Contractor, then the Owner may pay to the Prime Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Prime Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Prime Contractor, then the Prime Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the Prime Contractor shall continue the remainder of the Work in conformity with the terms of the Contract, and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

(e) The unconditional right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten

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(10) days advance written notice of termination for convenience to the Prime Contractor. Upon the Prime Contractor's receipt of such written notice, the Prime Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Prime Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Prime Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Prime Contractor for lost or anticipated profits.

13.4 TEMPORARY SUSPENSION OF THE WORK

(a) The Work or any portion of the Work may be temporarily suspended by the Owner immediately upon written notice to the Prime Contractor for any reason, including but not limited to:
(1) the causes described in Clauses 13.1(a)(1) through (a)(10) above;

(2) where other provisions in the Contract Documents require or permit temporary suspension of the Work;

(3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or

(4) other unforeseen conditions or circumstances.

(b) The Prime Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Prime Contractor arising from a temporary suspension due to a cause described in Clause (a)(1) above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses (a)(2) through (a)(4), where the Prime Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Prime Contractor under Subparagraph 4.3 of these General Conditions:

(1) an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Architect/Engineer and the Owner;

(2) an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and

(3) if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment

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to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

(a) This Contract shall be in all things governed by the laws of the State of Texas without regard to conflict of laws principles.

(b) The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Prime Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Prime Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without written consent of the Owner. If the Prime Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Prime Contractor, except where assignment is compelled or allowed by court order, the terms of the Contract Documents, or other operation of law.

14.3 WRITTEN NOTICE

Except as otherwise provided in Article 16, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid to the Project Manager or Superintendent of either party, or to an officer, partner, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

(a) The duties and obligations imposed on the Prime Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.

(b) No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Prime Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

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14.5 INTEREST

The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Paragraph 9.6(a) of these General Conditions.

14.6 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

No officer or employee of the Owner shall have a financial interest, direct or indirect, in any Contract with the Owner, or be financially interested, directly or indirectly, in the sale to the Owner of any land, materials, supplies or services, except on behalf of the Owner as an officer or employee. Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.7 VENUE

This Contract is deemed to be performed in Denton County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Denton County, Texas.

14.8 INDEPENDENT CONTRACTOR

In performing the Work under this Contract, the relationship between the Owner and the Prime Contractor is that of an independent contractor. The Prime Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Prime Contractor an agent, servant, or employee of the Owner, or making the Prime Contractor or any of the Prime Contractor’s employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

14.9 NONDISCRIMINATION

As a condition of this Contract, the Prime Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Prime Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, sexual orientation, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Prime Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Prime Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the

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Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.10 GIFTS TO PUBLIC SERVANTS

(a) The Owner may terminate this Contract immediately if the Prime Contractor has offered, conferred, or agreed to confer any benefit on a City of Denton employee or official that the City of Denton employee or official is prohibited by law from accepting.

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

(c) Notwithstanding any other legal remedies, the Owner may require the Prime Contractor to remove any employee of the Prime Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Prime Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.

ARTICLE 15 RIGHT TO AUDIT CONTRACTOR'S RECORDS

By execution of the Building Construction Services Agreement, the Prime Contractor grants the Owner the right to audit, at the Owner's election, all of the Prime Contractor's records and billings relating to the performance of the Work under the Contract Documents. The Prime Contractor agrees to retain its Project records for a minimum of five (5) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Prime Contractor under this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City’s rights as may be disclosed by an audit under this section.

ARTICLE 16 NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of the Denton City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Prime Contractor shall comply with the requirements of this ordinance as a precondition of any litigation relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

ARTICLE 17 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY

17.1 No Consequential Damages. Neither Owner nor Prime Contractor nor any of their affiliates, successors or assigns, or the respective shareholders, partners, assigns, directors, officers, agents or employees or representatives of either of them, shall be liable to the other for consequential, special, exemplary, indirect or incidental losses or damages, including loss of use, cost of capital, loss of goodwill, lost revenues or loss of profit, and Owner and Prime Contractor

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each hereby releases the other and each of such Persons from any such liability. The foregoing exclusion shall not preclude recovery, where applicable, of liquidated amounts hereunder.

17.2 Limitation of Liability. In no event shall the aggregate damages payable by either party hereunder exceed applicable liability limits for municipalities in the State of Texas; provided, however, that this limitation of liability shall not apply to (i) any loss or damage arising out of or connected with either party's gross negligence, fraud, willful misconduct or illegal or unlawful acts, (ii) the indemnification obligations of either party under the Contract to the extent any claim is made against the other or any of its affiliates by any party other than the indemnitor; (iii) costs incurred by Prime Contractor (and in the case of default by Prime Contractor, costs incurred by Owner) in completing the Work; or (iv) risks insured through insurance required under this Contract, it being the parties' specific intent that the limitation of liability shall not relieve the insurers' or guarantors' obligations for such insured risks.

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EXHIBIT D
PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The Contractor will be required to furnish Payment and Performance Bonds for 100% of the total awarded project task order before work is to commence. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms are attached and shall be returned upon notice of each project task order award by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from notice of task order award. Upon approval, a purchase order will be issued.

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Exhibit F
Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at : https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

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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.**

MASTEC NORTH AMERICA, INC..

2 [X] **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 relations hip 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 [X] 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 [X] 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 [X] No

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

4 [X] **I have no Conflict of Interest to disclose.**

5 DocuSigned by:
Glenn Travis
655F22496B7446D...
Signature of vendor doing business with the governmental entity

7/15/2025
Date

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CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

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

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

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

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

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

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

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

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

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

Certificate Of Completion

Envelope Id: A022AAD6-B993-4275-AB53-C63B98F5DF3B
Status: Sent
Subject: Please DocuSign: City Council Contract 8801 Prequalification for Traffic Signal Construction Mastec
Source Envelope:
Document Pages: 74
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Gabby Leeper
901B Texas Street
Denton, TX 76209
Gabby.Leeper@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
7/10/2025 12:16:32 PM
Holder: Gabby Leeper
Gabby.Leeper@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Gabby Leeper gabby.leeper@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.104	Sent: 7/10/2025 12:19:58 PM Viewed: 7/10/2025 12:20:10 PM Signed: 7/10/2025 12:20:30 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/10/2025 12:20:33 PM Viewed: 7/10/2025 1:09:02 PM Signed: 7/10/2025 1:09:54 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/10/2025 1:09:56 PM Viewed: 7/11/2025 4:22:09 PM Signed: 7/11/2025 4:25:03 PM
Glenn Travis glenn.travis@mastec.com Regional Vice President MasTec North America, Inc. Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 7/15/2025 8:50:35 AM ID: cb6dd28e-eeee-4739-9aa5-8a36c4906fd0	 Signature Adoption: Pre-selected Style Using IP Address: 2a09:bac2:bab6:15e1::22e:73 Signed using mobile	Sent: 7/11/2025 4:25:07 PM Resent: 7/14/2025 2:54:59 PM Resent: 7/15/2025 8:33:13 AM Viewed: 7/15/2025 8:50:35 AM Signed: 7/15/2025 8:54:00 AM

Signer Events	Signature	Timestamp
Scott McDonlald scott.mcdonald@cityofdenton.com Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 7/15/2025 1:44:23 PM ID: f418771a-2bf3-41f7-83e5-6ad6f53d8efd	Signed by: D4585119F060407... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/15/2025 8:54:04 AM Viewed: 7/15/2025 1:44:23 PM Signed: 7/15/2025 1:44:48 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 7/15/2025 1:44:52 PM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 7/10/2025 12:20:32 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 7/15/2025 1:44:52 PM Viewed: 7/15/2025 3:06:09 PM

Carbon Copy Events	Status	Timestamp
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		
James Andrews james.andrews@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 10/9/2024 5:32:03 PM ID: 4f7ee8fd-93df-452a-ad9d-25bcc34ba748		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/10/2025 12:19:58 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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

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 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.

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Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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