

## EXHIBIT 2

STATE OF TEXAS

§ COUNTY OF DENTON §

### CONTRACT AGREEMENT #6179

#### BY AND BETWEEN

CITY OF DENTON, TEXAS AND CBS MECHANICAL, INC., dba CBS ROOFING SERVICES

THIS CONTRACT is made and entered into this 16th day of August 2016, by and between CBS Mechanical, Inc. dba CBS Roofing Services, a corporation, whose address is 5001 West University Drive, Denton, Texas 76207, hereinafter referred to as "Contractor," and the CITY OF DENTON, TEXAS, a Texas Municipal Corporation and Home-Rule City, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and the subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

WITNESSETH: That for and in consideration of the payments, covenants and agreements contained herein, and under the conditions expressed in the bonds attached hereto, Contractor agrees with the Owner to commence and complete the performance of the work specified within the agreement, in the amount of \$183,518.00 and for the mutual benefits to be obtained hereby, the parties agree as follows:

#### SCOPE OF SERVICES

Contractor shall provide construction services in accordance with the specifications, requirements, terms, conditions, and agreements as incorporated herein for all purposes as "**Exhibit A – Exhibit I**". The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Contractor Quote for Denton Civic Center Roof Renovation - Pricing (**Exhibit "A"**)
- (b) Negotiated Scope of Work and Services and Technical Requirements, Drawings, Graphs, Charts, etc. (**Exhibit "B"**); (**Technical Specifications and Drawings are available at the Office of the Purchasing Manager and at <http://www.cityofdenton.com/departments-services/departments-g-p/materials-management-purchasing-distribution-center-/bids-and-proposals/current-bids-proposals>**)
- (c) Contractor Payments and Performance Milestones (**Exhibit "C"**);
- (d) City of Denton Standard Terms and Conditions and Contractual Requirements (**Exhibit "D"**);
- (e) Special Terms and Conditions (**Exhibit "E"**);
- (f) Payment and Performance Bonds (**Exhibit "F"**);
- (g) Insurance Requirements and Documents from Contractor (**Exhibit "G"**);
- (h) Contractor's Business Information (**Exhibit "H"**);
- (i) Conflict of Interest Questionnaire (**Exhibit "I"**);

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 this written Contract, and then to the contract documents in the sequential order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

**EXHIBIT 2**

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

**CBS MECHANICAL, INC. dba CBS ROOFING SERVICES**

By: DocuSigned by:  
Steve Kress, Vice President  
5CFEC3DA579744A...  
**AUTHORIZED SIGNATURE**

**TYPED NAME:** Steve Kress, Vice President

**TITLE:** Vice President

940-387-7568(o) or 940-387-3890(f)  
**PHONE NUMBER**

skress@cbsmechanical.com

**E-MAIL ADDRESS**

**ATTEST:**

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

**CITY OF DENTON, TEXAS**  
**A Texas Municipal Corporation**

By: \_\_\_\_\_  
**HOWARD MARTIN**  
**CITY MANAGER**

**ATTEST:**  
**JENNIFER WALTERS, CITY SECRETARY**

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

**APPROVED AS TO LEGAL FORM:**  
**ANITA BURGESS, CITY ATTORNEY**

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

**EXHIBIT 2**

**Exhibit A**

**Contract Pricing Details**

**EXHIBIT 2  
Proposal****ROOFING SERVICES**

A Division of CBS Mechanical, Inc.

5001 WEST UNIVERSITY DRIVE DENTON, TEXAS 76207 (940) 387-7568 FAX (940) 387-3890

**Attn: David Saltsman**

PROPOSAL SUBMITTED TO: <b>City of Denton</b>		PHONE: <b>940-349-7247</b>	DATE: <b>August 3, 2016</b>
STREET: <b>869 S. Woodrow</b>		JOB NAME: <b>Denton Civic Center-Lower Section</b>	
CITY, STATE, AND ZIP CODE: <b>Denton, TX 76205</b>		JOB LOCATION: <b>Denton, TX</b>	
TIPS #: <b>2092415</b>	PLANS BY:	FAX: <b>940-349-7266</b>	EMAIL:

We hereby submit specifications and estimates for:

**Provide labor, materials and equipment for the following per Armko's specifications:**

- 1.) Tear off and remove existing roof systems down to Gypsum deck, including all base flashings and parapet walls throughout entire field of roof per Armko Industries specifications.
- 2.) Clean and remove all dirt and debris from Gypsum deck.
- 3.) Mechanically attach a new 28 pound base sheet using 1.7" fasteners per Armko's requirements.
- 4.) Fully adhere 1.5" of PolyIso with 1/8" tapered using type IV asphalt per manufacturer's specifications.
- 5.) Install a 25/32 coverboard using type IV asphalt per manufacturer's requirements.
- 6.) Adhere 80 mil SBS base sheet using type IV asphalt.
- 7.) Fully adhere a Hyload 150E cap sheet using hot asphalt per manufacturer's specifications.
- 8.) Flood coat and gravel using #7 roof gravel and type IV asphalt at a rate of 60 pounds per square.
- 9.) Fabricate and install all sheetmetal, flashings and coping cap per Armko's requirements.
- 10.) Clean all trash and debris upon completion of the project.
- 11.) Provide a CBS Roofing Services 2-year MRCA contractor's warranty and a 20-year manufacturer's warranty.

Mobilization/Demobilization Cost:	\$7,000
Payment & Performance Bond Cost:	\$2,773
Material Cost:	\$135,518
Labor Cost:	\$38,227
<b>Total Cost Not to Exceed:</b>	<b>\$183,518</b>

It is agreed that in arriving at the above prices for labor and materials it is contemplated by the parties that the same will be paid to the order of CBS Mechanical, Inc. at its place of business in Denton, Texas, promptly as provided herein, and in the event same is not so paid we agree to pay interest at twelve (12%) percent on same amount from its due date and in the event the same is collected through suit or through and Attorney, the Probate Court or Bankruptcy Court, we agree to pay reasonable collection expenses, including but not limited to attorney's fees thereon. If it becomes necessary to file lien to secure funds under this agreement we hereby agree to reimburse CBS Mechanical, Inc. for expenses incurred in the preparation of said lien the sum of \$300.00, in addition to the foregoing reasonable collection expenses, including but not limited to attorney's fees.

CBS MECHANICAL PROVIDES COMPREHENSIVE GENERAL LIABILITY, WORKERS COMPENSATION, AUTOMOBILE LIABILITY AND EXCESS LIABILITY INSURANCE COVERAGE. A CERTIFICATE IS AVAILABLE ON REQUEST.

Payment to be made as follows:

**PER EXECUTED CONTRACT DOCUMENTS**

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate.

All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers or fully covered by Workmen's Compensation Insurance.

Authorized

Signature: Jacob Choate

Jacob Choate

Note: This proposal may be withdrawn by us if not accepted within 30 days.

**Acceptance of Proposal**

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of

Acceptance:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_



**EXHIBIT 2**

**Exhibit B**

**Required Scope of Work and Services**  
**Technical Requirements, Drawings, Graphs,**  
**Charts, etc.**

## EXHIBIT 2

### Scope of Work

The intent of this Scope of Work is to obtain complete construction of the work identified with the technical specifications as detailed in the quote(s), and further identified within this contract. The work for which proposals are being solicited is described in detail in the **Technical Specification contained in Exhibit 2, and the Drawings in Exhibit 3 of this RFP**. The proposal submission shall accurately describe the Proposer's understanding of the objectives and scope of the requested construction and provide an outline of the process to complete the requirements of the project.

#### Special Notice and Additional Requirement(s):

1. Additional safety precautions shall be instituted by the awarded contractor, as the work environment will be in an area where citizens and employees may be present, and work safety must be coordinated with the owner.
2. **The Contractor shall be responsible for all spoil removals, and any excess soil that will require removal.**

1  $\frac{1}{16}" = 1'-0"$

ROOF SYSTEM AS SPECIFIED

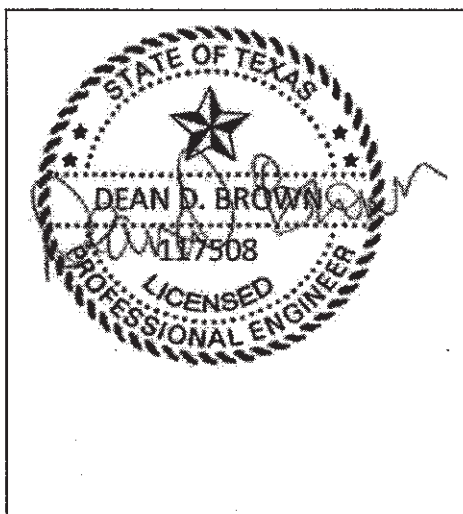
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## EXHIBIT 2

**SPECIFICATIONS  
FOR ROOFING  
AT  
CIVIC CENTER BUILDING  
FOR  
THE CITY OF DENTON**

PROJECT NUMBER: 20160711-30



The contents of this Competitive Sealed Proposal are considered to be private data of The City of Denton; therefore, the contents herein may not be used or reproduced without the specific written permission of The City of Denton.

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****SECTION 07530  
COAL-TAR ELASTOMERIC ROOFING SYSTEM****PART 1 - GENERAL****1.01 AREAS COVERED****A. Areas A, B, C, D, and E****1.02 DEFINITIONS**

ACM	Asbestos Containing Materials
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
ASTM	American Society for Testing and Materials
CTEM	Coal-Tar Elastomeric Membrane
EIP	Ethylene Interpolymer
EPA	Environmental Protection Agency
EPDM	Ethylene Propylene Diene Monomer
EPS	Expanded Polystyrene
EVT	Equiviscous Temperatures
FM	Factory Mutual
IBC	International Building Code
KEE	Ketone Ethylene Ester
NDL	No Dollar Limit
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NRCA	National Roofing Contractors Association
OSHA	Occupational Safety & Health Administration
SBS	Styrene-Butadiene-Styrene
SDI	Steel Deck Institute
SMACNA	Sheet Metal and Air Conditioning Contractors National Association
SPRI	Single Ply Roofing Industry
UL	Underwriters Laboratories, Inc.

**1.03 REFERENCES (INCLUDING LATEST REVISIONS)**

- A. Comply with governing local, state, and federal regulations, safety standards, and codes.**
- B. Testing Laboratory Services: Test results shall meet or exceed established standards.**
- C. Underwriters Laboratories, Inc. (Roofing Covering): Class A fire hazard classification.**
- D. American Society for Testing and Materials (ASTM)**
- E. The National Roofing Contractors Association (NRCA) - Roofing and Waterproofing Manual**
- F. Sheet Metal and Air Conditioning Contractors National Association (SMACNA) - Architectural Sheet Metal Manual**



**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30**

G. American Society of Civil Engineers – ASCE 7

**1.04 INSTALLER QUALIFICATIONS**

A. Roofing installer must be:

1. Currently prequalified with the Owner in accordance with Owner's prequalification requirements.
2. Currently in good standing with the manufacturer.
3. Installer must be an experienced single firm specializing in the type of roofing repair and/or removal and replacement work required, employing only experienced workers for the class of work in which they are employed, having at least five (5) years successful experience on projects similar in size and scope and acceptable as applicators by the Project Manager.
4. Contractor must have successfully completed previous projects warranted by the manufacturer.

B. It shall remain each Bidder's responsibility to determine his current status with the manufacturer's certification plan.

**1.05 MANUFACTURER QUALIFICATIONS**

A. A qualified manufacturer is one that is UL listed and has FM approvals for a membrane roofing system similar to that used for this project for a minimum of fifteen (15) years.

**1.06 CONTRACT DOCUMENT QUALITY ASSURANCE**

A. In the case of an inconsistency between the drawings and specifications or within either document not clarified by addendum, the better quality or greater quantity of work shall be provided in accordance with the Project Manager's interpretation.

**1.07 SUBMITTALS**

A. Samples and Manufacturer's Submittals: Submit prior to delivery or installation.

1. Samples of all roofing system components including all specified accessories.
2. Samples of all materials used on the project, which are not supplied by the membrane manufacturer, shall be submitted to the membrane manufacturer for written approval prior to work starting.
3. Submit sample of proposed warranty complete with any addenda necessary to meet the warranty requirements as specified.
4. Submit latest edition of manufacturer's specifications and installation procedures. Submit only those items applicable to this project.
5. A written statement from the roofing materials manufacturer approving the installer, specifications and drawings as described and/or shown for this project and stating the intent to guarantee the completed project.
6. Manufacturer's Equiviscous Temperatures (EVT) for the specified bitumens.

B. Shop Drawings: Provide manufacturer's approved details of all perimeter conditions, projection conditions, and any additional special job condition details other than indicated in the drawings.

C. Maintenance Procedures: Within ten days of the date of Substantial Completion of the project, deliver to the Owner two copies of the manufacturer's printed instructions regarding care and maintenance of the roof.

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****1.08 DELIVERY, STORAGE, AND HANDLING**

- A. Deliver materials in manufacturer's original, unopened containers and rolls with all labels intact and legible including labels indicating appropriate warnings, storage conditions, lot numbers, and usage instructions. Materials damaged in shipping or storage shall not be used.
- B. Manufacturer's packaging and/or roll plastic is not acceptable for exterior storage. Tarpaulin with grommets shall be minimum acceptable for exterior coverings. All materials stored as above shall be a minimum of four inches (4") off the substrate, and the tarpaulin tied off with rope.
- C. Deliver materials requiring fire resistance classification to the job with labels attached and packaged as required by labeling service.
- D. Deliver materials in sufficient quantity to allow continuity of work.
- E. Handle and store material and equipment in such a manner as to avoid damage. Liquid products shall be delivered sealed, in original containers.
- F. Handle rolled goods so as to prevent damage to edge or ends.
- G. Select and operate material handling equipment so as not to damage existing construction or applied roofing.
- H. Moisture-sensitive products shall be maintained in dry storage areas and properly covered. Provide continuous protection of materials against wetting and moisture absorption. Store roofing and flashing materials on clean raised platforms with weather protective covering when stored outdoors.
- I. Store rolled goods on end.
- J. Protect materials against damage by construction traffic.
- K. The proper storage of materials is the sole responsibility of the contractor and any wet or damaged roofing materials shall be discarded, removed from the project site, and replaced prior to application.
- L. Comply with fire and safety regulations, especially with materials which are extremely flammable and/or toxic. Use safety precautions indicated on labels.
- M. Products liable, such as emulsions, to degrade as a result of being frozen shall be maintained above 40° F in heated storage.
- N. No storage of materials shall be permitted on roof areas other than those materials that are to be installed the same day. Any exception must be in written form.
- O. The contractor is to erect a temporary chain link fence, minimum six feet (6') in height, around work area stage and kettles. Fence is to be secured on a daily basis.



**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****1.09 SITE CONDITIONS****A. Job Condition Requirements:**

1. Coordinate the work of the contractor with the work to be performed by other trades, to ensure proper sequencing of the entire work. The contractor is to schedule his work so that adequate time is allowed for other trades to perform their work.
2. Apply roofing in dry weather.
3. Do not apply roofing when ambient temperature is below 45° F.
4. Proceed with roofing work only when weather conditions are in compliance with manufacturer's recommended limitations, and when conditions will permit the work to proceed in accordance with specifications.
5. Schedule the work so the building will be left watertight at the end of each day. Do not remove more roofing materials than can be reinstalled in any working day.
6. Load placed on the roof at any point shall not exceed the safe load for which the roof is designed.
7. All surfaces to receive new roofing shall be smooth, dry, and free from dirt, debris, and foreign material before any of this work is installed. Competent operators shall be in attendance at all times equipment is in use. Materials shall be stored neatly in areas designated by the Project Manager.
8. The contractor is to be aware of the potential for roof leaks on the existing roof as a result of ruptured blisters and/or roof mat damage caused by the vacuum process, foot traffic, or material and equipment storage. The contractor is to take all necessary precautions to prevent damage to the existing roof. All damage to the existing roof that could result in roof leaks is to be repaired on a daily basis by the roofing contractor.
9. The contractor shall follow local, state, and federal regulations, safety standards, and codes for the removal, handling, and disposal of asbestos containing materials, if present. When a conflict exists, follow the stricter document.
10. Due caution should be exercised so as not to alter the structural integrity of the deck. When cutting through any deck, care should be taken so as not to damage the deck or any part of the deck, such as post tension cables, etc.
11. All kettles shall have a fume recovery system, automatic thermostat control, and visible temperature gauge all in working order.
12. The contractor is to verify the location of all interior ducts, electrical lines, piping, conduit, and/or similar obstructions. The contractor is to perform all work in such a manner as to avoid contact with the above mentioned items.
13. Surface and air temperatures should be a minimum 40° F during applications of cleaner and waterproof coating and remain above 40° F for a minimum of four (4) hours following applications. Verify compatibility of cleaner with coatings, paints, primers and joint sealers specified. Advise Project Manager of any problems in this regard prior to commencing cleaning operations.
14. Temporary Sanitary Facilities: The contractor shall furnish and maintain temporary sanitary facilities for employees' use during this project. These will be removed after the completion of the project. All portable facilities shall comply with local laws, codes, and regulations.

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****B. Protection of Work and Property:**

1. **Work:** The contractor shall maintain adequate protection of all his work from damage and shall protect the Owner's and adjacent property from injury or loss arising from this contract. Contractor shall provide and maintain at all times any OSHA required danger signs, guards, and/or obstructions necessary to protect the public and his workmen from any dangers inherent with or created by the work in progress. All federal, state, and city rules and requirements pertaining to safety and all EPA standards, OSHA standards, NESHAP regulations pertaining to asbestos as required shall be fulfilled by the contractor as part of his proposal.
2. **Property:** Protect existing planting and landscaping as necessary or required to provide and maintain clearance and access to the work of this contract. Examples of two categories or degrees of protection are generally as follows:
  - a) removal, protection, preservation, or replacement and replanting of plant materials;
  - b) protection of plant materials in place, and replacement of any damage resulting from the contractor's operations.
3. **Twenty-four Hour Call:** The contractor shall have personnel on call 24 hours per day, seven (7) days per week for emergencies during the course of a job. The Project Manager is to have the 24 hour numbers for the contact. Contractor must be able to respond to any emergency call and have personnel on-site within two (2) hours after contact. Numbers available to the Project Manager are to be both home and office numbers for:
  - a) Job Foreman
  - b) Job Superintendent
  - c) Owner or Company Officer

**C. Damage to Work of Others:** The contractor shall repair, refinish, and make good any damage to the building or landscaping resulting from any of his operation. This shall include, but is not limited to, any damage to plaster, tile work, wall covering, paint, ceilings, floors, or any other finished work. Damage done to the building, equipment, or grounds must be repaired at the successful contractor's expense holding the Owner harmless from any other claims for property damage and/or personal injury.**D. Measurements:** It will be the contractor's responsibility to obtain and/or verify any necessary dimensions by visiting the job site, and the contractor shall be responsible for the correctness of same. Any drawings supplied are for reference only.**E. Use of Premises:**

1. The contractor is advised that the Owner will occupy the building at all times, and the contractor must provide all safeguards required to protect personnel and to keep noise levels as low as reasonably possible for each operation.
2. The contractor shall:
  - a) Coordinate work in such a manner as to not interfere with the normal operation of the building.
  - b) Assume full responsibility for protection and safekeeping of products stored on premises.
  - c) Agree to hold the Owner harmless in any and all liability of every nature and description which may be suffered through bodily injuries, including death of any persons by reason of negligence of the contractor, agents, employees, or subcontractors.

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****F. Cleaning and Disposal of Materials:**

1. Contractor shall keep the job clean and free from all loose materials and foreign matter. Contractor shall take necessary precautions to keep outside walls clean and shall allow no roofing materials to remain on the outside walls.
2. All waste materials, rubbish, etc., shall be removed from the Owner's premises as accumulated. Rubbish shall be carefully handled to reduce the spread of dust. A suitable scrap chute or hoist must be used to lower any debris. At completion, all work areas shall be left broom clean and all contractor's equipment and materials removed from the site.
3. All bituminous or roofing related materials shall be removed from ladders, stairs, railings, and similar parts of the building.
4. Debris shall be deposited at an approved disposal site.

**1.10 SEQUENCING AND SCHEDULING**

- A. Coordinate roofing schedule with work of other trades.
- B. Plan lay up of roofing membrane with respect to deck slope. Avoid situations where excessive drainage could pass into completed roofing.
- C. Maintain communication with roofing manufacturer's representative to inform of progress and to schedule periodic inspections.
- D. All penetrations shall be made in roof prior to beginning with roof installation.

**1.11 WARRANTIES**

- A. Roofing - Manufacturer: Project shall be installed in such a manner that the roofing material manufacturer will furnish a written  
  
twenty (20) year NDL type warranty with no exclusion for hail events containing hail stones up to and including four inches (4")  
  
from the date of substantial completion of the completed project. Manufacturer issuing warranty shall provide historical data supporting hail resistance.
- B. Roofing - Contractor: The contractor, jointly with any subcontractors employed by him, shall guarantee the work required and performed under this contract will be free from defects in workmanship and materials, and that the building will be and remain waterproof for a two (2) year warranty period, after the Owner accepts the work as substantially complete. The warranty shall be in approved notarized written form, to obligate the contractor and his subcontractors, if any, to make good the requirements of the warranty.
- C. Warranty repairs shall be performed by a certified installer. The repairs shall be performed in accordance with the manufacturer's written instructions and recommended procedures so as to not void the warranty. Repair of the system, including materials and labor, shall be done at no cost to the Owner.
- D. During the proposal period each Bidder shall make arrangements with the material manufacturer to provide the required warranty. Refer to SUBMITTALS Paragraph in this section for requirements concerning submittals of warranty.

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****PART 2 - PRODUCTS****2.01 GENERAL**

- A. Compatibility: Provide materials that are recommended by manufacturers to be fully compatible with indicated substrates, or provide separation materials as required to eliminate contact between incompatible materials.
- B. All materials shall be furnished, specified, or approved in writing by the manufacturer issuing the warranty.
- C. All materials used on the project shall be asbestos free.

**2.02 FINISH MEMBRANE**

- A. The coal-tar elastomeric membrane (CTEM) shall be 60 mil overall calendered thickness. The membrane shall be a high-performance elastomeric membrane incorporating a DuPont™ Elvaloy® KEE (ketone ethylene ester), extended with coal-tar pitch and reinforced with polyester fibers as manufactured by Hyload, Inc., or approved equal.
- B. The coal-tar elastomeric membrane (CTEM) shall meet the following physical properties: Elongation 170%, ASTM D 412; Tensile Strength 1500 lbs/in<sup>2</sup>, ASTM D 412; Tear Strength 330 ppi, ASTM D 624; Density @ 70° F, 80 lbs/ft<sup>3</sup>; Low Temperature Flexibility, Pass, 37-GP-56M; and Water Absorption less than 0.1%, 37-GP-56M.

**2.03 BASE FLASHING and VERTICAL WALL MEMBRANE**

- A. Flashing membrane shall be non-fleeced thermoplastic Elvaloy® with KEE membrane, as manufactured by Hyload Inc., or pre-approved equal.
- B. Non-fleeced flashing membrane shall be utilized for multi-angled intersections, stripping ply, trim strips, and other conditions where molding/forming of the membrane is required.

**2.04 BITUMEN**

- A. Shall be ASTM D 312 Type IV extra steep asphalt.

**2.05 UNDERLAYMENT PLIES**

- A. Shall be Underwriters Laboratory approved.
- B. Shall be twenty-eight pound (28#) fiberglass base sheet, ASTM D4601, Type II.
- C. Shall be nominal eighty-five (85) mil, smooth surfaced, SBS modified asphalt glass reinforced base sheet coated with flexible, SBS polymer-modified asphalt, meeting ASTM D6163, Type 1, Grade S.

**2.06 INSULATION**

- A. All insulation shall be in compliance with Section 07215 Roof and Deck Insulation.

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30**

- B. All insulation shall be approved in writing by the membrane manufacturer as to thickness, type, and manufacturer. All insulation must be approved for the specific application, Underwriters Laboratory approved.
- C. Tapered Polyisocyanurate Roof Insulation: Shall be tapered polyisocyanurate board, with a 20 psi minimum compressive strength and nominal 2.0 pcf density. Insulation shall be of thickness required for one-eighth inch (1/8") slope per foot to roof drains as shown on drawings with a minimum thickness of one and one-half inch (1-1/2"). Average R-value over each roof area shall meet or exceed R-19. Insulation shall be surfaced on two (2) sides with a non-asphaltic facer material.
- D. Factory Tapered Polyisocyanurate Crickets: Factory cut twenty-four inch by forty-eight inch (24" x 48") polyisocyanurate board cut to one-half inch (1/2") per foot slope used in conjunction with standard thickness of polyisocyanurate board to provide positive slope.

**2.07 SUBSTRATE BOARDS**

- A. Fiberboard: Shall be thickness of one-half inch (1/2"), R of 1.32; board size four feet by eight feet (4' x 8'), impregnated six (6) sides with asphalt.

**2.08 CANT STRIP**

- A. Structural: Shall be wood where used for structural purposes meeting NRCA, FM Global and Underwriters Laboratory guidelines.
- B. Non-structural: Shall be wood fiber where used for non-structural purposes, conforming to ASTM C208 and C209.

**2.09 ROUGH LUMBER**

- A. All wood nailers, structural cants, curbs, and other miscellaneous rough carpentry, shall be lumber as recommended by NRCA, and Underwriters Laboratory guidelines.
- B. Vertical Wall Shimming Material: Shall be exterior grade plywood, gypsum core board, or concrete core board unless otherwise accepted by Project Manager. Thickness shall be as required for attachment or to make material flashing flush or level with offsets and/or transitions, minimum three-fourths inch (3/4"). Proper selection of material is required to achieve UL guidelines.

**2.10 SEALANTS**

- A. One-part Urethane Sealant: Sealant for use at coping joints, reglet joints, etc., shall be a one-component, high performance, non-priming, non-sag, gun grade elastomeric polyurethane sealant designed for use in active exterior joints, ASTM C 920, shall meet the following physical and performance properties, SONOLASTIC® NP 1™ as manufactured by BASF Construction Chemicals, LLC, or approved equal.

<u>Properties</u>	<u>Results</u>	<u>Test Methods</u>
Movement capability, %	±35	ASTM C719
Tensile strength, psi (MPa)	350 (2.4)	ASTM D412
Tear strength, pli	50	ASTM D1004
Ultimate elongation at break, %	800	ASTM D412
Rheological, at 120° F (49° C) (sag in vertical displacement)	No sag	ASTM C639
Extrudability, 3 seconds	Passes	ASTM C603
Hardness, Shore A		ASTM C661



**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30**

At standard conditions	25 – 30	
After heat aging (max Shore A: 50)	25	
Weight loss, after heat aging	3%	ASTM C792
Cracking and chalking, after heat aging	None	ASTM C792
Tack-free time, hrs, (maximum 72 hrs)	Passes	ASTM C679
Stain and color change	Passes (no visible stain)	ASTM C510
Bond durability,* on glass, aluminum, and concrete $\pm 35\%$ movement	Passes	ASTM C719
Adhesion* in peel, pli (min. 5 pli)	30	ASTM C794
Adhesion* in peel after UV radiation through glass (min. 5 pli)	Passes	ASTM C794
Artificial weathering, Xenon arc, 250 hours	Passes	ASTM C793
Artificial weathering, Xenon arc, 3,000 hours	No surface cracking	ASTM G26
Water immersion, 122° F (50° C)	Passes 10 weeks with movement cycling	ASTM C1247

\*Primed for water immersion dictated by ASTM C920.

- B. Silyl-terminated Polyether Sealant: Sealant shall be a thermosetting, solvent free, non-slump, self-fixturing, multipurpose structural sealant which shall meet the following physical and performance properties, M-1 as manufactured by Chem Link, Inc., or approved equal.

<u>Properties</u>	
Specific Gravity	1.62 (13.5 lbs./gallon)
Viscosity	800,000+ cps Brookfield RTV, TF spindle, 4 rpm 73° F.
Shear Strength (ASTM D-1002)	400 psi+ (7 day ambient cure)
Elongation @ break (ASTM D-412)	400-550% (7 day ambient cure)
Hardness Shore A (ASTM C-661)	45 $\pm$ 3
Tack free time (ASTM C-679)	20 minutes
Low temperature flex ASTM D-816)	Minus 10° F pass 1/4" mandrel
Slump (sag) (ASTM C-697)	Zero slump
Shrinkage (ASTM D-2453)	No measurable shrinkage (after 14 days)
Service temperature	-40° F to 200° F continuous service

**2.11 FASTENERS**

- A. Fasteners and fastening plates or bars shall be as recommended by the fastener manufacturer for the specific application.
- B. Fastener for Gypsum Deck: Shall be a pre-assembled from coated steel with self-anchoring tube nail of the correct length to embed the roof deck to a depth of at least one inch (1"). Rib reinforced roofing disk shall be a diameter of two and seven-tenths inch (2.7") with locking staple, Twin Loc-Nail as manufactured by ES Products, or approved equal. Fasteners and washers shall be listed in the FM Global Approval Guide.

**2.12 ROOFING AGGREGATE**

- A. ASTM D 1863 covers the quality and grading of crushed stone and water worn gravel suitable for use as coarse mineral aggregate.
- B. General Characteristics of Crushed Stone and Gravel: The stone and gravel at the time of application shall be hard, durable, surface dry (up to 2%) by weight moisture content), free of clay, loam, sand, or other foreign substances, and shall conform to size grading and property requirements.
- C. Grading: The aggregate shall conform to sieve analysis as follows:

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<u>Sieve</u>	<u>Total Passing</u>
3/4"	100
1/2"	90 to 100
3/8"	40 to 70
No. 4	0 to 15
No. 8	0 to 5

**D. Physical Property Requirements:**

Moisture, crushed stone and gravel	2.0% max.
Unit Weight (loose)	60 lbs./cu. ft., min.
Dust	0.5% max.
Hardness, amount passing No. 5 (3.36 mm) sieve when tested in accordance with ASTM D 1865	20% max.

**2.13 ASPHALT ROOF PRIMER**

- A. Quick-dry asphalt-based primer for priming of asphalt roof surfaces, as manufactured by Gardner-Gibson, Inc. / GAF, or approved equal.

ASTM	D 41
Flash Point	105° F
Viscosity at 80° F (ASTM D 217)	50-60 K.U.
Weight per gallon	7.4 pounds
Drying time (to touch)	Min. 4 hours

**2.14 ASPHALT PLASTIC ROOF CEMENT**

- A. Trowel-applied mastic used on flanges of gravel stops, stacks, vents, and similar applications, or approved equal.

ASTM	D 4586
Flash Point	105° F
Weight per gallon (approximate)	11 lbs.
Viscosity @ 80° F (ASTM D 217)	270-330
% Non-Volatile (Fed. Test Method 141)	70% Min.
% Specially Processed Bitumen	30% Min.
% Total Solids, by Volume	75% Min.
Dry film thickness of 1 gal./15 sq. ft.	85 Mils
Drying time	2 to 3 days
Service Temperature, Extended Exposure	-20° to +150° F
Resistance to Oils & Solvents	Poor
Resistance to Sunlight	Good
Resistance to Chemicals	Good
Effects of Weathering	Slight chalking
Water Resistance	
Under Good Drainage Conditions	Excellent
Under Continuous Submersion	Fair

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CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****2.15 ALUMINUM ROOF COATING**

- A. Aluminized heat reflective roof coating, VOC compliant, containing three pounds (3#) per gallon of aluminum paste pigment, as manufactured by approved equal.

**2.16 PITCH PAN SEALANT**

- A. Pitch pan sealant shall be one part, self-leveling coal-tar elastomeric urethane which shall meet the following physical and performance properties, or approved equal.

<u>Test</u>	<u>Typical Value</u>	<u>Test Method</u>
Elongation	300%	ASTM D 2370
Viscosity	15,000 – 25,000 cps	ASTM D 2196
Flash Point	325°F minimum	ASTM D 93

**2.17 PIPE SUPPORTS**

- A. Pipe support system shall be a prefabricated, engineered support system designed specifically for use on roofing without adhesive, roof penetrations, flashings, or damage to roofing system. Supports shall be as recommended by manufacturer as suitable for size and type of conduit or pipe being supported. Shall be as manufactured by approved equal.
1. Base shall be seventeen inches (17") circular base, injected molded polypropylene, with 227 square inches of surface on bottom, designed for weight disbursement;
  2. Dimensions shall be three inches (3") high by seventeen inches (17") in diameter, with molded insert for square tubing and two threaded rod couplings molded in.
  3. Frame shall be pre-galvanized zinc coated 12 gauge channel meeting ASTM A653.
  4. Hangers shall be clevis and/or band type as per pipe requirements.
  5. Accessories shall consist of cadmium plated threaded rods, clamps, nuts, bolts, and washers.
  6. Rollers shall be non-binding heavy duty SBR rubber.

**2.18 ROOF PLAQUE**

- A. Contractor shall provide a sixteen inch by sixteen inch (16" x 16") metal plaque which shall contain the information listed below. Fasteners to attach plaque shall be stainless steel, short enough to not penetrate outer surface of hatch or door where mounted. Location of plaque to be determined by Project Manager.
1. Project Manager name, phone number, contact person.
  2. School district phone number, contact person.
  3. School district emergency phone number.
  4. Contractor name, phone number, contact person.
  5. Subcontractor name, phone number, contact person.
  6. Roof Consultant, name, phone number, contact person.
  7. Roof system, warranty information.
  8. Roof Manufacturer, phone number, contact person.

**2.19 TERMINATION/PRESSURE BARS**

- A. Aluminum strip shall be extruded channel bar with a mill finish, width one inch (1"), thickness 0.100" ± .008", leg height one-fourth inch (1/4") top and bottom, leg angle ninety degrees (90°), for perimeter and curb anchorage, having predrilled holes six inches (6") on center, as manufactured by Olympic Fasteners, or approved equal.



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CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****2.20 SELF-ADHERING UNDERLAYMENT FOR TEMPORARY WATERPROOFING**

- A. A premium heavyweight, minimum 60 mil, self-adhering underlayment, to use as a temporary waterproofing barrier.

**2.21 DELIVERY AND STORAGE**

- A. All materials shall be delivered with appropriate carton and can labels indicating appropriate warnings, storage conditions, lot numbers, and usage instructions. Materials damaged in shipping or storage shall not be used.

**2.22 PRECAUTIONS**

- A. Some of the indicated materials are extremely flammable and/or toxic. Use precautions indicated on can and carton labels.

**2.23 MISCELLANEOUS MATERIALS**

- A. Other materials shall be as specified, or of the best grade for the proposed use, as recommended by the manufacturer of said product.

**PART 3 - EXECUTION****3.01 REFERENCE**

- A. In the instance of a conflict between these specifications and those of the manufacturer and/or current NRCA, Underwriters Laboratory and IBC guidelines, the more stringent specifications (better quality or greater quantity of work) shall take precedence.
- B. The manufacturer's Technical Specifications and current NRCA, Underwriters Laboratory and IBC guidelines shall be considered a part of this specification and shall be referred to for general application procedures and recommendations.
- C. Application of materials shall be in strict accordance with the manufacturer's recommendations and current NRCA, Underwriters Laboratory and IBC guidelines, except where more stringent requirements (better quality or greater quantity of work) are shown or specified.
- D. General Installation:
1. Comply with governing local, state, and federal regulations, safety standards, and codes.
  2. Protect adjacent areas with tarpaulin or other durable materials.
  3. Contractor shall prevent overspray, and be responsible for parking lot areas and/or adjoining areas not part of this contract.
  4. Contractor shall be responsible for sealing, as required, all openings that may allow bitumen migration or drippage, i.e. pitch dams, envelopes, and filler strips.

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5. Prepare surfaces according to manufacturer's or applicator's published instructions. All metal that is to receive bitumen, or come in contact with bitumen or adhesive, shall be first primed with appropriate primer. Any prefinished galvanized sheet steel that is to receive bitumen, or come in contact with bitumen or adhesive, shall be scored, scuffed or abraded before receiving primer application.
6. Use cleaning materials or primers necessary to render an acceptable surface/substrate.
7. All surfaces/substrates shall be clean and dry prior to application of materials.
8. Prior to application of felts and membrane, all foreign matter, gravel, etc., shall be removed from the insulation and/or substrate. Gravel or debris between the insulation/substrate and plies is not acceptable.
9. Prior to application of flashing membranes, substrate shall be clean and free of any previously installed roofing materials. Contractor shall ensure that all components of substrate be structurally sound before application of flashing materials.
10. Bitumen kettle shall have a fume recovery system, and visible thermometer to provide positive monitoring of the bitumen temperature when it is heated in accordance with manufacturer's instructions.
11. Ambient temperature shall be 40° F and rising.
12. The underlayment plies and field membrane are to be laid in the direction of maximum roof slope, working from bottom of slope toward ridge.
13. All roof areas will be picture framed with the 60 mil coal-tar elastomeric membrane (CTEM) as the system is being applied. The outer edge of the picture frame sheet shall extend approximately two inches (2") above the top of the cant. All end laps of the field sheets of the 60 mil coal-tar elastomeric membrane shall lap the picture frame sheet a minimum of eight inches (8") or the picture frame sheet side laps shall lap the field sheet a minimum of eight inches (8").
14. Wrinkles, buckles, kinks, and fishmouths are not acceptable when laying felt and membrane.
15. Dry voids of felt on felt or membrane on membrane are not acceptable.
16. All surfaces that are to receive the self-adhered membranes shall be primed with a fast drying asphaltic primer, except when self-adhered membrane is to be installed over a CTEM surface.

## 3.02 SUBSTRATE PREPARATION

- A. Tear-off: Remove all existing roof assembly down to the roof deck or original substrate. Substrate shall be smooth, free of debris, sharp edges, and other surface irregularities prior to starting roofing application. Substrate repair shall be performed as required to minimum of NRCA standards.
- B. Poured Gypsum Decks:
  1. The deck shall be a minimum of two inches (2") thick. It shall have been tested to ensure that it has been allowed to cure properly, and will securely hold fasteners. Decks installed during raining or freezing weather will not be acceptable.
  2. Damaged or irregular areas shall be repaired with a quick-setting cement mix. Joints shall be filled to provide a level surface.
  3. The specified base sheet shall be fastened with fasteners approved by the Gypsum Association. Fasteners shall have a minimum holding power of forty pounds (40#) per fastener.

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****3.03 CATEGORY II (NON-FRIABLE) ASBESTOS CONTAINING MATERIALS (ACM)  
REMOVAL**

- A. Owner and Contractor agree to exonerate, indemnify, defend, and hold harmless the roofing material manufacturer from and against all claims, demands, lawsuits, damages, expenses and losses incurred by Contractor's removal of asbestos-containing materials from Owner's building and work site. Contractor must conduct its operations according to applicable requirements including but not limited to those established by:
1. Occupation Safety and Health Administration (OSHA).
  2. Environmental Protection Agency (EPA).
  3. Department of Transportation (DOT).
  4. State or Local Air Pollution Control Authorities/Agencies.
  5. State or Local Solid Waste or Hazardous Waste Authorities/Agencies.
  6. State or Local Health Department(s).
  7. State or Local Building Code Authorities.
  8. Other federal, state or local agencies or authorities.
- B. Contractor or Owner shall perform appropriate inspections, surveys and file timely notifications to proper authorities prior to starting roof renovation or demolition activities. Inspectors, project planners, project managers, contractors and workers involved in the roof project shall have appropriate training, licenses and registrations. Contractor and Owner shall be responsible for determining and implementing regulatory compliance activities, including but not limited to work practices, engineering controls, personal protection, air monitoring, testing, hazard communication, material handling, record retention, and arranging for waste disposal/handling.
- C. Contractor must file a Uniform Hazardous Waste Manifest from proper landfill site for each load of asbestos containing material removed. Copies must be sent to Owner and material manufacturer/specifier. Transportation of waste shall be in accordance with applicable Department of Transportation (DOT) requirements.

**3.04 ASPHALT HEATING**

- A. Use low burner flames during initial melt-downs. Circulate asphalt after initial melt-down.
1. Maximum asphalt temperature shall be 25°F below the flash point.
- B. Avoid prolonged heating of asphalt at high temperatures. Reduce the asphalt temperature to below 500°F if asphalt is not being used for periods of four (4) hours or more.
- C. Kettle shall be free of contaminants.
- D. Application rates: Bitumen quantities for waterstop/tie-offs, flashings, miscellaneous detail applications, and minimum kettle capacity are not included in application rates. To account for these factors, add approximately 25 percent additional bitumen on a total job average basis.

**3.05 ROUGH CARPENTRY**

- A. Nailers shall be installed according to NRCA, Underwriters Laboratory, and IBC guidelines.

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- 1  
2 B. Wooden nailers shall be installed at gravel stops, drip edges, expansion joints, and  
3 on outside perimeter of building.  
4  
5 C. Gravel stop and drip edge nailers shall be the same height as the new insulation  
6 being installed where required.  
7  
8 D. Nailers shall be raised if necessary by anchoring an additional nailer of appropriate  
9 height to the existing nailer if the existing nailer is not to be replaced.  
10  
11 E. Expansion joint nailers shall extend upward a minimum of eight inches (8") above  
12 finish roof height.  
13  
14 F. Where parapet wall exists, specified vertical wall shimming material shall be installed  
15 beginning at roof height up to a minimum of twelve inches (12") above finished roof  
16 surface, or as detailed, to provide substrate for horizontal termination of roof to wall  
17 flashing system.  
18  
19 G. Any lumber or shimming required for attachment, or to make material flashing flush or  
20 level with offsets and/or transitions, shall be incorporated in these specifications.  
21

## 22 3.06 CANTS

- 23  
24 A. Provide full 45 degree cant strips (no partials) at all intersections of vertical and  
25 horizontal surfaces, such as walls, parapet walls, curbs, expansion joints, etc., and as  
26 recommended by membrane manufacturer.  
27  
28 B. Cants shall provide a four (4) inch rise above the roof's surface.  
29  
30 C. Toe of cant shall be level with the surface to receive new roof membrane and in all  
31 cases anchored according to NRCA, Underwriters Laboratory, and IBC guidelines.  
32  
33 D. Cant strips shall be installed at the intersection of the deck and all vertical surfaces.  
34  
35 E. If a wood cant is used where insulation exists, cant shall be toe nailed into treated  
36 wood nailer under cant the same height as insulation.

## 37 3.07 MECHANICALLY FASTENED BASE SHEET OVER SUBSTRATE

- 38  
39 A. Substrate shall be covered with a specified base sheet mechanically fastened as  
40 follows:  
41 1. Securement shall conform to the ASCE 7 criteria for wind uplift as dictated by  
42 wind zone applicable to location of project. Fasteners and fastening patterns  
43 shall be determined by building height, location and geographical area of the  
44 United States. It is the contractor's responsibility to consult current codes,  
45 publications, literature, and bulletins of IBC and the fastener manufacturer that  
46 are in effect at the time of this project.  
47  
48 B. If slope dictates, underlayment plies shall be installed using the strapped method  
49 going with the slope as required by membrane manufacturer.  
50

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CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****3.08 ADHERED BASE SHEET OVER SUBSTRATE**

- A. Substrate shall be covered with specified base sheet adhered as follows:
1. The concrete deck shall be primed with concrete primer in accordance with manufacturer's recommended procedures and allowed to dry. Following the application of the primer, securement shall conform to the ASCE 7 criteria for wind uplift as dictated by wind zone applicable to location of project. Securement shall be determined by building height, location and geographical area of the United States. It is the contractor's responsibility to consult current codes, publications, literature, and bulletins of IBC and the adhesive manufacturer that are in effect at the time of this project.
- B. If slope dictates, underlayment plies shall be installed using the strapped method going with the slope as required by membrane manufacturer.

**3.09 INSULATION - GENERAL**

- A. Manufacturer's Instructions: In regard to attachment, the manufacturer's instructions or specifications shall determine the suitability for an application. Installation must meet ASCE 7 criteria and meet local governing building codes.
- B. Precautions: The surface of the insulation must not be ruptured due to overdriving of fasteners.
- C. Thermal insulation boards shall be laid on the substrate in parallel rows with end joints staggered and butted as close as possible. All joints shall be tight and at the roof perimeter and roof penetrations, insulation shall be cut neatly and fitted to reduce openings to a minimum. All openings one-fourth inch (1/4") or larger shall be filled with insulation.
- D. Insulation shall be tapered or feathered at drains and scuppers to provide proper drainage.
- E. No more insulation shall be installed than can be covered by the completed roof system by the end of the day or the onset of inclement weather.
- F. Tapered insulation and/or crickets shall be placed in accordance with the drawings and/or as required to minimum of NRCA standards.

**3.10 FULLY ADHERED INSULATION**

- C. Specified insulation shall be bonded to the specified base sheet with a solid mopping of steep asphalt Type IV, as required by slope (NRCA), at the minimum rate of thirty pounds (30#)  $\pm$  20% per one hundred (100) square feet and immediately walked in place.

**3.11 APPLICATION OF UNDERLAYMENT PLY SHEETS**

- A. Insulation shall be covered with one (1) layer of specified fiberglass ply sheet fully adhered.



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- 1 B. All layers shall be solid mopped in a uniform and continuous manner at the nominal  
2 rate of thirty pounds (30#)  $\pm$  20% per one hundred (100) square feet using steep  
3 asphalt Type IV as required by slope, properly heated and applied within the  
4 Equiviscous Temperature (EVT) range.  
5  
6 C. Broom each ply from the unmopped side before adhesive cools. Ensure complete  
7 and continuous seal and contact between bitumen and ply sheets without wrinkles,  
8 including ends, edges, laps, fishmouths, or blisters. Broom width shall be thirty-four  
9 inches (34") minimum. Avoid walking on plies until adhesive has set.  
10  
11 D. Specified layers shall be applied in accordance with the manufacturer's  
12 recommendations and in accordance with general practices as set forth by the NRCA  
13 Roofing Manual.  
14  
15 E. If slope dictates, underlayment plies shall be installed using the strapped method  
16 going with the slope as required by membrane manufacturer.  
17

## 3.12 APPLICATION OF FINISH FIELD PLY

- 18  
19  
20 A. Unroll at least ten feet (10') of the 60 mil coal-tar elastomeric membrane (CTEM) and  
21 position the sheet. The properly heated steep asphalt (per specification) should be  
22 applied at the rate of approximately thirty pounds (30#)  $\pm$  20% per one hundred (100)  
23 square feet with a mop just ahead of the roll of the CTEM to form a pool of asphalt  
24 into which the membrane is to be rolled. The roll of CTEM should push a puddle of  
25 asphalt ahead of it with no voids. Care should also be taken not to trap air under the  
26 membrane. The pool of asphalt in front of the roll will eliminate entrapped air.  
27  
28 B. The asphalt must be mopped so as to extend beyond both edges of the sheet. The  
29 amount of asphalt should be just sufficient for excess asphalt to squeeze out along  
30 the edges.  
31  
32 C. If slope dictates, membrane shall be installed using the strapped method going with  
33 the slope as required by membrane manufacturer.  
34  
35 D. Picture frame all roof areas with 60 mil coal-tar elastomeric membrane (CTEM) as  
36 finish membrane ply is being applied. Rectangular type projections should also be  
37 picture framed.  
38

## 3.13 FIELD LAP SPLICE

- 39  
40  
41 A. Coal-tar elastomeric membrane (CTEM) shall be installed as above with side lap  
42 minimum three inches (3"), no maximum. End laps shall be minimum eight inches  
43 (8"), no maximum, and staggered a minimum of four feet (4'), no maximum.  
44  
45 B. Field Lap Splice with Bitumen: The membrane shall be laid in the same direction as  
46 the base ply, but the laps shall not coincide with the base ply. While asphalt is still  
47 hot, pressure shall be applied to the laps with a trowel or similar tool to ensure  
48 complete contact with the asphalt, and a squeeze-out of bitumen shall be visible. The  
49 side laps in the 60 mil coal-tar elastomeric membrane (CTEM) should not be located  
50 above those in the base ply, but located to one side or other to avoid excessive ply  
51 build-up. Lack of or no side lap bitumen squeeze-out is not acceptable. Contractor  
52 shall cut away dry material to dry material, and install a minimum of twelve inch (12")  
53 wide membrane overlaid in hot bitumen.  
54

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## C. Field Seams/Laps:

1. All laps/seams, cross seams, T-joints, seams/openings at penetrations, or other details shall be sealed and checked daily, no variance.
2. Laps: All laps shall be straight and free of wrinkles and/or fishmouths, no variance.

## 3.14 PERIMETER FASTENING

- A. Wood nailers are required for perimeter gravel stops or drip edges. Field membrane and all plies shall be mechanically fastened on the vertical face of nailer, twelve inches (12") on center maximum.

## 3.15 FLASHING - GENERAL

- A. Flash all penetrations, metal edge systems, walls, curbs, expansion joints, drains as shown on details and approved shop drawings with white Elvaloy® flashing membrane.
1. Field fabricate flashings for vent pipes, vent stacks, or other multi-angled roof projections/penetrations.
  2. Mechanically fasten flashing at terminations according to approved details.
  3. Fastening membrane flashing through metal counterflashing without the use of a termination bar is not acceptable.
- B. Any lumber or shimming required for attachment or to make material flashing flush or level with offsets and/or transitions shall be incorporated in the flashing specifications.

## 3.16 BASE FLASHING (APPROXIMATELY 8" IN HEIGHT MINIMUM)

- A. Base flashings shall be installed using the flashing membrane, with length of run not to exceed eight linear feet (8').
- B. Wooden nailers or curbs shall be installed at all edges and openings in the roof, mechanically fastened to the deck.
- C. Cant strips shall be installed at the intersection of the deck and all vertical surfaces.
- D. The roofing field membrane shall extend up over and a minimum two inches (2") above the top of cant strips at all vertical intersections or out to the roof's edge.
- E. All flashings shall be mechanically fastened with a termination bar a maximum of six inches (6") on center, be a maximum of forty inches (40") above finished roof height, extend a minimum of four inches (4") / eight inches (8") onto the field of horizontal roof membrane, and not exceed eight linear feet (8') of run in length.
- F. All vertical flashing butted seams of the flashing membrane shall be covered with a six inch (6") trim strip and hot-air welded.
- G. All flashing membrane shall be adhered with flashing bonding adhesive to the vertical substrate and hot-air welded to the field of roof membrane; hot-air weld six inch (6") trim strip over the butted vertical seams/laps.
- H. Flashing welds shall be a minimum two inch (2") width, no maximum.

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## I. Hot-Air Welding of Flashing:

1. When using a hand-held hot-air welder, the seams should be pressed together using a hand-held roller. The speed and temperature settings of the welding equipment can be affected by the weather conditions at the site of application, therefore, these parameters should be set by trial and error using two (2) pieces of the flashing membrane. Minimum width of hot-air weld two inches (2"), no maximum.
2. Lay the membranes together and apply pressure to the welded seam to ensure full adhesion.
3. Allow the seams to set fully, and probe the entire length for voids. Reseal voids immediately with a hot-air gun and roller.

J. All hot-air welded seams/laps shall be tested daily with a probe for integrity, no variance.

## 3.17 PROJECTION FLASHINGS

- A. Plumbing Vents: Soil vent stack pipes shall receive new lead flashings installed in strict accordance with practices set forth in the NRCA Roofing Manual. The lead shall be carried up and over the top of the stack, and crimped down into the pipe to form a watertight seal. Projections that cannot be sealed thus should be boxed in and flashed as recommended by the roof membrane manufacturer.
- B. Square Projections: Lay the 60 mil coal-tar elastomeric membrane (CTEM) up to the projection, and cut membrane so that it will extend twelve inches (12") beyond the projection. Cut a slit in the membrane to correspond with the position of the projection, and lay the membrane in hot asphalt. Apply another layer of membrane in exactly the same fashion, but from the opposite direction. For metal flange-type projections, after doing above, strip in with six inch (6") strips of membrane.
- C. Round Projections: Cut membrane square and eighteen inches (18") from perimeter of projection. Slit square membrane with an "X" of proper size to ensure a close fit and positive seal. Place over projection, and adhere to clean membrane already on the roof. Cut a six inch (6") piece of membrane to apply as a collar, and secure with an all stainless steel clamp.

## 3.18 EDGING FLASHINGS

- A. An NRCA-approved gravel stop/fascia system shall be installed in strict accordance with published instructions to meet ANSI-SPRI ES-1 requirements.
- B. The 60 mil coal-tar elastomeric field membrane (CTEM) shall extend a minimum of one inch (1") below the base of the nailer, and be fastened six inches (6") on center. A metal edge of proper gauge and dimensions shall be mechanically fastened, using a continuous clip fastened six inches (6") on center, to the wood nailer over the membrane. The metal shall have a minimum of a three inch (3") flange, set in asphalt mastic and fastened into nailer a minimum of six inches (6") on center, and a minimum of a four inch (4") fascia (match existing). The lower elevation of the metal edge shall extend a minimum of one inch (1") below the juncture of the bottom edge of the wood nailer and adjoining wall surface. The metal edge shall have a minimum of one inch (1") gravel stop.



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- 1 C. All metal coming in contact with bituminous material shall be primed. Strip metal  
2 edge flange with one strip of Type IV fiberglass felt set in hot bitumen extending  
3 inward from the lip of the gravel guard a minimum of three inches (3") past metal  
4 flange. Strip in fiberglass felt with 60 mil coal-tar elastomeric membrane (CTEM)  
5 flashing from the lip of the gravel guard to a minimum of three inches (3") past the  
6 edge of the fiberglass underlayment using hot bitumen. At the leading edge of the  
7 CTEM along the lip of the gravel guard, a liberal bead of silyl-terminated polyether  
8 sealant shall be applied.

- 9 1. NOTE: If internal flange of metal edge detail is tapered, CTEM self-adhered  
10 membrane shall be used in lieu of the 60 mil CTEM. Any laps of the CTEM  
11 self-adhered membrane shall be covered with a four inch (4") wide piece of the  
12 60 mil CTEM field membrane centered over the lap, hot-air welded and  
13 extending the full length of the lap. At the top leading edge where the  
14 self-adhered CTEM membrane does not have a selvedge edge for welding  
15 CTEM to CTEM, a liberal bead of silyl-terminated polyether sealant shall be  
16 applied.

- 17  
18 D. The coal-tar elastomeric membrane (CTEM) finishing strip shall have a minimum of  
19 four inch (4") lap joints that are staggered from any joints in the gravel guard.  
20

21 **3.19 PIPING/CONDUIT**

- 22  
23 A. Piping/conduit shall be raised to NRCA recommended heights, and new supports  
24 furnished. Permanent supports shall be installed upon pads approved by membrane  
25 manufacturer. Coordinate work with Project Manager.  
26  
27 B. All gas lines, piping, and conduits shall be coated with industrial grade yellow paint.  
28

29 **3.20 PIPE/EQUIPMENT SUPPORTS**

- 30  
31 A. All gas lines, piping, and conduit must be supported on specified stands or hangars.  
32  
33 B. Supports shall be attached to pipes with oversized strapping.  
34  
35 C. Designated pipe/equipment supports shall be removed and replaced with new.  
36  
37 D. Verify that roof surface is smooth and clean to extent needed to receive materials.  
38 Surface shall be cleaned by removing any loose gravel and any foreign matter.  
39  
40 E. Install support systems in accordance with manufacturer's instructions and approved  
41 shop drawings. Accurately locate and align pre-fabricated pipe supports in locations  
42 specified as per approved shop drawings. Pipe supports shall be placed not to  
43 exceed ten feet (10') on center and within two feet (2") of all elevation changes,  
44 intersections, and corners.  
45  
46 F. Supports shall be set on a double layer of membrane, adhered to the roof surface  
47 using specified silyl-terminated polyester sealant, unless noted otherwise by support  
48 manufacturer.  
49  
50 G. Provide bond breaker between dissimilar metals.  
51

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****3.21 EXPANSION JOINT**

- A. Expansion joints at walls and field of the roof shall be curbed as outlined in accordance with NRCA and SMACNA guidelines. The curbs will be flashed as outlined above in Curb Flashings.

**3.22 SURFACE FINISH**

- A. Flood Coat and Aggregate: Shall be applied at the minimum rate of five hundred pounds (500#) per one hundred (100) square feet set in hot (liquid) flood coat of steep asphalt Type IV applied at the minimum rate of sixty pounds (60#) per one hundred (100) square feet.
- B. Field Coating: Aluminum coating in the field shall be applied at the minimum rate of one and one-half (1-1/2) gallons per one hundred (100) square feet to achieve full and total coverage eliminating any shadowing. Coating shall be spray applied.
- C. Flashing Coating: All vertical membrane flashings above the toe of the cant shall be aluminum coated at the minimum rate of one and one-half (1-1/2) gallons per one hundred (100) square feet to achieve full and total coverage eliminating any shadowing.
- D. Flashing Coating: All vertical membrane flashings above the toe of the cant that are not the white welded-seam flashing shall be aluminum coated at the minimum rate of one and one-half (1-1/2) gallons per one hundred (100) square feet to achieve full and total coverage eliminating any shadowing.

**3.23 MEMBRANE PROTECTION**

- A. Walk Way Pads: Install manufacturer's walk way pads continuously on each side of each air-handling/mechanical unit on the roof in accordance with the manufacturer's recommended procedures.
- B. Where equipment pads, wood sleepers, or walkway slabs are to be installed over the roofing membrane, an additional layer of the roofing membrane shall be installed between the roofing membrane and the pad, sleeper, or slab. Due caution shall be exercised to prevent roofing membrane damage during placement. Where required, membrane shall be welded to field membrane to prevent slippage.

**3.24 ROOF PLAQUE**

- A. Metal plaque shall be installed on the underside of each roof hatch or on the inside of the maintenance room door. Location of plaque to be determined by Project Manager.
- B. Plaque shall be fastened with stainless steel screws that are short enough to not penetrate outer surface of hatch or door where mounted.

**EXHIBIT 2****PROJECT NO. 20160711-30****CITY OF DENTON****CIVIC CENTER – LOWER AREA, DENTON, TX**

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**3.25 OVERNIGHT SEAL**

- A. Provide temporary weather protection during interval between demolition and removal of existing construction on exterior surfaces and installation of new construction to ensure that no water leakage or damage occurs to structure or interior areas of existing building.
- B. Installation shall be performed according to accepted roofing practice as outlined in the NRCA Roofing Manual.

**END OF SECTION 07530**

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****SECTION 07600  
SHEET METAL AND MISCELLANEOUS ACCESSORIES****PART 1 - GENERAL****1.01 SUMMARY****A. Section Includes:**

1. Provide flashing and sheet metal components for moisture protection.
2. Related accessories.

**1.02 DEFINITIONS**

ACM	Asbestos Containing Materials
ASCE	American Society of Civil Engineers
ASTM	American Society for Testing and Materials
CTEM	Coal-Tar Elastomeric Membrane
EIP	Ethylene Interpolymer
EPA	Environmental Protection Agency
EPDM	Ethylene Propylene Diene Monomer
EPS	Expanded Polystyrene
EVT	Equiviscous Temperatures
FM	Factory Mutual
IBC	International Building Code
KEE	Ketone Ethylene Ester
NDL	No Dollar Limit
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NRCA	National Roofing Contractors Association
OSHA	Occupational Safety & Health Administration
SBS	Styrene-Butadiene-Styrene
SDI	Steel Deck Institute
SMACNA	Sheet Metal and Air Conditioning Contractors National Association
UL	Underwriters Laboratories, Inc.

**1.03 SUBMITTALS****A. Product Data:**

1. Submit shop drawings, product data and mockups of all sheet metal.

**1.04 QUALITY ASSURANCE**

- A. Comply with governing local, state, and federal regulations, safety standards, and codes. Provide products of acceptable manufacturers in satisfactory use in similar service for five (5) years. Use experienced installers. Deliver, handle and store materials in accordance with manufacturer's instructions.
- B. Reference Standards: Applicable portions of ASCE, SMACNA, ASTM, and NAAMM publications.

**EXHIBIT 2****CITY OF DENTON****PROJECT NO. 20160711-30****CIVIC CENTER – LOWER AREA, DENTON, TX**

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**1.05 WARRANTIES**

- A. Manufacturer's Product Warranty: Submit manufacturer's standard limited product warranty signed by the manufacturer's authorized official, guaranteeing to correct failures in product which may occur during the warranty period, without reducing or otherwise limiting any other rights to correction which the Owner/Project Consultant may have under the contract documents. Failure is defined to include product failure which leads to interruption of a watertight installation. Correction may include repair or replacement of failed product.
- B. Contractor's Warranty Period: For roofing flashing and sheet metal, provide a written warranty which shall warrant work to be free of leaks and defects in materials and workmanship for two (2) years, starting from date of substantial completion.
- C. Defects of the sheet metal occurring during the warranty period shall be promptly corrected by the contractor, and defects of the roofing shall be promptly corrected by the manufacturer at no additional cost to the Owner. Upon notification from the Owner or the Owner's representative that evidence of a defect exists, the responsible party shall immediately inform the Owner's representative of the date on which corrective work will be scheduled, and shall notify the Owner's representative when the corrective work has been completed.

**PART 2 - PRODUCTS****2.01 SHEET METAL MATERIAL**

- A. Hot-dipped Galvanized Steel for use as counterflashings (where not visible from the ground), pitch pans and expansion joints: Minimum 24-gauge, G-90, hot-dipped galvanized metal, commercial quality, ASTM A 653/A 653M.
- B. Stainless Steel for use as pitch pans: Minimum 24-gauge, commercial quality, ASTM A 653/A 653M.
- C. Hot-dipped Galvanized Steel for use as continuous clips: Minimum 22-gauge, G-90, hot-dipped galvanized metal, commercial quality, ASTM A 653/A 653M.
- D. Prefinished Galvanized Sheet Steel (where visible from the ground): Shall be 24-gauge flat stock, prefinished with Kynar finish meeting ASTM A 446, forty-five and one-half inches to forty-eight inches width by one hundred twenty inches in length (45-1/2" - 48" x 120") for use as new metal edge gravel guard, cover plates, downspouts, gutters, coping and miscellaneous metal.
- E. Stainless Steel: QQ-S-766, Class 304 or 316; or ASTM A 167, Type 304 or 316; form and condition most suitable for the purpose.
- F. Prefinished Aluminum: Shall be that most suitable for the purpose.
- G. All existing sheet metal shall be replaced with new metal of like gauge and type, or as specified on drawings.
- H. All prefinished metal color shall be as selected by Owner/Architect from manufacturer's full range of colors, including metallics.

**EXHIBIT 2****CITY OF DENTON****PROJECT NO. 20160711-30****CIVIC CENTER – LOWER AREA, DENTON, TX****2.02 FASTENERS**

- A. Fasteners shall be same metal as flashing/sheet metal, or other non-corrosive metal as recommended by sheet manufacturer for the specific application. Match finish of exposed heads with material being fastened.
- B. Fasteners and fastening plates or bars shall be listed in the FM Global Approval Guide.
- C. Fastener for Brick: Shall be one-fourth inch by two inches (1/4" x 2"), zinc with plated steel or stainless steel nail, one piece unit, flat head.
- D. Screws: Self-taping sheet metal type with neoprene washer, as appropriate.
- E. Pop Rivets: Full stainless steel Series 42 or 44, as appropriate.
- F. Continuous Clip: Concealed hold-down clip type; of same materials as coping, gravel guard, sized to suit application. Use a continuous clip, minimum 22-gauge G-90 galvanized.

**2.03 RELATED MATERIAL**

- A. Plastic Cement: FS SS-C-153, cutback asphalt type.
- B. Solder: QQ-S-571 composition best suited for purpose; use high tin content, minimum 60/40, for stainless steel and monel alloy.
- C. Copper, Sheet, and Strip: QQ-C-576, ASTM B 370, light cold-rolled temper, minimum 16 ounce.
- D. Sealant (for Sheet Metal): One-component polyurethane, conforming to requirements of FS TT-S-230C, non-staining and non-bleeding.
- E. Miscellaneous Materials:
  - 1. Downspout Boots: Provide and install cast iron by Neenah Foundry Company, or pre-approved equal.
  - 2. Splash Blocks: Concrete, 3000 psi, 28 days. Provide and install with protection pads at all downspouts. Dimensions shall be a minimum eighteen inches wide by thirty-six inches long (18" x 36").
  - 3. Metal Accessories: Provide and install sheet metal clips, straps, anchoring devices, and similar accessory units as required for installation of work, matching or compatible with material being installed, non-corrosive, size, and gauge required for performance.

**PART 3 - EXECUTION****3.01 INSPECTION**

- A. Verify roof openings, curbs, pipes, sleeves, ducts or vents through roof are solidly set, cant strips and reglets in place, substrates are smooth and clean and nailing strips located.



**EXHIBIT 2****PROJECT NO. 20160711-30****CITY OF DENTON****CIVIC CENTER – LOWER AREA, DENTON, TX**

B. Verify membrane termination and base flashings are in place, sealed and secure, prior to metal installation.

C. Beginning of installation means acceptance of conditions.

**3.02 PREPARATION**

A. Field measure site conditions prior to fabricating work. Provide all shop drawings and mock-ups one month prior to installation to the Owner/Project Consultant for approval.

B. Install starter and edge strips and cleats before starting installation.

**3.03 FABRICATION - GENERAL**

A. Shop-fabricate work to greatest extent possible. Comply with details shown, and with applicable requirements of SMACNA "Architectural Sheet Metal Manual" and other recognized industry practices. Fabricate for waterproof and weather-resistant performance; with expansion provisions for running work, sufficient to permanently prevent leakage, damage or deterioration of the work. Form work to fit substrates. Comply with material manufacturer's instructions and recommendations. Form exposed sheet metal work without excessive oil-canning, buckling, and tool marks, true to line and levels as indicated, with exposed edges folded back to form hems.

B. Fabricate gravel stops/fascia, gutters/downspouts, counterflashings, expansion joints, and copings with new galvanized sheet metal as specified. Fabricate gravel guard and fascia to size and dimensions as indicated on the drawings. Fabricate light metal coping, gutters and downspouts as indicated.

C. Fabricate pitch pans with new stainless steel as specified.

D. Form sheet metal on bending brake.

E. Form materials with straight lines, sharp angles and smooth curves.

F. Fold back edges on concealed side of exposed edge to form hem (1/4" minimum).

G. Weld or solder joints on parts that are to be permanently and rigidly assembled.

H. Limit single-piece lengths to ten feet (10').

I. Fabricate corner pieces with eighteen inch (18") extensions, mitered and sealed by forming as one piece.

J. Where installing flashing directly to masonry or dissimilar materials, backpaint with bituminous paint.

K. Install new metal rooftop projections. New rooftop projection details shall be as recommended in NRCA or SMACNA handbooks. All rooftop projections shall be cleaned, all joints sealed, and painted with a rust inhibitive paint.

L. All sheet metal shall be sealed and watertight.

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CIVIC CENTER – LOWER AREA, DENTON, TX

- 1 M. Metal work should be secured so as to prevent damage from buckling or wind. Where  
2 clips are shown, fabricate as detailed.  
3  
4 N. All metal to receive bitumen or adhesive shall be first primed with asphalt primer.  
5  
6 O. All prefabricated metal shall be sanded and/or abraded prior to receiving primer.  
7  
8 P. Separations: Provide for separation of metal from non-compatible metal or corrosive  
9 substrates by coating concealed surfaces at locations of contact, with bituminous coating  
10 or other permanent separation as recommended by manufacturer/fabricator.  
11  
12 Q. Bed flanges of work in a thick coat of bituminous roofing cement where required for  
13 waterproof performance.  
14

## 3.04 INSTALLATION

- 15  
16  
17 A. General: All sheet metal termination to vertical wall shall have a through-wall with receiver  
18 installed on masonry walls or prefabricated "Z" bar flashing pre-installed to fluid applied  
19 wall finished prior to installation of sheet metal termination. This applies to edge metal,  
20 base flashing closures and all vertical surface intersections. Refer to NRCA, SMACNA,  
21 and metal manufacturer's guidelines.  
22  
23 B. Gravel Guard/Fascia:  
24 1. Shall be installed with expansion joints, ten feet (10') on center, one-fourth inch  
25 (1/4") expansion leeway, with a cover plate.  
26 2. Form sections identical to profiles as shown or approved similar, to match existing  
27 building.  
28 3. Fabricate corner pieces with minimum eighteen inch (18"), maximum forty-eight  
29 inch (48") extensions, formed and sealed with rivets and sealant, as one piece.  
30 4. Hem exposed edges one-half inch (1/2") minimum.  
31 5. Backpaint flashing in contact with masonry or dissimilar materials with bituminous  
32 paint. Surface sand before applying primers.  
33 6. Integrate flashing in a manner consistent with detailing.  
34 7. Provide and install continuous clip, minimum 22 gauge.  
35 8. Apply sealant at horizontal juncture of gravel guard metal to exterior vertical wall.  
36 9. Shall be fabricated in accordance with published details.  
37 10. Install bead of sealant at metal edge juncture at exterior wall surface.  
38  
39 C. Coping:  
40 1. Install new pre-manufactured metal coping for a permanent watertight installation.  
41 2. All coping shall be pre-manufactured to include low profile standing seam metal to  
42 meet ANSI/SPRI ES-1 requirements.  
43 3. Shall be minimum 24-gauge prefinished Kynar installed in ten foot (10') sections  
44 maximum.  
45 4. Vertical fascia shall extend minimum two and one-half inches (2-1/2") or be minimum  
46 one and one-half inches (1-1/2") below bottom of nailer, whichever is greater.  
47 5. Fabricate corner pieces with minimum eighteen inch (18"), maximum forty-eight  
48 inch (48") extensions, formed and sealed with rivets and sealant, as one piece.  
49 6. Hem exposed edges one-fourth inch (1/4") minimum.  
50 7. Provide and install continuous clip, minimum 22-gauge.  
51 8. Shall be fabricated in accordance with published details.  
52



## EXHIBIT 2

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CIVIC CENTER – LOWER AREA, DENTON, TX

- 1 D. Expansion Joint Field and at Wall:
- 2 1. Shall be as outlined by details, and be in full compliance with these specifications.
- 3 2. Lock seams and end joints.
- 4 3. Fabricate corner pieces with minimum eighteen inch (18"), maximum forty-eight
- 5 inch (48") extensions, formed and sealed with rivets and sealant, as one piece.
- 6 4. Hem exposed edges one-fourth inch (1/4") minimum.
- 7 5. Backpaint flashing in contact with masonry or dissimilar materials with bituminous
- 8 paint. Surface sand before applying primers.
- 9 6. Integrate flashing in a manner consistent with detailing.
- 10 7. Provide and install continuous clip, minimum 22-gauge or one gauge thicker than
- 11 flashing.
- 12 8. Shall be fabricated in accordance with published details.
- 13
- 14 E. Counterflashing:
- 15 1. Provide and install new two-piece sheet metal counterflashing as required for a
- 16 permanent watertight installation.
- 17 2. Saw cut brick mortar joint to receive friction fit reglet and removable counterflashing
- 18 as detailed in SMACNA 7th Edition Figure 4-4D.
- 19
- 20 F. Gutter and Downspout:
- 21 1. Fabrication:
- 22 a) Fabricate gutter and downspout of profile and size to match existing and as
- 23 indicated.
- 24 b) Field measure site conditions prior to fabricating work.
- 25 c) Fabricate with required connection pieces.
- 26 d) Fabricate section square, true, and accurate in size, in maximum possible
- 27 lengths and free of distortion or defects detrimental to appearance or
- 28 performance.
- 29 e) Hem exposed edges of metal.
- 30 f) Form and seal all metal joints; provide for expansion joints per SMACNA.
- 31 2. Installation:
- 32 a) Install collector head, downspout, and accessories.
- 33 b) Join lengths with seams pop riveted and sealed watertight. Flash and seal
- 34 collector head to downspouts and accessories.
- 35 c) Seal all metal joints watertight for full metal surface contact.
- 36 d) Collector Head: SMACNA style profile; submit detail for approval.
- 37 e) Downspouts: Rectangular profile. Seal all joints, six inches by six inches
- 38 (6" x 6") minimum or as shown on published details.
- 39 f) Support Brackets, Joint Fasteners: Profiled to suit gutters and downspouts.
- 40 g) Anchorage Devices: SMACNA requirements. Type recommended by fabricator.
- 41 h) Collector Head Supports – Kynar.
- 42 i) Downspout Support Straps – Kynar.
- 43
- 44 G. Overflow Scupper, Collector Head and Downspout:
- 45 1. Fabrication:
- 46 a) Fabricate overflow scupper, collector head and downspout of profile and size
- 47 indicated, taking care that the roof drain leader fits properly into the back of the
- 48 collector head. Seal the pipe to the collector head for watertightness.
- 49 b) Field measure site conditions prior to fabricating work.
- 50 c) Fabricate with required connection pieces.
- 51 d) Fabricate section square, true, and accurate in size, in maximum possible
- 52 lengths and free of distortion or defects detrimental to appearance or
- 53 performance.

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- e) Hem exposed edges of metal.
- f) Form and seal all metal joints; provide for expansion joints per SMACNA.
2. Installation:
  - a) Install collector head, downspout, and accessories.
  - b) Join lengths with seams pop riveted and sealed watertight. Flash and seal collector head to downspouts and accessories.
  - c) Seal all metal joints watertight for full metal surface contact.
  - d) Collector Head: SMACNA style profile; submit detail for approval.
  - e) Downspouts: Rectangular profile. Seal all joints, six inches by six inches (6" x 6") minimum or as shown on published details.
  - f) Support Brackets, Joint Fasteners: Profiled to suit gutters and downspouts.
  - g) Anchorage Devices: SMACNA requirements. Type recommended by fabricator.
  - h) Collector Head Supports – Kynar.
  - i) Downspout Support Straps – Kynar.
- H. Pitch Pans – Stainless Steel:
  1. Install pitch pans of 24-gauge stainless steel according to NRCA standards, minimum of six inches by six inches (6" x 6").
  2. Pitch pans shall be fabricated to minimum of four inches (4") above the finished roof membrane. Seams of pitch pans shall be soldered inside and out.
  3. Mastic shall be applied under pitch pan flange a minimum of one-half pound (1/2#) per linear foot.
  4. All metal flanges shall be primed with asphalt primer prior to flashing installation. Inside of pitch pan shall be cleaned and primed.
  5. All projections enclosed in pitch pans shall be cleaned in any manner suitable and coated with a rust inhibitive coating as approved by the Owner/Project Consultant. Coating shall be allowed to dry prior to pitch pan fill.
  6. Base of pitch pans shall be filled around penetration with M-1 sealant. Sprinkle mod bit granules over sealant 1/4" deep.
  7. Top finish fill shall be coal-tar urethane, with maximum fill to within three-eighths inch (3/8") of top of pitch pan sides.
  8. Strip metal flange of pitch pan with one strip of Type IV fiberglass felt set in hot bitumen extending from the outer edge of the flange a minimum of three inches (3") inward to base of pitch pan.
  9. Strip in fiberglass felt with 60 mil coal-tar elastomeric membrane (CTEM) flashing set in hot asphalt extending from the outer edge of the Type IV fiberglass underlayment a minimum of three inches (3") inward to the base of the pitch pan.
- I. Bonnets/Hoods:
  1. Fabricate and install above all pitch pans, where necessary, or reinstall as applicable, metal bonnets over all pitch pans, NO EXCEPTIONS.
  2. Bonnets/Hoods shall be manufactured with metal compatible with metal to which bonnet is to be attached.
  3. On beams and other steel, weld in place bonnets fabricated from one-fourth inch (1/4") steel plate.
  4. Draw band bonnets fabricated from 22-gauge galvanized steel may be used on circular projections.

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****3.05 FINISH**

- A. Backpaint concealed metal surfaces with bituminous paint where expected to be in contact with cementitious materials or dissimilar metals. Exposed surfaces to be provided with a factory applied fluorocarbon Kynar finish meeting ASTM A 446 and AAMA specification 605.2 for high performance coating.
- B. New 24-gauge hot-dipped galvanized metal shall be painted on all locations visible from the ground with an industrial grade paint as selected by Project Manager from manufacturer's full range of colors, including metallics. Galvanized metal surface must be properly prepared by removing all oil, grease, and/or protective mill coatings by solvent cleaning surface in accordance with SSPC-SP1, and according to paint manufacturer's recommendation, to ensure proper adhesion of paint to metal.

**END OF SECTION 07600**

**EXHIBIT 2****CITY OF DENTON  
CIVIC CENTER – LOWER AREA, DENTON, TX****PROJECT NO. 20160711-30****ROOF PLANS/DETAIL DRAWINGS****1.01 ROOF PLANS**

- A. Any drawings supplied are for reference purposes only. Dimensions, penetrations, curbs, etc. must be field verified. Those shown are typical but may not be all inclusive, and contractor shall be responsible for the correctness of same. Any existing insulation thickness, deck type or other details shown on the drawings shall be subject to contractor confirmation.

**1.02 DETAIL DRAWINGS**

- A. The enclosed details for this project are intended primarily to present the proper installation of the membranes used for waterproofing at flashings, perimeter closures, roof projections, etc. Specific underlying construction configurations, such as walls, nailers, wood backing, structural steel, etc., which may currently be in place may or may not be accurately depicted on the attached details. Unless specifically called out in the accompanying written specifications, or where a detail is noted "AS DRAWN", and/or proper roofing and construction practices are not being followed, underlying construction configurations are to remain unchanged from those in place on the building prior to this reroofing.

**END OF SECTION**

**EXHIBIT 2**

**Exhibit C**

**Contractor Payment and Performance**  
**Milestones**



**EXHIBIT 2****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 days after receipt of valid invoices for which items or services have been received unless unusual circumstances arise. The 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 is later.**

**Direct deposit for payments:** 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](http://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 Herman Lawson, City of Denton Facilities Management, 869 South Woodrow, Denton, TX 76205. The copy may also be emailed to Mr. David Saltsman at [david.saltsman@cityofdenton.com](mailto:david.saltsman@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 days of the month, and submitted on the AIA 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 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. PAYMENT APPLICATIONS AND PAYMENTS TO CONTRACTORS:**

- A. Upon presentation of valid payment requests invoices, which should be within the first week of each month, the Owner shall make partial payments to the Contractor for construction accomplished during the preceding calendar month on the basis of completed construction certified to by the 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 Contractor prior to completion of the project. Upon the approval by the Owner of the Contractor's "Final Invoice for Payment" showing the total cost of the construction performed, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled there under which shall not have been paid: Provided, however, that such final payment shall be made not later than thirty (30) 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 Contractor.
- B. The 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

**EXHIBIT 2**

such excess shall have been approved by the Owner, and Owner's Representative, and in writing by the Purchasing Agent as part of a change order.

- C. No payment shall be due while the Contractor is in default in respect of any of the provisions of this contract, and the Owner may withhold from the Contractor the amount of any claim by any third party against either the Contractor or the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of this contract. This includes alleged failure of the Contractor to make payments to subcontractors.

**4. RELEASE OF LIENS AND CERTIFICATE OF CONTRACTOR:**

Release of Liens and Certificate of Contractor shall be accomplished in accordance with Article 5.3 of the Standard Terms and Conditions.

**5. PAYMENTS TO MATERIAL-MEN AND SUBCONTRACTORS:**

The 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 Contractor's Default**

If default shall be made by the 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 Contractor and the Surety or Sureties upon the Contractor's bond or bonds a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner and/or Engineer shall be made by the 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 Contractor, and the 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, appliances, and plant belonging to the Contractor or any 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 Contractor may have against third persons in connection with this contract and for such purpose the Contractor does hereby assign, transfer and set over unto the Owner all such rights claims and demands.

**B. Liquidated Damages**

The time of the completion of construction of the project is of the essence of the contract. Should the Contractor neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such money which may be then due or which may become due and payable to the Contractor the sum of FIVE HUNDRED DOLLARS (\$500.00) per day for each and every day, including weekends, that such construction is delayed on its completion beyond the specified time, as liquidated damages and

## EXHIBIT 2

not as a penalty; if the amount due and to become due from the Owner to the Contractor is insufficient to pay in full any such liquidated damages, the Contractor shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Contractor in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

### C. 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 Contractor to complete the construction of the project within the time herein agreed upon.

**EXHIBIT 2**

**Exhibit D**

**City of Denton Construction**  
**Terms and Conditions**  
**and**  
**contractual requirements**

## EXHIBIT 2

# CITY OF DENTON GENERAL CONDITIONS FOR BUILDING 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 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 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 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 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 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 Contractor;
- (2) between the Owner and a Subcontractor or Sub-subcontractor; or
- (3) between any persons or entities other than the Owner and 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.



**EXHIBIT 2****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 Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Contractor is responsible, to fulfill the 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 Proposal. 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 Contractor's Bid.

**i) BASE Proposal**

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

**j) HAZARDOUS SUBSTANCE**

The term Hazardous Substance is defined to include the following:

## EXHIBIT 2

- (1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite 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;
- (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 Contractor as provided in the Agreement.

**EXHIBIT 2**

- (b) Execution of the Building Construction Services Agreement by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions, including subsurface conditions as described and identified in the Geotechnical Report, 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 Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- (d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- (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 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;

**EXHIBIT 2**

- (4) the Supplementary General Conditions and Special Provisions, if any;
- (5) the General Conditions for Building Construction;
- (6) the 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.

**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 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.



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- (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 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 Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then 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 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. 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 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 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 Contractor's Applications for Payment.

**2.3 OWNER'S RIGHT TO STOP THE WORK**

If the 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 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 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 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 twenty (20) days after receipt of notice from the Owner, the Owner may correct the 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 Contractor from payments then or thereafter due to the Contractor. The cost of correction is subject to verification (but not approval) by the Architect/Engineer. If payments then or thereafter due the Contractor are not sufficient to cover the cost of correction, the Contractor shall pay the difference to the Owner.



**EXHIBIT 2****2.5 NOTICE TO PROCEED**

After final execution of the Contract and receipt and approval of the required performance and payment bonds and evidence of required insurance, the Owner will issue a written notice to proceed with the Work, including the designated Contract Time within which Substantial Completion of the Work must be achieved. If the Owner unreasonably delays issuance of a written notice to proceed through no fault of the Contractor, the Contractor shall be entitled only to an equitable adjustment of the Contract Time, if properly claimed pursuant to the requirements of Paragraph 4.3; but the Contractor shall not be entitled to any increase to the Contract Sum whatsoever for this reason.

**ARTICLE 3 THE CONTRACTOR****3.1 DEFINITION OF CONTRACTOR**

The 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 "Contractor" means the Contractor or the Contractor's authorized employees or representatives.

**3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

- (a) The 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 Contractor may discover. The Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Contractor will be held responsible for any known or reasonably discovered subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the 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 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 Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of 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 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 Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents set forth specific instructions concerning these matters.
- (b) The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and

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any other persons performing portions of the Work under a subcontract with the Contractor or with any Subcontractor, and all other persons or entities for which the 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 Contractor.

- (c) The 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 Contractor.
- (d) The 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 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 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 separate contractor without the Contractor having given written notice to the Architect/Engineer of the existence of any known or reasonably discovered 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 Contractor. The Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Each Contractor for his own Work 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 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 Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- (c) The 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) to bona fide residents of the City of Denton, Texas;
  - (2) to bona fide residents of the County of Denton, Texas;
  - (3) to bona fide residents of the State of Texas;
  - (4) to bona fide residents of the United States.

**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 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, WITHIN TWO (2) YEARS AFTER DISCOVERY BY THE OWNER OF THE LATENT DEFECT.
- (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 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.



**EXHIBIT 2****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 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 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 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 Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Contractor shall promptly notify the Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.
- (d) If the 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 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 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 Contractor shall not be required to employ persons or entities against which the 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 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 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);

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

**3.9 SUPERINTENDENT**

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. 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 Contractor replace its superintendent at any time and the Contractor will replace said superintendent at the Owner's direction.

**3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

- (a) The 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 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;
    - (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.



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- (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 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 Contractor's Application for Payment. No 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 Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the 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 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 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 Contractor shall also prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.
- (c) The 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 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 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

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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, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- (b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (c) Samples are physical examples 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 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 Contractor which are not required by the Contract Documents may be returned without action.
- (f) The 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 Contractor represents that the 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 Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.
- (h) The 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 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 Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The 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 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 Contractor to the Architect/Engineer at the time of the above-mentioned submittals, including additional consulting fees, if any, in any

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and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.

- (i) The 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 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 Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- (b) The 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 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 Contractor shall not unreasonably withhold from the Owner or a separate contractor the 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 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 Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Contractor's tools, construction equipment, machinery, and surplus materials.
- (b) If the Contractor fails to clean up as provided in the Contract Documents, the Owner may clean up and the Owner's cost of cleaning up shall be charged to the Contractor.

**3.16 ACCESS TO WORK**

The 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**



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- (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 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 Contractor shall bear all related costs of tests, inspections, and approvals. The 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 Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect/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 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 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 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 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 INFRINGEMENT. In the event the Contractor has reason to believe that a particular design, process or product specified infringes a patent, the Contractor shall immediately notify the Owner and the Architect/Engineer of same.

**EXHIBIT 2****3.19 INDEMNIFICATION**

- (a) THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT/ENGINEER, HARMLESS AGAINST ANY AND ALL CLAIMS, 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 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 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 PERSON OR ENTITY.
- (b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under 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 Contractor or a 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 Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the 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 Contractor.

**ARTICLE 4 CONTRACT ADMINISTRATION**

**EXHIBIT 2****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 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 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. Owner shall notify the Architect/Engineer and Contractor in writing at least 10 days in advance, if electing to appoint a representative empowered to act for the Owner during the Construction Phase. 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 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 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 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 Contractor, the provisions of the Owner/Architect/Engineer Agreement will be made available to the 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



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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 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 Contractor's responsibility as provided in Paragraph 4.3. The Architect/Engineer and the Owner will not be responsible for the 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 Contractor, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Contractor is responsible.
- (d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and 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 Contractor. Communications by and with separate contractors will be through the Owner. The 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 Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the 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 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 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

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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 Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the 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 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 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 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 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

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compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT/ENGINEER AND THE OWNER WITHIN FOURTEEN (14) DAYS AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM. Every Claim of the 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 Contractor by his signature) of the Contractor, verifying the truth and accuracy of the Claim. THE CONTRACTOR SHALL BE DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURE AND TIME LIMITS SET OUT IN THIS PARAGRAPH.

- (b) Referral to the Architect/Engineer. Claims, disputes, and other matters in question between the 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 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 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



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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 CONTRACTOR AT THE 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 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 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 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 Contractor was not at fault; or
  - (6) other reasonable grounds.
- (g) Injury or Damage to Person or Property. If the 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 Contractor asserts a claim to the Contractor that the Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the 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 Contractor to seek and assert such claim against the Owner:

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(ii) The 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 Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the 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 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 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 Contractor in the claim submittal materials.

(ii) The 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 Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid.

(iii) The Subcontractor making the claim to the 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 Contractor in the claim submittal materials.

(3) Any failure of the 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.

(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 law.

(i) Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part. The 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 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 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 Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Contractor to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).

(2) In the event that the 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 Contractor provided within fourteen (14) days after receipt of the Contractor's Claim. If



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the Owner denies the Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the 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 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 Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the 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, not to exceed 5%, 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.**
- (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 STATE LAW.

**ARTICLE 5 SUBCONTRACTORS**

**EXHIBIT 2****5.1 DEFINITIONS OF SUBCONTRACTOR**

- (a) A Subcontractor is person or entity who has a direct contract with the Contractor to perform a portion of the Work at the Project site or to supply materials or equipment to the 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. WITH REGARDS TO MWBE, THE CITY OF DENTON ONLY REQUIRE A GOOD FAITH EFFORT, THERE IS NO PERCENTAGE REQUIREMENT.**

- (a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Contractor and the Owner, the 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 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 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 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 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 Contractor shall not change a Subcontractor previously selected if the Owner or Architect/Engineer makes reasonable objection to such change.

**EXHIBIT 2****5.3 SUBCONTRACTUAL RELATIONS**

- (a) By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Contractor all the obligations and responsibilities which the 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 Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.
- (b) The Contractor is solely responsible for making payments properly to the Contractor's Subcontractors on the Project. During performance of the Work, the Contractor shall comply with the following additional rules regarding Subcontractor payments:
- (1) The 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, along with partial waivers of liens for all Work included in the application for payment. The Report shall show all payments made to date by the 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. Pay applications will not be reviewed or certified by the Architect to the Owner without accompanying partial lien waivers after the first Certificate for payment. With each Application for Payment, the Contractor shall certify that there are no mechanics' or materialmen's Liens outstanding at the date of the Application for Payment, and that all bills due with respect to the Work have been paid to date, and that there is no known basis for filing of any liens against the Surety or the Owner in connection with the Work. Upon completion by the Contractor of the construction of the project, but prior to final payment to the Contractor, the Contractor shall deliver to the Owner conditional releases of all liens, which shall identify the remaining sums to be paid pending receipt of final payment. The conditional releases of liens, upon final payment by the Owner, shall release the Owner of all liens, and of all rights to claim any lien, from all manufacturers, material-men, 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 released from all such claims. As an alternative to the Report, the 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 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.**

Provided that the Owner has been notified by written correspondence (a lien notice) from any manufacturer, material-men, or subcontractor furnishing services or materials for the project that an outstanding debt is owed, the Owner shall ensure that the Contractor is notified of such notice within ten (10) days of receipt of such notice. The Contractor shall ensure that resolution has



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been achieved for each written notice filed with the Owner, and provide sufficient written documentation to the Owner that payment has been rendered, or a resolution has been achieved that is satisfactory to the Owner.

- (2) If, for any reason, the Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Contractor shall note the amount withheld and that payment is in dispute. The Owner may require the 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 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 Contractor has knowingly provided false information regarding payment of any Subcontractor; or
  - (iii) the Contractor has otherwise failed to make payments properly to any Subcontractor.
- (4) THE 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 CONTRACTOR.

**5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

In the event of a termination of this Contract by the Owner under Article 14, the 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 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, 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

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insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make 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 Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The 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 Contractor, separate contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Contractor's Change Order proposal is denied by the Owner, the 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 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 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 Contractor's construction and operations with the separate contractors as required by the Contract Documents.
- (b) If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly 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 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 Contractor's Work, except as to defects not then reasonably discoverable.
- (c) The Owner shall not be liable to the Contractor for damages suffered by the 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 Contractor and a separate contractor, the Architect/Engineer or the Owner may furnish the Contractor with written instructions designating priority of effort or change in methods, whereupon the Contractor shall immediately comply with such direction. In such event, the Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays



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verified by the Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Contractor.

- (d) The Contractor shall promptly remedy damage wrongfully caused by the 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 Contractor cause damage to the work or property of any separate contractor on the Project, the 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 Contractor who shall defend such proceedings, at the Contractor's expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Contractor shall pay or satisfy it and shall reimburse the Owner for 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 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 and allocate the cost among those 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 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

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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 guaranteed maximum price amount properly itemized and supported by sufficient substantiating data to permit evaluation;
  - (2) unit prices stated in the Contract Documents or subsequently agreed upon;
  - (3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
  - (4) 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 to 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 15%. 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:

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- (1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
  - (2) costs of materials, supplies and equipment (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.

### 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



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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 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 or Administrative Action. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE 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 Contractor, or of persons or entities for whom the 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 Contractor, the 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 Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- (b) The 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 Contractor as required by Article 11. The date of

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commencement of the Work shall not be changed by the effective date of insurance required by Article 11.

- (c) **Liquidated Damages.** The Contractor shall proceed expeditiously with adequate forces, materials, and equipment, and shall achieve Substantial Completion within the Contract Time. If the Contractor fails or refuses to complete the Work within the Contract Time as specified in the Bid Proposal form, the Building Construction Services Agreement, or in any proper extension of the Contract Time granted by the Owner, then the Contractor agrees, as a part of the consideration for the awarding of the Contract, to pay to the Owner the amount of liquidated damages (hereinafter called the "Stipulated Amount") as stipulated in the Bid Proposal form and the Building Construction Services Agreement for each calendar day that the Contractor has not Substantially Completed the Work after the expiration of the Contract Time provided. The Stipulated Amount is not to be considered as a penalty, but shall be deemed, taken, or treated as reasonable liquidated damages, fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would sustain in the event of the Contractor's late completion of the Project, and the stipulated amount is agreed to be the daily amount of damages that the Owner would sustain. The Stipulated Amount, as it accrues, will be retained from any portion of the Contract Sum due or that may become due to the Contractor. In the event the portion of the Contract Sum retained by the Owner is insufficient to recover the Stipulated Amount, then the Contractor or the Contractor's Surety shall pay to the Owner any additional liquidated damages due that are in excess of the funds remaining unpaid in the Contract Sum. The Owner shall be the sole judge as to whether or not the Work has been Substantially Completed within the calendar days allotted, which shall include the original Contract Time and any proper extension of the Contract Time granted in writing by the Owner. Should the Contractor dispute the Owner's determination of liquidated damages due, however, or should the Contractor, or the Contractor's agents or assigns, institute any legal action against the Owner to enforce rights under the Contract Documents, then this Subparagraph 8.2(c) shall not be construed to prevent the Owner from seeking full recovery for any and all actual damages suffered by the Owner and attributable to the Contractor, as an alternative to all liquidated damages due.

**8.3 DELAYS AND EXTENSIONS OF TIME**

- (a) If the 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 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.
- (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 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



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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 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 Contractor shall promptly suspend the Work when either the Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The 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 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 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 Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The 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 Contractor or any of the Subcontractors, for which the 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 Contractor is entitled to a time extension, as determined by the Architect/Engineer, Owner may similarly direct acceleration and the Contractor agrees to perform same on the basis that the Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). THE 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 Contractor for the performance of the Work under the Contract Documents.

**9.2 SCHEDULE OF VALUES**

**EXHIBIT 2**

Before the first Application for Payment, the 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 Contractor's Application for Payment. The schedule of values shall follow the trade division of the Specifications. 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 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 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. 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 Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Contractor complies with Clause 5.3(b) (2) of these General Conditions and the Contractor's Payment Bond Surety consents in writing to payment to the 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 CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.
- (d) The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

**EXHIBIT 2**

- (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, Contractor shall, at 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 Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Contractor's sole expense, and amounts may be withheld from the 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 \$25,000.00 and performance and payment bonds are not furnished by the Contractor, 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 Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the 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 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;



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- (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or
- (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- (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 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 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 typically applied by the City for all public works contracts in excess of \$50,000. The City may require varying percentage withholding amounts; however, the City typically requires five percent. For retainage percentages in excess of five percent, the City must deposit the retainage into an interest-bearing account and pay the interest earned to the contractor on completion of the contract. 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 or decreased 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 Contractor as provided in Subparagraph 9.4(a). If the 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;



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- (3) failure of the 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 liquidated 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 each of the above reasons that existed for withholding certification are removed or remedied, 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 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 Contractor default remains uncured.
- (b) The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the 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 Contractor on account of such Subcontractors portion of the Work. The 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 Contractor and action taken

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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 Contractor or, in the event of the 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 Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The 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 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 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 Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list accompanying the Certificate.
- (c) The Certificate of Substantial Completion shall be submitted to the Owner and the 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 Contractor and certification by the Architect/Engineer, the Owner shall make payment,

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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 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 Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion Substantially Complete, the Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the
- (a) progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect/Engineer.
- (b) Immediately prior to such partial occupancy or use, the Owner, 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 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 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 Contractor.
- (b) Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect/Engineer:



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- (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 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 Contractor's affidavit under Clause (b)(1) shall state that the Contractor has paid each of his subcontractors, laborers or materialmen in full for all labor and materials provided to him for the Work under this Contract. In the event the Contractor has not paid each of his subcontractors, laborers or materialmen in full, the 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 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 Contractor or by issuance of Change Orders affecting final completion and the Architect/Engineer confirms the delay, the Owner shall, upon application by the 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 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 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.



**EXHIBIT 2****10.2 SAFETY OF PERSONS AND PROPERTY**

- (a) The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- (1) employees on the Work and other persons who may be affected thereby;
  - (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
  - (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- (b) The 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 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 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 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 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 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 Contractor shall furnish the Owner and the Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury,

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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 "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 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 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 Contractor of any responsibility for damage resulting from any blasting operations.

- (f) The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the 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 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 Contractor or any of its Subcontractors. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.19. 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 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 Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect/Engineer.
- (h) The 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 Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

**10.4 PUBLIC CONVENIENCE AND SAFETY**

- (a) The 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

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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 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 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 Contractor's neglect shall be deducted from the Contract Sum. The 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 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 Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the 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 Contractor shall, at the 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 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 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 Contractor at Contractor's cost and expense. The 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 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 Contractor.



**EXHIBIT 2****10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS**

When existing storm sewers or drains have to be taken up or removed, the Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The 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 Contractor shall provide and maintain, at the Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. The Contractor shall, at the 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 Contractor desires to use the Owner's water in connection with the Work, the Contractor shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the 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 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 Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Contractor through the City of Denton.

**10.9 USE OF FIRE HYDRANTS**

The 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 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



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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 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 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 Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Contractor or any of its Subcontractors, the Contractor shall be responsible for remediating the condition at the sole expense of the Contractor in accordance with the 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 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 Contractor or any Subcontractor or Supplier. The 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 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 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 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 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 Contractor or a Subcontractor:
  - (1) The 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

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such event, the Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.

- (2) The Contractor shall immediately respond in accordance with the SPRP in the event of a spill.
- (3) The 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 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 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 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 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 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 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 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 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 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 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 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 chrysotile, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable.

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- (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 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 Contractor and approved by the Owner;
  - (2) if the Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and backcharge the 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 CONTRACTOR'S INSURANCE**

Contractors shall refer to Attachment A for all City of Denton insurance requirements.

### **11.2 PROPERTY INSURANCE**

Contractors shall refer to Attachment A for all City of Denton insurance requirements.

### **11.3 'UMBRELLA' LIABILITY INSURANCE**

Contractors shall refer to Attachment A for all City of Denton insurance requirements.

### **11.4 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS**

Contractors shall refer to Attachment A for all City of Denton insurance requirements.

### **11.6 PERFORMANCE AND PAYMENT BONDS**

- (a) Subject to the provisions of Subparagraph 11.3(b), the Contractor shall, with the execution and delivery of the Construction Services Agreement, 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 Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.3(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 Contract Sum, 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) year 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 Contract Sum, 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) If the Contract Sum, including Owner-accepted alternates and allowances, if any, is greater than \$100,000, Performance in 100% of the Contract Sum are mandatory and shall be provided by the Contractor. If the Contract Sum is greater than \$50,000 but less than or equal to \$100,000, only a Payment Bond in 100% of the Contract amount is mandatory; provided, however, that the Contractor may elect to furnish a Performance Bond in the same amount if the Contractor so chooses. If the Contract Sum is less than or equal to \$25,000, the Contractor may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid to the Contractor until final completion and acceptance of all work by Owner. If the Contractor elects to provide Performance and Payment Bonds 100% of the total Contract Sum, progress payments in accordance with these General Conditions shall be disbursed.
- (c) 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 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.
- (d) The person or persons, partnership, company, firm, Limited Liability Company, association, corporation, or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with the Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on the Owner until it has been approved as to form by the City Attorney, executed for the Owner by the City Manager, the performance and payment bonds and evidence of insurance have been furnished as required by the Contract Documents, and the fully executed contract has been delivered to the Contractor.
- (e) The failure of the Contractor to execute the Contract or deliver the required statutory bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as the Owner can assemble and deliver the Contract shall constitute a material breach of the Contractor's bid proposal and the Owner may rescind the Contract award and collect or retain



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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 Contractor's failure to execute and furnish the statutory bonds and to sign the Contract within ten (10) days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.3(e). In the event the Owner should re-advertise for bids, the defaulting 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 observation and be replaced at the 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 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 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 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 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 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 Contractor a written acceptance or waiver of the defect or nonconformity. The 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.

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- (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 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 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 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 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 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 Contractor nor accepted by the Owner.
- (f) If the 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 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 Contractor's expense. If the 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 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 Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Contractor then or thereafter are not sufficient to cover the deficiency, the Contractor shall pay the difference to the Owner.
- (g) The 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 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 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 Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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- (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 Contractor and the 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 Contractor and the Surety. If for any reason the 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 Contractor, including but not limited to the following causes:
- (1) Failure or refusal of the 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 Contractor is insufficient to complete the Work within the specified time.
  - (3) Failure or refusal of the 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 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.

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- (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 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 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 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 twenty (20) days after the written notice of termination for cause has been served upon the Contractor and the surety or its authorized agents, assume the obligations of the Contractor for the Work or that portion of the Work which the Owner has ordered the 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 Contractor's default.
- In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the 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 liquidated 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 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



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Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The 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 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 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 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 liquidated or actual 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 Contractor, then the Owner may pay to the Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the 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 Contractor, then the 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 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 right to terminate this Contract for the convenience of the Owner (including but not limited to nonappropriation 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 Contractor. Upon the Contractor's receipt of such written notice, the Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The 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 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 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 Contractor for any reason, including but not limited to:
  - (1) the causes described in Clauses 13.1(a)(1) through (a)(10) above;

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- (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 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 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 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 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 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 governed by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.
- (b) This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Denton and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. 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.

**EXHIBIT 2****14.2 SUCCESSORS AND ASSIGNS**

The Owner and the 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 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 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 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 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 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,

**EXHIBIT 2**

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 Contractor is that of an independent contractor. The 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 Contractor an agent, servant, or employee of the Owner, or making the Contractor or any of the 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 Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the 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, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The 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 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 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 Contractor to remove any employee of the 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 Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.



## EXHIBIT 2

### ARTICLE 15 RIGHT TO AUDIT CONTRACTOR'S RECORDS

By execution of the Building Construction Services Agreement, the Contractor grants the Owner the right to audit, at the Owner's election, all of the Contractor's records and billings relating to the performance of the Work under the Contract Documents. The 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 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. 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.

**Should a conflict arise between the PO, RFP document, supplier terms, drawings, specifications, construction document, or contract; the terms and conditions set forth in the City of Denton General Conditions and the negotiated contract shall prevail.**

**EXHIBIT 2**

**Exhibit E**  
**City of Denton**  
**Special Terms and Conditions**

**EXHIBIT 2****ADDITIONAL TERMS AND CONDITIONS****Contract Term**

It is the intention of the City of Denton to award a contract for construction of the project as described in the drawings and specifications. Materials and services undertaken pursuant to this RFP will be required to commence within fourteen (14) days of delivery of a Notice to Proceed. The services shall be accomplished per the Scope of Work as identified in Section III, the Procurement Process and Procedures as outlined in Section II, and shall conform to the requirements contained in the Technical Specification in Exhibit 2, and Technical Drawings in Exhibit 3.

The Contract shall commence upon the issuance of a Notice to Proceed by the City of Denton and shall automatically expire upon completion of the work and acceptance by the City of Denton.

**Pricing**

Only firm, lump sum pricing with no escalation will be accepted for this project.

**Price Adjustments**

Price adjustments will not be allowed for this project unless a change in scope is approved that increases or decreases the amount of work required.

Requests or proposals for changes in scope must be submitted in writing with documentation that provides justification for the change and supporting evidence that describes the basis for the cost change.

Upon receipt of such request, the City of Denton reserves the right to either: accept the proposed change as competitive with the general market price at the time and issue appropriate authorizations or reject the increases within 30 calendar days after receipt of a properly submitted request. No work shall be undertaken on a proposed change until authorized by the City of Denton in the form of a Purchase Order change and/or other documentation appropriate to amending the contract.

The request can be sent by e-mail to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

Or mail to:

City of Denton

Attn: Purchasing Manager

RFP # 4811

901B Texas Street

Denton, Texas 76209

Or call:

City of Denton Purchasing

(940) 349-7100

The City of Denton reserves the right to accept, reject, or negotiate any proposed price changes.

**Quantities**

The quantities indicated on the drawings and in the Technical Specification are believed to be accurate but shall be considered only as estimates. The project requires complete and functional construction of the substation perimeter fence in accordance with the dimensions presented on the project documents. Differences between the quantities of material required and the estimated quantities will not be considered as basis for a change in the price for the project. In submitting a proposal, the proposer is stating that he has reviewed the project drawings and specifications and understands their intent and has checked the quantities and dimension and is asserting that the proposal is intended to account for all conditions and quantities to complete the project as described in the plans and specification.

**Substitutions**

Substitutions are not permitted without the written approval of the City of Denton Purchasing Department. For substitutions prior to the proposal deadline, this will be accomplished with a submittal

**EXHIBIT 2**

to the Architect/Engineer, and approval by the City representative, and issuance of a written addendum. For substitutions after contract award, this will be accomplished with a submittal request to the Architect/Engineer, and approval by the City representative, and issuance of a written contract change order.

**Product Changes During Contract Term**

The supplier shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to the Project Manager with the RFP number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be rejected and must be removed from the site at the supplier's expense. Products that have been installed shall be replaced at the supplier's expense.

**Patent Rights**

The contractor agrees to indemnify and hold harmless the City from any claim involving patent right infringement or copyrights on goods supplied.

**Asbestos Free Materials**

The contractor shall provide asbestos-free materials as represented by the Manufacturer's "Materials Safety Data Sheets"

**Rights to Data, Documents, and Computer Software (Government Entity Ownership)**

Any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by contractor in the performance of its obligations under this contract shall be the exclusive property of the City and all such materials shall be delivered to the City by the contractor upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of contractor's obligations under this contract without the prior written consent of the City; provided, however, that contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work.

The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

**Adding New Products or Services to the Contract after Award**

Following the Contract award, ADDITIONAL services of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added. A formal written request may be sent to successful Contractor to provide a proposal on the additional services and shall submit proposal to the City as instructed. All submitted prices are subject to negotiation in accordance with Texas Government Code 2254. The City may accept or reject the proposal, and may issue a separate RFQ for the services requested, after rejecting some, or all, of the proposal. The services covered under this provision shall conform to the statement of work, specifications, and requirements as outlined in the request. Contract changes shall be made in accordance with Local Government Code 252.048.

**Samples**

Respondents must make samples available in accordance with the specification and upon request by the City of Denton prior to award with no costs to the City.



**EXHIBIT 2****Venue**

This agreement shall be governed by the law of the State of Texas and venue for its construction and enforcement shall lie in the courts of Denton County, Texas.

**Silence of Specifications**

The apparent silence of these specifications as to any detail or the apparent omission from it of a detailed description concerning any point, shall be regarded as a meaning that the only best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

**Prevailing Wage Rates**

In accordance with Texas Government Code 2258, the awarded contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website [www.wdol.gov](http://www.wdol.gov) for Denton County, Texas (WD-2509).

Notwithstanding any other provision of this Contract, the awarded contractor hereby represents and warrants that the contractor shall pay to each of its employees a wage not less than what is currently known as the "Federal Minimum Wage" and any increase or amendments thereto. Furthermore, contractor shall produce proof of compliance with this provision by contractor to the City. The City shall withhold payments due to contractor until contractor has complied with this provision. Prior to any payment being made for work satisfactorily completed and accepted, contractor shall submit wage rate affidavits with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage".

**Special Permitting Requirements**

The awarded contractor shall work with identified City staff to obtain the necessary permits for construction of the project.

**Contracts and Bonds**

Successful awarded contractor will be required to sign original contract and submit a performance and payment bonds for 100 percent of the total proposal submitted 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.

The City shall normally return the proposal bonds within ten (10) working days after the proposal due date, except for the three top ranked firms. The three top ranked firms will be retained by the City until the required contract and bonds have been executed, after which they shall be returned.

**SPECIAL CONDITIONS FOR GRANT FUNDED PURCHASES****DAVIS BACON COMPLIANCE REQUIREMENTS**

The Contractor shall comply with the requirements of the Davis-Bacon Wage Act and the Wage Rate Requirements under Section 1606 of the Recovery and Reinvestment Act (the Act) and shall indemnify the City from liability for any failure to pay wages in compliance with the Act. The contractor shall ensure that all laborers and mechanics employed in the performance of the project for which the

**EXHIBIT 2**

assistance is provided, including those employed by subcontractors, are paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the 'Davis-Bacon Act'). The bidder who is awarded the Contract shall pay the wage rate in effect as of the date the Contract is awarded. The Contractor shall cooperate with the City by providing information in the form and frequency requested by the City concerning the type of work performed, the number of hours worked, and the hourly rates paid for the various types of work performed by all workers on the Project. The Contractor shall allow City staff to conduct on-site wage interviews and shall post information concerning the Act as requested by the City.

All contractors and subcontractors must comply with Davis-Bacon Wage Rates and the Wage Rate Requirements of Section 1606 of the Recovery and Reinvestment Act.

**The Wage Rate Requirements, as stated in the Recovery and Reinvestment Act Grant are as follows:**

**THIS AWARD TERM IS APPLICABLE TO ARRA AWARDS WHEN WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT TERM IS APPLICABLE.**  
**THIS AWARD TERM IS ALSO APPLICABLE TO SUBGRANTS AND CONTRACTS.**

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

*Recipient* means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

*Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

**Davis-Bacon Act**

(a) *Definition.*—"Site of the work"—

(1) Means--

- (i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and
- (ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is—
  - (A) Located in the United States; and
  - (B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

- (i) They are dedicated exclusively, or nearly so, to performance of the award or project; and
- (ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

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- (3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

- (b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

- (2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

- (3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

- (4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all

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the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
  - (ii) The classification is utilized in the area by the construction industry.
  - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.
- (d) Whenever the minimum wage rate prescribed in the award for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.



**EXHIBIT 2****Rates of Wages**

The minimum wages to be paid laborers and mechanics under this award involved in performance of work at the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to this award. These wage rates are minimum rates and are not intended to represent the actual wage rates that the Contractor may have to pay.

**Payrolls and Basic Records**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and last 4 digits of the social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the article entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b) (1) The Contractor shall submit weekly for each week in which any award work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this article. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the --

Superintendent of Documents U.S. Government Printing Office Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the award and shall certify --
  - (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this article and that such information is correct and complete;
  - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the award during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the

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Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the award.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this article.

(4) The falsification of any of the certifications in this article may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this article available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**Withholding of Funds**

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this award or any other Federal award with the same Prime Contractor, or any other federally assisted award subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the award. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the award, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**Apprentices and Trainees**

(a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if

**EXHIBIT 2**

certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

- (2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.
- (3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this article, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- (4) Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.
- (5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- (6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

- (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.
- (2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the

**EXHIBIT 2**

wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

- (3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (4) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this article shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

**Compliance with Copeland Act Requirements**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this award.

**Subcontracts (Labor Standards)**

- (a) Definition. "Construction, alteration or repair," as used in this article means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—
  - (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
  - (2) Painting and decorating;
  - (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
  - (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the article entitled Davis Bacon Act of this award, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and
  - (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a) (1) (ii) of the Davis-Bacon Act article, and the physical place or places where the building or work will remain (paragraph (a) (1) (i) of the Davis Bacon Act article, in the "site of the work" definition).
- (b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the articles entitled—



## EXHIBIT 2

- (1) Davis-Bacon Act;
  - (2) Contract Work Hours and Safety Standards Act -- Overtime Compensation (if the article is included in this award);
  - (3) Apprentices and Trainees;
  - (4) Payrolls and Basic Records;
  - (5) Compliance with Copeland Act Requirements;
  - (6) Withholding of Funds;
  - (7) Subcontracts (Labor Standards);
  - (8) Contract Termination -- Debarment;
  - (9) Disputes Concerning Labor Standards;
  - (10) Compliance with Davis-Bacon and Related Act Regulations; and
  - (11) Certification of Eligibility.
- (c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the award articles cited in paragraph (b).
- (d) (1) Within 14 days after issuance of the award, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the articles set forth in paragraph (b) of this article have been included in the subcontract.

Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

- (e) The Contractor shall insert the substance of this article, including this paragraph (e) in all subcontracts for construction within the United States.

### **Contract Termination -- Debarment**

A breach of the award articles entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act -- Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the whole award or in part for the Recovery Act covered work only, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

### **Compliance with Davis-Bacon and Related Act Regulations**

**EXHIBIT 2**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this award.

**Disputes Concerning Labor Standards**

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes and Appeals as defined in 10 CFR 600.22. Disputes within the meaning of this article include disputes between the Contractor (and any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**Certification of Eligibility**

- (a) By entering into this award, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government awards by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this award shall be subcontracted to any person or firm ineligible for award of a Government award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**Approval of Wage Rates**

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this award must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the award. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

**BUY AMERICAN ACT COMPLIANCE REQUIREMENTS**

The Contractor acknowledges to and for the benefit of the **City of Denton** that it understands the goods and services under this Agreement are being funded with monies made available by the American Reinvestment and Recovery Act of 2009 (Recovery Act) (or are being made available for a project being funded with monies made available by the Recovery Act) and section 1605 of such law contains provisions commonly known as "Buy American." The Buy American requirement prohibits the use of Recovery Act funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States ("Buy American requirement") including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Department of Energy (DOE) grantee that (a) the Contractor has reviewed and understands the Buy American requirement, (b) all of the iron, steel, and manufactured goods used in the project will be and/or have been produced in the United States in a manner that

**EXHIBIT 2**

complies with the Buy American requirement, unless an exception to the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support an exception to the Buy American requirement, as may be requested by the DOE grantee or DOE. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the DOE grantee to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the DOE grantee resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part from DOE). Neither this paragraph (nor any provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the DOE grantee.

**The requirements for the Buy American Act, as stated in the Recovery and Reinvestment Act Grant are as follows:**

**REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS --  
SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009  
(MAY 2009)**

**THIS AWARD TERM IS APPLICABLE TO ANY RECOVERY ACT FUNDS FOR  
CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR OF A PUBLIC BUILDING OR  
PUBLIC WORK AND THE TOTAL PROJECT VALUE IS ESTIMATED LESS THAN \$7,443,000.  
THIS AWARD TERM ALSO APPLIES TO ALL SUBGRANTS AND CONTRACTS.**

a. Definitions. As used in this award term and condition--

- (1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—
  - (i) Processed into a specific form and shape; or
  - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- (2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- (3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbons, and may include other elements.

b. Domestic preference.

- (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

**EXHIBIT 2**

- (2) This requirement does not apply to the material listed by the Federal Government as follows:

None

[Award official to list applicable excepted materials or indicate "none"]

- (3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--
- (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
  - (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
  - (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

c. Request for determination of inapplicability of Section 1605 of the Recovery Act.

- (1) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b) (3) of this section shall include adequate information for Federal Government valuation of the request, including--
- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
  - (B) Unit of measure;
  - (C) Quantity;
  - (D) Cost;
  - (E) Time of delivery or availability;
  - (F) Location of the project;
  - (G) Name and address of the proposed supplier; and
  - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b) (3) of this section.
    - (i) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
    - (ii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
    - (iii) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
- (2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated



**EXHIBIT 2**

with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

- (3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

- d. Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

**Foreign and Domestic Items Cost Comparison**

List	Foreign and Domestic Items Cost Comparison				name,
	Description	Unit of Measure	Quantity	Cost (dollars)*	
	<i>Item 1:</i>				
	Foreign steel, iron, or manufactured good				
	Domestic steel, iron, or manufactured good				
	<i>Item 2:</i>				
	Foreign steel, iron, or manufactured good				
	Domestic steel, iron, or manufactured good				

address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

\*Include all delivery costs to the construction site.

**EXHIBIT 2**

**Exhibit F**

**Payment and Performance Bonds**

## EXHIBIT 2

Bond #46BCSHK7140

## PERFORMANCE BOND

STATE OF TEXAS §

COUNTY OF DENTON §

KNOW ALL MEN BY THESE PRESENTS: That CBS Mechanical, Inc. dba CBS Roofing Services whose address is 5001 West University Drive, Denton, Texas 76207 hereinafter called Principal, and the Hartford Fire Insurance Company, a corporation organized and existing under the laws of the State of Connecticut, and fully authorized to transact business in the State of Texas, as Surety, are held and firmly bound unto the City of Denton, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter called Owner, in the penal sum of ONE-HUNDRED AND EIGHTY-THREE THOUSAND, FIVE HUNDRED AND EIGHTEEN DOLLARS (\$183,518.00), in lawful money of the United States, to be paid in Denton County, Texas, for the payment of which sum well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement, which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement, which reduces the Contract price, decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract, identified by Ordinance, with the City of Denton, the Owner, dated the 16<sup>th</sup> Day of August, 2016, a copy of which is hereto attached and made a part hereof, for the Construction Services stated within Contract #6179 – Construction of City of Denton Civic Center Roof Renovation Project – Lower Section.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said Contract in accordance with the Plans, Specifications and Contract Documents during the original term thereof and any extension thereof which may be granted by the Owner, with or without notice to the Surety, and during the life of any guaranty or warranty required under this Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; and, if the Principal shall repair and/or replace all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of final completion and final acceptance of the Work by the Owner; and, if the Principal shall fully indemnify and save harmless the Owner from all costs and damages which Owner may suffer by reason of failure to so perform herein and shall fully reimburse and repay Owner all outlay and expense which the Owner may incur in making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

**EXHIBIT 2**

PROVIDED FURTHER, that if any legal action be filed upon this Bond, exclusive venue shall lie in Denton County, State of Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder, or to the Plans, Specifications, Drawings, etc., accompanying the same, shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder, or to the Plans, Specifications, Drawings, etc.

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Denton County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas.

IN WITNESS WHEREOF, this instrument is executed in three (3) copies, each one of which shall be deemed an original, this the 16th day of August, 2016.

ATTEST:

BY: Renee Carter  
SECRETARY

PRINCIPAL

CBS Mechanical, Inc. dba CBS Roofing Services

BY: [Signature]  
PRESIDENT VICE PRESIDENT

WITNESS:

BY: Roberta H. Cole

SURETY

Hartford Fire Insurance Company

BY: [Signature]  
Tracy Tucker, ATTORNEY-IN-FACT

The Resident Agent of the Surety in Denton County, Texas for delivery of notice and service of the process is:

NAME: Misty Links

STREET ADDRESS: 1212 N Locust St Denton, TX 76201

(NOTE: Date of Performance Bond must be date of Contract. If Resident Agent is not a corporation, give a person's name.)



## EXHIBIT 2

## PAYMENT BOND

Bond #46BCSHK7140

STATE OF TEXAS §

COUNTY OF DENTON §

KNOW ALL MEN BY THESE PRESENTS: That CBS Mechanical, Inc. dba CBS Roofing Services whose address is 5001 West University Drive, Denton, Texas 76207 hereinafter called Principal, and the Hartford Fire Insurance Company, a corporation organized and existing under the laws of the State of Connecticut, and fully authorized to transact business in the State of Texas, as Surety, are held and firmly bound unto the City of Denton, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter called Owner, in the penal sum of ONE-HUNDRED AND EIGHTY-THREE THOUSAND, FIVE HUNDRED AND EIGHTEEN DOLLARS (\$183,518.00), in lawful money of the United States, to be paid in Denton County, Texas, for the payment of which sum well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement, which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement, which reduces the Contract price, decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract, identified by Ordinance, with the City of Denton, the Owner, dated the 16<sup>th</sup> Day of August, 2016, a copy of which is hereto attached and made a part hereof, for the Construction Services stated within Contract #6179 – Construction of City of Denton Civic Center Roof Renovation Project – Lower Section.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material in the prosecution of the Work provided for in said Contract and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby expressly waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, exclusive venue shall lie in Denton County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder, or to the Plans, Specifications, Drawings, etc., accompanying the same, shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder, or to the Plans, Specifications, Drawings, etc.

## EXHIBIT 2

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Denton County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such surety, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas.

IN WITNESS WHEREOF, this instrument is executed in three (3) copies, each one of which shall be deemed an original, this the 16th day of August, 2016.

ATTEST:

BY: Benei Carter  
SECRETARY

PRINCIPAL

CBS Mechanical, Inc. dba CBS Roofing Services

BY: [Signature]  
PRESIDENT VICE PRESIDENT

WITNESS:

BY: [Signature]

SURETY:

Hartford Fire Insurance Company

BY: [Signature]  
Tracy Tucker ATTORNEY-IN-FACT

The Resident Agent of the Surety in Denton County, Texas for delivery of notice and service of the process is:

NAME: Misty LinksSTREET ADDRESS: 1212 N Locust St Denton, TX 76201

(NOTE: Date of Payment Bond must be date of Contract. If Resident Agent is not a corporation, give a person's name.)

## EXHIBIT 2

## POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

Bond T-12

One Hartford Plaza

Hartford, Connecticut 06155

email: bond.claims@thehartford.com

call: 888-266-3488 | fax: 860-757-5835

Agency Code: 46-503582

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- ☒ Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☒ Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☒ Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- ☐ Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of Unlimited**

Tracy Tucker, W. Lawrence Brown, Steven Tucker of FT WORTH, Texas

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on August 1, 2009, the Companies have caused these presents to be signed by its Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



John Gray, Assistant Secretary

M. Ross Fisher, Vice President

STATE OF CONNECTICUT

COUNTY OF HARTFORD

ss.

Hartford

On this 12th day of July, 2012, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Kathleen T. Maynard

Kathleen T. Maynard  
Notary Public

My Commission Expires July 31, 2016

I, the undersigned, Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of 16th day of August, 2016.  
Signed and sealed at the City of Hartford.



Kevin Heckman, Assistant Vice President

**EXHIBIT 2**

**IMPORTANT NOTICE**

To obtain information or make a complaint:

You may contact your agent.

You may call Hartford Insurance Group at the toll free telephone number for information or to make a complaint at:

**1-800-392-7805**

You may also write to The Hartford:

**The Hartford  
Hartford Financial Products  
2 Park Avenue, 5<sup>th</sup> Floor  
New York, New York 10016  
1-212-277-0400**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

**1-800-252-3439**

You may write the Texas Department of Insurance

P.O. Box 149104  
Austin, TX 78714-9104  
Fax Number (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

**PREMIUM OR CLAIMS DISPUTES:** Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**ATTACH THIS NOTICE TO YOUR POLICY:** This notice is for your information only and does not become a part or condition of the attached document.

**AVISO IMPORTANTE**

Para obtener informacion o para someter una queja.

Puede comunicarse con su agente.

Usted puede llamar al numero de telefono gratis de The Hartford Insurance Group para informacion o para someter una queja al

**1-800-392-7805**

Usted tambien puede escribir a The Hartford.

**The Hartford  
Hartford Financial Products  
2 Park Avenue, 5<sup>th</sup> Floor  
New York, New York 10016  
1-212-277-0400**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de compañías, coberturas, derechos o quejas al:

**1-800-252-3439**

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104  
Austin, TX 78714-9104  
Fax Number (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

**DISPUTAS SOBRE PRIMAS O RECLAMOS:** Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con su agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

**UNA ESTE AVISO A SU POLIZA:** Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.



**EXHIBIT 2**

**Exhibit G**  
**Insurance Requirements**  
**and Contractor Documentation**

## EXHIBIT 2



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/1/2016

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

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

<b>PRODUCER</b> Tucker Agency, Ltd. P O Box 2285 Ft. Worth TX 76113		<b>CONTACT NAME:</b> Judy Branch <b>PHONE (A/C No. Ext):</b> (817) 336-8520 <b>FAX (A/C No):</b> (817) 336-6501 <b>E-MAIL ADDRESS:</b> judy@tuckeragency.com	
<b>INSURED</b> CBS Roofing Services (A Division of CBS Mechanical, Inc.) 5001 W University Dr Denton TX 76207		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Amerisure Insurance Co <b>INSURER B:</b> Amerisure Partners Ins Co <b>INSURER C:</b> Travelers Property & Casualty <b>INSURER D:</b> Federal Insurance Company <b>INSURER E:</b> <b>INSURER F:</b>	

## COVERAGES

CERTIFICATE NUMBER: CBS Roof 15-16 All Lines

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b>						EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	Y	CPP 2056599 08	9/1/2015	9/1/2016	MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> XCU Included						PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> Contractual Liability						GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						\$
B	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS	Y	Y	CA 2056597 07	9/1/2015	9/1/2016	Underinsured motorist Bl single \$ 500,000
	<input type="checkbox"/> NON-OWNED AUTOS						EACH OCCURRENCE \$ 10,000,000
C	<input checked="" type="checkbox"/> UMBRELLA LIAB						AGGREGATE \$ 10,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB						\$
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	ZUP-11R14276-15-NF	9/1/2015	9/1/2016	\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below		Y	WC 2056602 07	9/1/2015	9/1/2016	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	<b>Installation Floater</b>			0663-61-30 WCE	1/14/2015	1/14/2016	Limit of Insurance 100,000 Deductible 5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 Project: Denton Civic Center-Lower Section

Additional insured in favor of City of Denton, its officials, agents, employees and volunteers and the Architect/Engineers applies to all policies except workers compensation if required by written contract. General liability additional insured includes ongoing and completed operations if required by written. Waiver of subrogation in favor of City of Denton applies to all policies if required by written contract. All policies include blanket 30 day notice of cancellation if required by written contract.

## CERTIFICATE HOLDER

## CANCELLATION

City of Denton 869 S.Woodrow Denton, TX 76205	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Tracy Tucker/JUDY
---	--

ACORD 25 (2010/05)

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INS025 (201005) 01

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**EXHIBIT 2**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**TEXAS  
CONTRACTOR'S BLANKET ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

<b>Policy Number</b> CPP 2056599 08	<b>Agency Number</b> 09/01/2015	<b>Policy Effective Date</b> 09/01/2015
<b>Policy Expiration Date</b> 09/01/2016	<b>Date</b> 09/01/2015	<b>Account Number</b>
<b>Named Insured</b> CBS Mechanical, Inc. CBS Roofing Services (A Division of CBS Mechanical, Inc.) K&K Landscape Services, LLC	<b>Agency</b> Tucker Agency, Ltd	<b>Issuing Company</b> Amerisure Ins Co

1. a. **SECTION II - WHO IS AN INSURED** is amended to add as an insured any person or organization:

Whom you are required to add as an additional insured on this policy under a written contract or written agreement relating to your business.

- b. The written contract or written agreement must:

- (1) Require additional insured status for a time period during the term of this policy; and
- (2) Be executed prior to the "bodily injury", "property damage", or "personal and advertising injury" leading to a claim under this policy.

- c. If, however:

- (1) "Your work" began under a letter of intent or work order; and
- (2) The letter of intent or work order led to a written contract or written agreement within 30 days of beginning such work; and
- (3) Your customer's customary contracts require persons or organizations to be named as additional insureds;

we will provide additional insured status as specified in this endorsement.

However, if you have entered into a construction contract subject to Subchapter C of Chapter 151 of Subtitle C of Title 2 of the Texas Insurance Code with the additional insured, the insurance afforded to such person(s) or organization(s) only applies to the extent permitted by Subchapter C of Chapter 151 of Subtitle C of Title 2 of the Texas Insurance Code.

2. **SECTION II - WHO IS AN INSURED** is amended to add the following:

If the additional insured is:

- a. An individual, their spouse is also an additional insured.
- b. A partnership or joint venture, members, partners, and their spouses are also additional insureds.
- c. A limited liability company, members and managers are also additional insureds.
- d. An organization other than a:
  - (1) Partnership;
  - (2) Joint venture; or

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## EXHIBIT 2

## (3) Limited liability company;

executive officers and directors of the organization are also additional insureds. Stockholders are also additional insureds, but only with respect to their liability as stockholders.

e. A trust, trustees are also insureds, but only with respect to their duties as trustees.

## 3. The insurance provided under this endorsement is limited as follows:

a. That person or organization is an additional insured only with respect to liability arising out of:

## (1) Premises you:

(a) Own;

(b) Rent;

(c) Lease; or

(d) Occupy; or

(2) Ongoing operations performed by you or on your behalf. If, however, the written contract or written agreement also requires completed operations coverage, we will also provide completed operations coverage for that additional insured.

b. Premises, as respects paragraph 3.a.(1) above, include common or public areas about such premises if so required in the written contract or written agreement.

c. Additional insured status provided under paragraphs 3.a.(1)(b) or 3.a.(1)(c) above does not extend beyond the end of a premises lease or rental agreement.

d. Ongoing operations, as respects paragraph 3.a (2) above, does not apply to "bodily injury" or "property damage" occurring after:

(1) All work to be performed by you or on your behalf for the additional insured(s) at the site of the covered operations is complete including related materials, parts or equipment (other than service, maintenance or repairs); or

(2) That portion of "your work" out of which the injury or damage arises is put to its intended use by any person or organization other than another contractor working for a principal as a part of the same project.

e. The limits of insurance that apply to the additional insured are the least of those specified in the:

(1) Written contract;

(2) Written agreement; or

(3) Declarations of this policy.

The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

f. The insurance provided to the additional insured does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of, or failure to render, any professional services, including but not limited to:

(1) The preparing, approving, or failing to prepare or approve:

(a) Maps;

(b) Drawings;

(c) Opinions;

(d) Reports;

(e) Surveys;



**EXHIBIT 2**

- (f) Change orders;
  - (g) Design specifications; and
  - (2) Supervisory, inspection, or engineering services.
- g. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, paragraph 4. Other Insurance is deleted and replaced with the following:

**4. Other Insurance.**

Coverage provided by this endorsement is excess over any other valid and collectible insurance available to the additional insured whether:

- a. Primary;
- b. Excess;
- c. Contingent; or
- d. On any other basis;

unless the written contract or written agreement requires this insurance be primary. In that case, this insurance will be primary without contribution from such other insurance available to the additional insured.

- h. If the written contract or written agreement as outlined above requires additional insured status by use of CG 20 10 11 85, then the terms of that endorsement, shown below, are incorporated into this endorsement, to the extent such terms do not restrict coverage otherwise provided by this endorsement:

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.  
SCHEDULE**

Name of Person or Organization: Blanket Where Required by Written Contract or Agreement that the terms of CG 20 10 11 85 apply.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

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**CG 20 10 11 85**

- i. If the written contract or written agreement as outlined above requires additional insured status by use of an Insurance Services Office (ISO) endorsement, then the coverage provided under this CG 70 85 endorsement does not apply. Additional insured status is limited to that provided by the ISO endorsement.

**EXHIBIT 2**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**TEXAS  
CONTRACTOR'S GENERAL LIABILITY EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Under **SECTION I - COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, paragraph 2. **EXCLUSIONS**, provisions 1. through 6. of this endorsement amend the policy as follows:

**1. LIQUOR LIABILITY**

Exclusion c. Liquor Liability is deleted.

**2. NONOWNED WATERCRAFT**

Exclusion g. Aircraft, Auto or Watercraft, subparagraph (2) is deleted and replaced with the following:

(2) A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not being used to carry persons or property for a charge.

**3. PREMISES ALIENATED**

A. Exclusion j. Damage to Property, subparagraph (2) is deleted.

B. The following paragraph is deleted from Exclusion j. Damage to Property;

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

**4. PROPERTY DAMAGE LIABILITY - ELEVATORS AND SIDETRACK AGREEMENTS**

A. Exclusion j. Damage to Property, paragraphs (3), (4), and (6) do not apply to the use of elevators.

B. Exclusion k. Damage to Your Product does not apply to:

- 1. The use of elevators; or
- 2. Liability assumed under a sidetrack agreement.

**5. PROPERTY DAMAGE LIABILITY - BORROWED EQUIPMENT**

A. Exclusion j. Damage to Property, paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

B. With respect to any one borrowed equipment item, provision 5.A. above does not apply to "property damage" that exceeds \$25,000 per occurrence or \$25,000 annual aggregate.

**6. PRODUCT RECALL EXPENSE**

A. Exclusion n. Recall of Products, Work or Impaired Property does not apply to "product recall expenses" that you incur for the "covered recall" of "your product". This exception to the exclusion does not apply to "product recall expenses" resulting from:

- 1. Failure of any products to accomplish their intended purpose;
- 2. Breach of warranties of fitness, quality, durability or performance;
- 3. Loss of customer approval or any cost incurred to regain customer approval;
- 4. Redistribution or replacement of "your product", which has been recalled, by like products or substitutes;
- 5. Caprice or whim of the insured;

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**EXHIBIT 2**

6. A condition likely to cause loss, about which any insured knew or had reason to know at the inception of this insurance;
  7. Asbestos, including loss, damage or clean up resulting from asbestos or asbestos containing materials;
  8. Recall of "your product(s)" that have no known or suspected defect solely because a known or suspected defect in another of "your product(s)" has been found.
- B. Under SECTION III - LIMITS OF INSURANCE, paragraph 3. is replaced in its entirety as follows and paragraph 8. is added:**
3. The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of:
    - a. Damages under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** because of "bodily injury" and "property damage" included in the "products-completed operations hazard" and
    - b. "Product recall expenses".
  8. Subject to paragraph 5. above, \$25,000 is the most we will pay for all "product recall expenses" arising out of the same defect or deficiency.

The insurance afforded by reason of provisions 1. through 6. of this endorsement is excess over any valid and collectible insurance (including any deductible) available to the insured whether primary, excess or contingent, and SECTION IV., paragraph 4. Other Insurance is changed accordingly.

**7. BLANKET CONTRACTUAL LIABILITY - RAILROADS**

When a written contract or written agreement requires Contractual Liability - Railroads, the definition of "insured contract" in Section V - Definitions is replaced by the following with respect to operations performed for, or affecting, a railroad:

9. "Insured Contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

  - (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - (b) Giving directions or instructions, or failing to give them;
  - (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

**8. CONTRACTUAL LIABILITY - PERSONAL AND ADVERTISING INJURY**

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**EXHIBIT 2**

Under **SECTION 1 - COVERAGE B**, paragraph 2. Exclusions, paragraph a. Contractual Liability is deleted.

**9. SUPPLEMENTARY PAYMENTS**

Under **SECTION 1 - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**, paragraph 1.b. is deleted and replaced with the following:

1. b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

**10. BROADENED WHO IS AN INSURED**

**SECTION II - WHO IS AN INSURED** is deleted and replaced with the following:

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

Paragraphs (1)(a), (1)(b) and (1)(c) above do not apply to your "employees" who are:

- (i) Managers;
- (ii) Supervisors;
- (iii) Directors; or
- (iv) Officers;

with respect to "bodily injury" to a co-"employee".

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees," other than either your "executive officers," (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insured for:

- (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or volunteer worker as a consequence of paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services except as provided in Provision 11. of this endorsement.

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## EXHIBIT 2

- (2) "Property damage" to property:
- (a) Owned, occupied or used by;
  - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by  
you, any of your "employees," "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only;
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Form.
  - e. Your subsidiaries if:
    - (1) They are legally incorporated entities; and
    - (2) You own more than 50% of the voting stock in such subsidiaries as of the effective date of this policy.

If such subsidiaries are not shown in the Declarations, you must report them to us within 180 days of the inception of your original policy.
  - f. (1) Any person or organization, other than an architect, engineer or surveyor, required to be named as an additional insured in a "work contract", letter of intent or work order. However, such person or organization shall be an additional insured only with respect to covered "bodily injury," "property damage," and "personal and advertising injury" arising out of "your work" under that "work contract", letter of intent or work order.
  - (2) We will provide additional insured coverage to such person or organization only:
    - (a) for a period of 30 days after the effective date of the applicable "work contract", letter of intent or work order; or
    - (b) until the end of the policy term in effect at the inception of the applicable "work contract", letter of intent or work order;

whichever is earlier.
  - (3) Coverage provided under this paragraph f. is excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent, or on any other basis unless the "work contract", letter of intent or work order requires this insurance be primary, in which case this insurance will be primary without contribution from such other insurance available to the additional insured.
  - (4) This paragraph f. does not apply if form CG 70 85, Texas Contractors Blanket Additional Insured Endorsement, is attached to the policy.
  - g. Any person or organization to whom you are obligated by virtue of a written contract to provide insurance such as is afforded by this policy, but only with respect to liability arising out of the maintenance or use of that part of any premises leased to you, including common or public areas about such premises if so required in the contract.
- However, no such person or organization is an insured with respect to:
- (1) Any "occurrence" that takes place after you cease to occupy those premises; or
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

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## EXHIBIT 2

- h. Any state or political subdivision but only as respects legal liability incurred by the state or political subdivision solely because it has issued a permit with respect to operations performed by you or on your behalf.

However, no state or political subdivision is an insured with respect to:

- (1) "Bodily injury", "property damage", "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard."

- i. Any person or organization who is the lessor of equipment leased to you, to whom you are obligated by virtue of a written contract to provide insurance such as is afforded by this policy, but only with respect to their liability arising out of the maintenance, operation or use of such equipment by you or a subcontractor on your behalf with your permission and under your supervision. However, if you have entered into a construction contract subject to Subchapter C of Chapter 151 of Subtitle C of Title 2 of the Texas Insurance Code with the additional insured, the insurance afforded to such person(s) or organization(s) only applies to the extent permitted by Subchapter C of Chapter 151 of Subtitle C of Title 2 of the Texas Insurance Code.

No such person or organization, however, is an insured with respect to any "occurrence" that takes place after the equipment lease expires.

- j. Any architect, engineer, or surveyor engaged by you but only with respect to liability arising out of your premises or "your work." However, if you have entered into a construction contract subject to Subchapter C of Chapter 151 of Subtitle C of Title 2 of the Texas Insurance Code with the additional insured, the insurance afforded to such person only applies to the extent permitted by Subchapter C of the Chapter 151 of Subtitle C of Title 2 of the Texas Insurance Code.

No architect, engineer, or surveyor, however, is an insured with respect to "bodily injury," "property damage," or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- (1) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
- (2) Supervisory, inspection, or engineering services.

This paragraph j. does not apply if form CG 70 85, Texas Contractors Blanket Additional Insured Endorsement, is attached to the policy.

- k. Any manager, owner, lessor, mortgagee, assignee or receiver of premises, including land leased to you, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises or land leased to you.

However, no such person or organization is an insured with respect to:

- (1) Any "occurrence" that takes place after you cease to occupy that premises, or cease to lease the land; or
- (2) Structural alteration, new construction or demolition operations performed by or on behalf of that person or organization.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the end of the policy period;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization;
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
- d. Coverage A does not apply to "product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed the organization.

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**EXHIBIT 2**

4. Any person or organization (referred to below as vendor) with whom you agreed, because of a written contract or agreement to provide insurance is an insured, but only with respect to "bodily injury" or "property damage" arising out of "your products" that are distributed or sold in the regular course of the vendor's business.

However, no such person or organization is an insured with respect to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement.
- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in "your product" made intentionally by the vendor;
- d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, tasting, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of "your products";
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the "your product";
- g. "Your products" which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
- h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (1) The exceptions contained in subparagraphs d. or f.; or
  - (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

This insurance does not apply to any insured person or organization from which you have acquired "your products", or any ingredient, part, or container, entering into, accompanying or containing "your products".

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

#### **11. INCIDENTAL MALPRACTICE LIABILITY:**

As respects provision 10., **SECTION II - WHO IS AN INSURED**, paragraph 2.a.(1)(d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide medical or paramedical services, provided that you are not engaged in the business or occupation of providing such services, and your "employee" does not have any other insurance that would also cover claims arising under this provision, whether the other insurance is primary, excess, contingent or on any other basis.

Under **SECTION III - LIMITS OF INSURANCE**, provisions 12. through 14. of this endorsement amend the policy as follows:

#### **12. AGGREGATE LIMITS PER PROJECT**

The General Aggregate Limit applies separately to each of your construction projects away from premises owned by or rented to you.

#### **13. INCREASED MEDICAL PAYMENTS LIMITS AND REPORTING PERIOD**

- A. The requirement under **SECTION I - COVERAGE C MEDICAL PAYMENTS** that expenses be incurred and reported to us within one year of the date of the accident is changed to three years.
- B. **SECTION III - LIMITS OF INSURANCE**, paragraph 7., the Medical Expense Limit, is subject to all the terms of **SECTION III - LIMITS OF INSURANCE** and is the greater of:

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**EXHIBIT 2**

1. \$10,000; or
  2. The amount shown in the Declarations for Medical Expense Limit.
- C. This provision 13. does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded either by the provisions of the Coverage Form or by endorsement.

**14. DAMAGE TO PREMISES RENTED TO YOU – SPECIFIC PERILS**

- A. The word fire is changed to "specific perils" where it appears in:
1. The last paragraph of **SECTION I – COVERAGE A**, paragraph 2. Exclusions;
  2. **SECTION IV**, paragraph 4.b. Excess Insurance.
- B. The Limits of Insurance shown in the Declarations will apply to all damage proximately caused by the same event, whether such damage results from a "specific peril" or any combination of "specific perils."
- C. The Damage To Premises Rented To You Limit described in **SECTION III - LIMITS OF INSURANCE**, paragraph 6., is replaced by a new limit, which is the greater of:
1. \$1,000,000; or
  2. The amount shown in the Declarations for Damage To Premises Rented To You Limit.
- D. This provision 14. does not apply if the Damage To Premises Rented To You Limit of **SECTION I - COVERAGE A** is excluded either by the provisions of the Coverage Form or by endorsement.

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, provisions 15. through 17. of this endorsement amend the policy as follows:

**15. KNOWLEDGE OF OCCURRENCE**

Under 2. Duties In The Event Of Occurrence, Offense, Claim, Or Suit, paragraph a. is deleted and replaced and paragraphs e. and f. are added as follows:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense, regardless of the amount, which may result in a claim. Knowledge of an "occurrence" or an offense by your "employee(s)" shall not, in itself, constitute knowledge to you unless one of your partners, members, "executive officers," directors, or managers has knowledge of the "occurrence" or offense. To the extent possible, notice should include:
- (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- e. If you report an "occurrence" to your workers compensation carrier that develops into a liability claim for which coverage is provided by the Coverage Form, failure to report such an "occurrence" to us at the time of the "occurrence" shall not be deemed a violation of paragraphs a., b., and c. above. However, you shall give written notice of this "occurrence" to us as soon you become aware that this "occurrence" may be a liability claim rather than a workers compensation claim.
- f. You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":
- (1) Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;
  - (2) Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under the insurance.

**16. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

Paragraph 6. Representations is deleted and replaced with the following:

**6. Representations**

By accepting this policy, you agree:

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**EXHIBIT 2**

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

We will not deny coverage under this coverage part if you unintentionally fail to disclose all hazards existing as of the inception date of this policy. You must report to us any knowledge of an error or omission in the description of any premises or operations intended to be covered by the Coverage Form as soon as practicable after its discovery. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

**17. TRANSFER OF RIGHTS (BLANKET WAIVER OF SUBROGATION)**

Paragraph 8. Transfer of Rights Of Recovery Against Others To Us is deleted and replaced with the following:

- B. If the insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. However, if the insured has waived rights to recover through a written contract, or if "your work" was commenced under a letter of intent or work order, subject to a subsequent reduction to writing with customers whose customary contracts require a waiver, we waive any right of recovery we may have under this Coverage Form.

**18. EXTENDED NOTICE OF CANCELLATION AND NONRENEWAL**

Paragraph 2.b. of A. Cancellation of the COMMON POLICY CONDITIONS is deleted and replaced with the following:

- b. 60 days before the effective date of the cancellation if we cancel for any other reason.

Under SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 9. When We Do Not Renew is deleted and replaced with the following:

**9. When We Do Not Renew**

- a. We may elect not to renew this policy except, that under the provisions of the Texas Insurance Code, we may not refuse to renew this policy solely because the policyholder is an elected official.
- b. If we elect not to renew this policy, we may do so by mailing or delivering to the first Named Insured, at the last mailing address known to us, written notice of nonrenewal, stating the reason for nonrenewal, at least 60 days before the expiration date. If notice is mailed or delivered less than 60 days before the expiration date, this policy will remain in effect until the 61st day after the date on which the notice is mailed or delivered. Earned premium for any period of coverage that extends beyond the expiration date will be computed pro rata based on the previous year's premium.
- c. If notice is mailed, proof of mailing will be sufficient proof of notice.
- d. The transfer of a policyholder between admitted companies within the same insurance group is not considered a refusal to renew.

**19. MOBILE EQUIPMENT REDEFINED**

Under SECTION V - DEFINITIONS, paragraph 12. "Mobile equipment", paragraph f. (1) does not apply to self-propelled vehicles of less than 1,000 pounds gross vehicle weight that are not designed for highway use.

**20. DEFINITIONS**

- 1. SECTION V – DEFINITIONS, paragraph 4. "Coverage territory" is replaced by the following definition:

"Coverage territory" means anywhere in the world with respect to liability arising out of "bodily injury," "property damage," or "personal and advertising injury," including "personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication provided the insured's responsibility to pay damages is determined in a settlement to which we agree or in a "suit" on the merits, in the United States of America (including its territories and possessions), Puerto Rico and Canada.

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**EXHIBIT 2****2. SECTION V – DEFINITIONS** is amended by the addition of the following definitions:

"Covered recall" means a recall made necessary because you or a government body has determined that a known or suspected defect, deficiency, inadequacy, or dangerous condition in "your product" has resulted or will result in "bodily injury" or "property damage".

"Product Recall expenses" mean only reasonable and necessary extra costs, which result from or are related to the recall or withdrawal of "your product" for:

- a. Telephone and telegraphic communication, radio or television announcements, computer time and newspaper advertising;
- b. Stationery, envelopes, production of announcements and postage or facsimiles;
- c. Remuneration paid to regular employees for necessary overtime or authorized travel expense;
- d. Temporary hiring by you or by agents designated by you of persons, other than your regular employees, to perform necessary tasks;
- e. Rental of necessary additional warehouse or storage space;
- f. Packaging of or transportation or shipping of defective products to the location you designate; and
- g. Disposal of "your products" that cannot be reused. Disposal expenses do not include:
  - (1) Expenses that exceed the original cost of the materials incurred to manufacture or process such product; and
  - (2) Expenses that exceed the cost of normal trash discarding or disposal, except as are necessary to avoid "bodily injury" or "property damage".

"Specific Perils" means fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; weight of snow, ice or sleet; or "water damage."

"Water damage" means accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.

"Work contract" means a written agreement between you and one or more parties for work to be performed by you or on your behalf.

**EXHIBIT 2**

**COMMERCIAL GENERAL LIABILITY  
CG 20 01 04 13**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PRIMARY AND NONCONTRIBUTORY –  
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

The following is added to the **Other Insurance Condition** and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

## EXHIBIT 2

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### EARLIER NOTICE OF CANCELLATION PROVIDED BY US

Number of Days Notice 30

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation is increased to the number of days shown in the Schedule above.

If this policy is cancelled by us we will send the Named Insured and any party listed in the following schedule notice of cancellation based on the number of days notice shown above.

#### SCHEDULE

##### Name of Person or Organization

The Name of Person or Organization is any person or organization holding a certificate of insurance issued for you, provided the certificate:

1. Refers to this policy;
2. States that notice of:
  - a. Cancellation;
  - b. Nonrenewal; or
  - c. Material change reducing or restricting coverage;will be provided to that person or organization;
3. Is in effect at the time of the:
  - a. Cancellation;
  - b. Nonrenewal; or
  - c. Material change reducing or restricting coverage; and
4. Is on file at your agent or broker's office for this policy.

##### Mailing Address

The Mailing Address is the address shown for that person or organization in that certificate of insurance.



## EXHIBIT 2

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## TEXAS ADVANTAGE COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the

### BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The premium for this endorsement is \$ \_\_\_\_\_

#### 1. BROAD FORM INSURED

**SECTION II - LIABILITY COVERAGE, A.1. Who Is An Insured** is amended by the addition of the following:

- d. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or a majority interest, will qualify as a Named Insured. However,
    - (1) Coverage under this provision is afforded only until the end of the policy period;
    - (2) Coverage does not apply to "accidents" or "loss" that occurred before you acquired or formed the organization; and
    - (3) Coverage does not apply to an organization that is an "insured" under any other policy or would be an "insured" but for its termination or the exhausting of its limit of insurance.
  - e. Any "employee" of yours using:
    - (1) A covered "auto" you do not own, hire or borrow, or a covered "auto" not owned by the "employee" or a member of his or her household, while performing duties related to the conduct of your business or your personal affairs; or
    - (2) An "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business. However, your "employee" does not qualify as an insured under this paragraph (2) while using a covered "auto" rented from you or from any member of the "employee's" household.
  - f. Your members, if you are a limited liability company, while using a covered "auto" you do not own, hire or borrow and while performing duties related to the conduct of your business or your personal affairs.
  - g. Any person or organization with whom you agree in a written contract, written agreement or permit, to provide insurance such as is afforded under this policy, but only with respect to your covered "autos".
- This provision does not apply:
- (1) Unless the written contract or agreement is executed or the permit is issued prior to the "bodily injury" or "property damage";
  - (2) To any person or organization included as an insured by an endorsement or in the Declarations; or
  - (3) To any lessor of "autos" unless:
    - (a) The lease agreement requires you to provide direct primary insurance for the lessor;
    - (b) The "auto" is leased without a driver; and

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**EXHIBIT 2**

- (c) The lease had not expired.

Leased "autos" covered under this provision will be considered covered "autos" you own and not covered "autos" you hire.

- h. Any legally incorporated organization or subsidiary in which you own more than 50% of the voting stock on the effective date of this endorsement.

This provision does not apply to "bodily injury" or "property damage" for which an "insured" is also an insured under any other automobile policy or would be an insured under such a policy, but for its termination or the exhaustion of its limits of insurance, unless such policy was written to apply specifically in excess of this policy.

## **2. COVERAGE EXTENSIONS - SUPPLEMENTARY PAYMENTS**

Under **SECTION II - LIABILITY COVERAGE, A.2.a. Supplementary Payments**, paragraphs (2) and (4) are deleted and replaced as follows:

- (2) Up to \$2,500 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

## **3. AMENDED FELLOW EMPLOYEE EXCLUSION**

Under **SECTION II - LIABILITY COVERAGE, B. EXCLUSIONS**, paragraph 5. Fellow Employee is deleted and replaced by the following:

### **5. Fellow Employee**

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business. However, this exclusion does not apply to your "employees" that are officers, managers, supervisors or above. Coverage is excess over any other collectible insurance.
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of paragraph a. above.

## **4. HIRED AUTO PHYSICAL DAMAGE COVERAGE AND LOSS OF USE EXPENSE**

- A. Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE**, the following is added:

If any of your owned covered "autos" are covered for Physical Damage, we will provide Physical Damage coverage to "autos" that you or your "employees" hire or borrow, under your name or the "employee's" name, for the purpose of doing your work.

We will provide coverage equal to the broadest physical damage coverage applicable to any covered "auto" shown in the Declarations, Item Three, Schedule of Covered Autos You Own, or on any endorsements amending this schedule.

- B. Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions**, paragraph b. Loss Of Use Expenses is deleted and replaced with the following:

### **b. Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision, only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

**EXHIBIT 2**

- (2) Specified Causes of Loss, only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision, only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$30 per day, to a maximum of \$2,000.

**C. Under SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance, paragraph b. is replaced by the following:**

**b. For Hired Auto Physical Damage, the following are deemed to be covered "autos" you own:**

- 1. Any covered "auto" you lease, hire, rent or borrow; and
- 2. Any covered "auto" hired or rented by your "employees" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto", nor is any "auto" you hire from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

**5. LOAN OR LEASE GAP COVERAGE**

Under SECTION III – PHYSICAL DAMAGE COVERAGE, A. COVERAGE, the following is added:

If a covered "auto" is owned or leased and if we provide Physical Damage Coverage on it, we will pay, in the event of a covered total "loss", any unpaid amount due on the lease or loan for a covered "auto", less:

- (a) The amount paid under the Physical Damage Section of the policy; and:
- (b) Any:
  - (1) Overdue lease or loan payments including penalties, interest or other charges resulting from overdue payments at the time of the "loss";
  - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (3) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease;
  - (4) Security deposits not refunded by a lessor; and
  - (5) Carry-over balances from previous loans or leases.

**6. RENTAL REIMBURSEMENT**

Under SECTION III - PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions, paragraph a. Transportation Expenses is deleted and replaced by the following:

**a. Transportation Expenses**

- (1) We will pay up to \$75 per day to a maximum of \$2,000 for transportation expense incurred by you because of covered "loss". We will pay only for those covered "autos" for which you carry Collision Coverage or either Comprehensive Coverage or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 24 hours after the covered "loss" and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss". This coverage is in addition to the otherwise applicable coverage you have on a covered "auto". No deductibles apply to this coverage.

**EXHIBIT 2**

- (2) This coverage does not apply while there is a spare or reserve "auto" available to you for your operation.

**7. AIRBAG COVERAGE**

Under **SECTION III - PHYSICAL DAMAGE, B. EXCLUSIONS**, paragraph 3. is deleted and replaced by the following:

3. We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:
- (1) Wear and tear, freezing, mechanical or electrical breakdown. However, this exclusion does not include the discharge of an airbag.
  - (2) Blowouts, punctures or other road damage to tires.

**8. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

**Section III - PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended to add the following:

No deductible applies to glass damage if the glass is repaired rather than replaced.

**9. COLLISION COVERAGE - WAIVER OF DEDUCTIBLE**

Under **Section III - PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended to add the following:

When there is a loss to your covered "auto" insured for Collision Coverage, no deductible will apply if the loss was caused by a collision with another "auto" insured by us.

**10. KNOWLEDGE OF ACCIDENT**

Under **SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 2. Duties In The Event Of Accident, Claim, Suit Or Loss**, paragraph a. is deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "accident", claim, "suit" or "loss". Knowledge of an "accident", claim, "suit" or "loss" by your "employees" shall not, in itself, constitute knowledge to you unless one of your partners, executive officers, directors, managers, or members (if you are a limited liability company) has knowledge of the "accident", claim, "suit" or "loss". Notice should include:
- (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.

**11. TRANSFER OF RIGHTS (BLANKET WAIVER OF SUBROGATION)**

Under **SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions** paragraph 5. **Transfer Of Rights Of Recovery Against Others To Us** is deleted and replaced by the following:

**5. Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. However, if the "insured" has waived rights to recover through a written contract, or if your work was commenced under a letter of intent or work order, subject to a subsequent reduction in writing with customers whose customary contracts require a waiver, we waive any right of recovery we may have under this Coverage Form.



## EXHIBIT 2

### 12. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Under **SECTION IV - BUSINESS AUTO CONDITIONS**, **B. General Conditions**, paragraph 2. **Concealment, Misrepresentation Or Fraud** is amended by the addition of the following:

We will not deny coverage under this Coverage Form if you unintentionally fail to disclose all hazards existing as of the inception date of this policy. You must report to us any knowledge of an error or omission in your representations as soon as practicable after its discovery. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

### 13. BLANKET COVERAGE FOR CERTAIN OPERATIONS IN CONNECTION WITH RAILROADS

When required by written contract or written agreement, the definition of "insured contract" is amended as follows:

- The exception contained in paragraph H.3. relating to construction or demolition operations on or within 50 feet of a railroad; and

- Paragraph H.a.

are deleted with respect to the use of a covered "auto" in operations for, or affecting, a railroad.

## EXHIBIT 2

POLICY NUMBER: CA 2056597 06

COMMERCIAL AUTO  
CA 71 65 10 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED INSURED - PRIMARY COVERAGE**


This endorsement modifies insurance provided under the

**BUSINESS AUTO COVERAGE FORM**

The provisions of the Coverage Form apply unless changed by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insured" under the Who Is An Insured Provision of the Coverage Form.

This endorsement changes the policy on the inception date of the policy, unless another date is shown below.

Endorsement Effective: 09/01/2015	Countersigned By:
Named Insured: CBS Mechanical, Inc. CBS Roofing Services (A Division of CBS Mechanical, Inc.) K&K Landscape Services LLC	 (Authorized Representative)

(No entry may appear above. If so, information to complete this endorsement is in the Declarations.)

Section II - Liability Coverage, A. Coverage, 1. Who Is An Insured is amended to add:

Any Person or Organization with whom you have an "insured contract" which requires:

- i. that Person or Organization to be added as an "insured" under this policy; and
- ii. this policy to be primary and non-contributory to any like insurance available to the Person or Organization.

Each such person or organization is an "insured" for Liability Coverage. They are an "insured" only if that person or organization is an "insured" under in SECTION II of the Coverage Form.

The contract between the Named Insured and the person or organization is an "insured contract".

## EXHIBIT 2

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### EARLIER NOTICE OF CANCELLATION PROVIDED BY US

Number of Days Notice 30

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation is increased to the number of days shown in the Schedule above.

If this policy is cancelled by us we will send the Named Insured and any party listed in the following schedule notice of cancellation based on the number of days notice shown above.

#### SCHEDULE

##### Name of Person or Organization

The Name of Person or Organization is any person or organization holding a certificate of insurance issued for you, provided the certificate:

1. Refers to this policy;
2. States that notice of:
  - a. Cancellation;
  - b. Nonrenewal; or
  - c. Material change reducing or restricting coverage;will be provided to that person or organization;
3. Is in effect at the time of the:
  - a. Cancellation;
  - b. Nonrenewal; or
  - c. Material change reducing or restricting coverage; and
4. Is on file at your agent or broker's office for this policy.

##### Mailing Address

The Mailing Address is the address shown for that person or organization in that certificate of insurance.

## EXHIBIT 2

## WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 42 03 04 A  
(Ed. 1-00)

## TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

## Schedule

1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

## 2. Operations:

## 3. Premium

The premium charge for this endorsement shall be 0.020 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

## 4. Advance Premium \$3,891

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 09/01/2015 Policy No. WC 2056602 07

Endorsement No.

Insured CBS Mechanical, Inc.

CBS Roofing Services (A Division of CBS Mechanical, Inc.)

K&K Landscape Services LLC  
Insurance Company Amerisure Ins Co

Countersigned by

Premium \$





## EXHIBIT 2

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### EARLIER NOTICE OF CANCELLATION PROVIDED BY US

Number of Days Notice 30

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation is increased to the number of days shown in the Schedule above.

If this policy is cancelled by us we will send the Named Insured and any party listed in the following schedule notice of cancellation based on the number of days notice shown above.

#### SCHEDULE

##### Name of Person or Organization

The Name of Person or Organization is any person or organization holding a certificate of insurance issued for you, provided the certificate:

1. Refers to this policy;
2. States that notice of:
  - a. Cancellation;
  - b. Nonrenewal; or
  - c. Material change reducing or restricting coverage;will be provided to that person or organization;
3. Is in effect at the time of the:
  - a. Cancellation;
  - b. Nonrenewal; or
  - c. Material change reducing or restricting coverage; and
4. Is on file at your agent or broker's office for this policy.

##### Mailing Address

The Mailing Address is the address shown for that person or organization in that certificate of insurance.

**EXHIBIT 2****INSURANCE REQUIREMENTS AND  
WORKER'S COMPENSATION 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, 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.
- 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:
  - 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.
- *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.*

**EXHIBIT 2**

- 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 marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:*

**[X] A. General Liability Insurance:**

General Liability insurance with combined single limits of not less than \$1,000,000.00 shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

**EXHIBIT 2****[X] Automobile Liability Insurance:**

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than **\$500,000** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- any auto, or
- all owned hired and non-owned autos.

**[X] Workers Compensation Insurance**

Contractor shall purchase and maintain Worker's Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$100,000 for each accident, \$100,000 per each employee, and a \$500,000 policy limit for occupational disease. The City need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against the City, its officials, agents, employees and volunteers for any work performed for the City by the Named Insured. For building or construction projects, the Contractor shall comply with the provisions of Attachment 1 in accordance with §406.096 of the Texas Labor Code and rule 28TAC 110.110 of the Texas Worker's Compensation Commission (TWCC).

**[ ] Owner's and Contractor's Protective Liability Insurance**

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Contractor's Protective Liability insurance policy naming the City as insured for property damage and bodily injury which may arise in the prosecution of the work or Contractor's operations under this contract. Coverage shall be on an "occurrence" basis and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least **\$500,000.00** combined bodily injury and property damage per occurrence with a **\$1,000,000.00** aggregate.

**[ ] Fire Damage Legal Liability Insurance**

Coverage is required if Broad form General Liability is not provided or is unavailable to the contractor or if a contractor leases or rents a portion of a City building. Limits of not less than \_\_\_\_\_ each occurrence are required.

**[ ] Professional Liability Insurance**

Professional liability insurance with limits not less than **\$1,000,000.00** per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.



**EXHIBIT 2****☐ Builders' Risk Insurance**

Builders' Risk Insurance, on an All-Risk form for 100% of the completed value shall be provided. Such policy shall include as "Named Insured" the City of Denton and all subcontractors as their interests may appear.

**☐ Commercial Crime**

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than \$\_\_\_\_\_ each occurrence are required.

**☐ Additional Insurance**

Other insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the "Specific Conditions" of the contract specifications.

**☒ Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities****A. Definitions:**

Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

**EXHIBIT 2**

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - 1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - 2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - 1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - 2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees

**EXHIBIT 2**

- of the person providing services on the project, for the duration of the project;
3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  4. obtain from each other person with whom it contracts, and provide to the contractor:
    - a. a certificate of coverage, prior to the other person beginning work on the project; and
    - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

**EXHIBIT 2**

**Exhibit H**  
**Contractor Business Information**



## EXHIBIT 2

<b>Form W-9</b> (Rev. August 2013) Department of the Treasury Internal Revenue Service	<b>Request for Taxpayer Identification Number and Certification</b>	<b>Give Form to the requester. Do not send to the IRS.</b>
Name (as shown on your income tax return) <b>CBS Mechanical, Inc. dba CBS Roofing Services</b>		
Business name/disregarded entity name, if different from above		
Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input checked="" type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____  <input type="checkbox"/> Other (see instructions) ▶ _____		Exemptions (see instructions):  Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____
Address (number, street, and apt. or suite no.) <b>5001 W. University Drive</b> City, state, and ZIP code <b>Denton, TX 76207</b>		Requester's name and address (optional) <b>Entech Sales &amp; Service, Inc</b> <b>3404 Garden Brook Drive</b> <b>Dallas, TX 75234</b>
List account number(s) here (optional)		

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Social security number**

--	--	--	--	--	--	--	--	--	--

**Employer identification number**

7	5	-	1	4	7	2	2	7	7
---	---	---	---	---	---	---	---	---	---

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign Here**

Signature of  
U.S. person ▶



Date ▶

9-8-15

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** The IRS has created a page on [www.irs.gov/w9](http://www.irs.gov/w9) for information about Form W-9, at [www.irs.gov/w9](http://www.irs.gov/w9). Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct:

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

## EXHIBIT 2



## City of Denton Purchasing

901-B Texas St. Denton, TX 76209

Phone: (940) 349-7100 Fax: (940) 349-7302

www.dentonpurchasing.com

## Substitute W-9 Form

The IRS requires all vendors to complete a W-9 Form. The information on this form must be filled out, signed and submitted by a vendor representative. All information must be completed before a purchase order or payment will be issued.

Name as shown on your income tax return:

CBS Mechanical, Inc.

Tax ID/Social Security #:

75-1472277

Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a US citizen or other U.S. person-for federal tax purposes as defined at the bottom of this page\*.

Authorized Signature:

Printed Name:

Steve Kress

## Mailing Address:

Company Name: CBS Roofing Services,  
A Division of CBS Mechanical, Inc.

Email: skress@cbsmechanical.com

Contact Name: Steve Kress

Website:

Address: 5001 W. University Dr.  
Denton, TX 76207

Phone Number: 940-387-7268

Fax Number: 940-387-3890

## Check appropriate box for federal tax classification (required):

☐ Individual/  
Sole  
Proprietor

☒ Corporation

☐ Partnership

☐ Limited  
Liability  
Corporation

☐ Other  
Please specify:

Must designate C or S

☐ C

☐ S

☐ Exempt  
Payee

Business Type:

☐ Real Estate  
Rental/Lease (A-1)

☐ Equipment  
Rental/Lease (A-9)

☐ Royalties (A-2)

☐ Medical/Health Care (A-6)

☐ Services Only (A-7)

☐ Merchandise-  
Goods Only (A-7)

☒ Merchandise &  
Services (A-7)

☐ Legal Firm/Attorney (A-C)

☐ Consultant/Prof  
Fees (A-7)

☐ Proceeds from  
Real Estate  
Purchases (S)

Type of Organization:

☐ Minority  
Owned

☐ Female Owned

☐ Non Profit

☐ Historically Underutilized  
Business

\*Definition of a U.S. Person-For Federal Tax purposes, you are considered a U.S. person if you are: (a) an individual who is a U.S. citizen or U.S. resident (b) a partnership, corporation, company, or association created or organized in the United States or under the laws of the United States (c) an estate (other than a foreign estate), or (d) a domestic trust (as defined in Regulations Section 301.7701-7).

**EXHIBIT 2****Vendor Information Not Required for W-9 Form****Remit Address (if different from above)**

Company Name: Same as above  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_

**ACH Information-Voluntary**

ABA Routing#: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Bank Account#: \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
ACH Email: \_\_\_\_\_  
ACH Email: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_

I (we) authorize the City of Denton to deposit payments into the checking account listed. The authority remains in effect until the City of Denton has received written notification from me of termination in time to allow reasonable opportunity to act on it, or until the City of Denton has sent me written notice of termination of the agreement.

Vendor Signature \_\_\_\_\_

Print Name/Title \_\_\_\_\_

Date \_\_\_\_\_

**List Products and/or Services Interested in Bidding:** Roofing

**For Internal Use Only**

- ☐ New Vendor  
☐ Vendor Change  
☐ Refund

Vendor Number

Requesting Department: \_\_\_\_\_

Date: \_\_\_\_\_

Department Representative (**Printed Name**) \_\_\_\_\_

Purchasing Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 2**

**Exhibit I**  
**Form CIQ**  
**Conflict of Interest Questionnaire**






## EXHIBIT 2

## CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		<b>OFFICE USE ONLY</b> <b>CERTIFICATION OF FILING</b>	
<b>1 Name of business entity filing form, and the city, state and country of the business entity's place of business.</b> CBS Roofing Services, A Division of CBS Mechanical, Inc. Denton, TX United States		<b>Certificate Number:</b> 2016-92959  <b>Date Filed:</b> 08/01/2016  <b>Date Acknowledged:</b>	
<b>2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.</b> City of Denton, TX			
<b>3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.</b>  6179 Civic Center-Lower Section; Provide roofing labor and material			
4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Chandler, David	Denton, TX United States		X
Choate, Jacob	Denton, TX United States		X
Kress, Steve	Denton, TX United States	X	
<b>5 Check only if there is NO Interested Party.</b> <input type="checkbox"/>			
<b>6 AFFIDAVIT</b> <div style="float: right; text-align: right;">         I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.       </div> <div style="clear: both;"></div> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 20px;"> <div style="text-align: center;">  <p>AFFIX NOTARY SEAL ABOVE</p> </div> <div style="text-align: center;">           _____          Signature of authorized agent of contracting business entity       </div> </div> <div style="margin-top: 20px;">         Sworn to and subscribed before me, by the said <u>Steve Kress</u>, this the <u>2nd</u> day of <u>August</u>, 20<u>16</u>, to certify which, witness my hand and seal of office.       </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;">           _____          Signature of officer administering oath       </div> <div style="text-align: center;"> <u>Renee Carter</u>          _____          Printed name of officer administering oath       </div> <div style="text-align: center;"> <u>Office Admin.</u>          _____          Title of officer administering oath       </div> </div>			

**EXHIBIT 2****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. 1491, 80th Leg., Regular Session.**

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

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 person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

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

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

**Steve Kress, V.P. of CBS Roofing Services, A Division of CBS Mechanical, Inc.**

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has an employment or business relationship.

\_\_\_\_\_  
Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer 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 filer of the questionnaire?

☐

Yes

☐

No

B. Is the filer of the questionnaire 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 10 percent or more?

☐

Yes

☐

No

D. Describe each affiliation or business relationship.

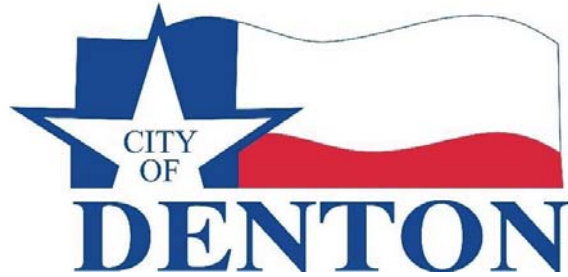
4 ☒ I have no Conflict of Interest to disclose.

5

\_\_\_\_\_  
Signature of person doing business with the governmental entity

**August 1, 2016**

\_\_\_\_\_  
Date

**EXHIBIT 2****Docusign City Council Transmittal Coversheet**

Contract	6179
File Name	Civic Center Roof - Lower Section Project
Purchasing Contact	Elton Brock
City Council Target Date	August 16, 2016
Granicus #	
Ordinance #	

## EXHIBIT 2



### Certificate Of Completion

Envelope Id: AF1275B2322B417AAFF8ABE895551C0E

Status: Sent

Subject: Please DocuSign: 6179 2 CBS Roofing Services.pdf

Source Envelope:

Document Pages: 164

Signatures: 1

Envelope Originator:

Certificate Pages: 6

Initials: 0

Elton Brock

AutoNav: Enabled

elton.brock@cityofdenton.com

Envelopeld Stamping: Enabled

IP Address: 129.120.6.150

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

### Record Tracking

Status: Original

Holder: Elton Brock

Location: DocuSign

8/5/2016 6:49:27 AM

elton.brock@cityofdenton.com

### Signer Events

#### Signature

#### Timestamp

Elton Brock

**Completed**

Sent: 8/5/2016 7:09:51 AM

elton.brock@cityofdenton.com

Viewed: 8/5/2016 7:10:03 AM

Purchasing Manager

Signed: 8/5/2016 7:11:01 AM

City of Denton

Using IP Address: 129.120.6.150

Security Level: Email, Account Authentication  
(Optional)

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

Steve Kress, Vice President

DocuSigned by:  
*Steve Kress, Vice President*  
5CFEC3DA579744A...

Sent: 8/5/2016 7:11:04 AM

skress@cbsmechanical.com

Viewed: 8/5/2016 7:46:20 AM

Vice President

Signed: 8/8/2016 6:34:33 AM

CBS Roofing Services

Using IP Address: 97.93.251.162

Security Level: Email, Account Authentication  
(Optional)

Electronic Record and Signature Disclosure:  
Accepted: 8/5/2016 7:46:20 AM  
ID: de4e3d9b-ea71-41c6-bb3a-b15b30c76c49

John Knight

Sent: 8/8/2016 6:34:37 AM

john.knight@cityofdenton.com

Deputy City Attorney

City of Denton

Security Level: Email, Account Authentication  
(Optional)

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

Julia Winkley

julia.winkley@cityofdenton.com

Security Level: Email, Account Authentication  
(Optional)

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

Howard Martin

howard.martin@cityofdenton.com

Security Level: Email, Account Authentication  
(Optional)

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



## EXHIBIT 2

Signer Events	Signature	Timestamp
Jennifer Walters jennifer.walters@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:		
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
Julia Winkley julia.winkley@cityofdenton.com Contracts Administration Supervisor City of Denton Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:	<div>COPIED</div>	Sent: 8/8/2016 6:34:36 AM Viewed: 8/8/2016 6:58:29 AM
Sherri Thurman sherri.thurman@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:	<div>COPIED</div>	Sent: 8/8/2016 6:34:36 AM
Jane Richardson jane.richardson@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:		
Robin Fox Robin.fox@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Accepted: 10/9/2015 11:39:51 AM ID: 04463961-03db-4c4d-9228-d660d6146ed6		
Jennifer Bridges jennifer.bridges@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:		

## EXHIBIT 2

Carbon Copy Events	Status	Timestamp
Jane Richardson jane.richardson@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:		
David Saltsman, Facilities Management david.saltsman@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:		
Notary Events		Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/8/2016 6:34:37 AM
Electronic Record and Signature Disclosure		

## **EXHIBIT 2**

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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: [kevin.gunn@cityofdenton.com](mailto:kevin.gunn@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 [kevin.gunn@cityofdenton.com](mailto:kevin.gunn@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..

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- 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 [kevin.gunn@cityofdenton.com](mailto:kevin.gunn@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

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

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



## EXHIBIT 2

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