

EXHIBIT 5

STATE OF TEXAS

§ COUNTY OF DENTON §

CONTRACT AGREEMENT #6016 BY AND BETWEEN CITY OF DENTON, TEXAS AND ZEIT ENERGY, LLC.

THIS CONTRACT is made and entered into this 13th day of September 2016, by and between ZEIT ENERGY, LLC, a limited liability company, whose address is 1717 McKinney Ave, Suite 700, Dallas Texas 75202, hereinafter referred to as "Design-Builder," 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, Design-Builder agrees with the Owner to commence and complete the performance of the work specified within the agreement, in the amount of \$2,682,445.00 and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Design-Builder shall provide design-build services in accordance with the City's RFQ#6016, the provisions of Texas Government Code 2269, and the Design-Builder's proposal response thereto, a copy of which is on file at the office of Purchasing Agent and 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) Design-Builder Response to RFQ#6016 - 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) Design-Builder 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 Design-Builder (**Exhibit "G"**);
- (h) Design-Builder's Business Information (**Exhibit "H"**);
- (i) Design-Builder Response to RFP - 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

EXHIBIT 5

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."

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

ZEIT ENERGY, LLC.

By: 
AUTHORIZED SIGNATURE

TYPED NAME: Clint Beauchamp

TITLE: Principal and Co-Founder

817-223-1401

PHONE NUMBER

clint@zeitenergy.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: _____

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Exhibit A

Contract Pricing Details

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Contract Price

6.1 Contract Price. Owner shall pay Design-Builder the sum of Two-Million, Six Hundred and Eighty-Two Thousand, Four Hundred and Forty-five Dollars and NO cents (\$2,682,445.00) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

The Contract Pricing is detailed in accordance with the overall design and construction of the various construction components as detailed below:

DESIGN DETAILED COSTS:

Phase I – Info Gathering & Schematic Design	\$ 20,000
Phase II – Design Development	\$ 55,000
Phase III – Construction Documents	\$ 15,000
Phase IV – Bidding and Negotiations	\$ 8,000
Phase V – Construction Administration	\$ 23,000
Reimbursable Expenses	\$ 3,000
Sub-Total – Full Design Costs	\$ 124,000

CONSTRUCTION DETAILED COSTS:

General Conditions	\$ 6,500
Mobilization/Demobilization for Project	\$ 5,000
Bonding for Project	\$ 42,880
Existing Conditions – selective demolition	\$ 15,000
Site Work	\$ 50,000
Concrete Work	\$ 98,000
Electrical Work	\$ 129,000
Plumbing Work	\$ 115,000
Earthwork	\$ 10,000
Fueling Equipment	\$1,135,000
Liquid Fuel Equipment Installation	\$ 55,400
Install of New Exit Concrete Driveway	\$ 45,865
Utility Gas Line Extension Allowance	\$ 66,000
Street Sign Pole Allowance	\$ 4,200
All other construction items not noted above	\$ 120,000
Sub-Total – Full Construction Costs	\$1,897,845

ALLOWANCE FOR GAS LINE FROM ATMOS CONNECTION

Utility Gas Line Extension Allowance	\$ 550,000
Street Sign Pole Allowance	\$ 35,000
Sub-Total – Gas Line Extension from Atmos Connection	\$ 585,000

THREE (3) YEAR MAINTENANCE SERVICE AGREEMENT

Year 1 - \$2100 per month	\$ 25,200
Year 2 - \$2100 per month	\$ 25,200
Year 3 - \$2100 per month	\$ 25,200
Sub-Total – 3 year Equipment Maintenance Agreement	\$ 75,600

Grand Total for Contract	\$2,682,445
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6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined within the General Terms and Conditions of the Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders approved by the Independent Architect/Engineer and the Owner, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of ten percent (10 %) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit A hereto.

6.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

An amount equal to the sum of: (a) ten percent (10 %) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit A hereto applied to the direct costs of the net reduction.

6.3 Allowance Items and Allowance Values.

6.3.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in an Exhibit hereto.

6.3.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.3.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from the Independent Architect/Engineer and the Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.3.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.


6.3.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

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Exhibit 1						
RFQ 6016 - Construction of the CNG Fueling Station - Pricing Sheet						
The respondent shall complete the following section, which directly corresponds to the specifications. The contractor shall not make						
1		Respondent's Name:		Zeit Energy, LLC		
2		Respondent is a Corporation, Partnership, sole Proprietorship,		Limited Liability Company		
3		Total working days after Notice to Proceed is issued by City for Construction of the CNG Fueling Station, shall be scheduled to be completed on or before November 30, 2016. If this date cannot be met, please insert the date that your firm can complete the project. The remainder of the project shall follow the schedule provided in Specification Section 01310		150		
3a		Construction Schedules :				
4		Total working days after Notice to Proceed is issued by City for				
Proposal Pricing:						
5		Base Pricing for Design-Build project per specifications:		\$2,021,846.00		
Pricing in typed words						
Design Detail Costs						
Item #	QTY	UOM	Product Description	Subcontractor	Unit Price	Total
6	1	LS	Phase I - Information Gathering and Schematic Design		\$20,000.00	\$20,000.00
7	1	LS	Phase II - Design Development		\$55,000.00	\$55,000.00
8	1	LS	Phase III - Construction Documents		\$15,000.00	\$15,000.00
9	1	LS	Phase IV - Bidding and Negotiations		\$8,000.00	\$8,000.00
10	1	LS	Phase V - Construction Administration		\$23,000.00	\$23,000.00
11	1	LS	Reimbursable Expenses		\$3,000.00	\$3,000.00
12	1	LS	All other Design Items not noted above		\$0.00	\$0.00
Sub-total Base Price (Item #5)						\$124,000.00
Construction Detailed Pricing:						
Item #	QTY	UOM	Product Description	Subcontractor	Unit Price	Total
13	1	LS	General Conditions		\$8,500.00	\$8,500.00
14	1	LS	Mobilization & Demobilization for Project		\$5,000.00	\$5,000.00
15	1	LS	Bonds (Labor and Materials & Performance)		\$42,880.00	\$42,880.00
16	1	LS	Existing Conditions - selective demolition		\$15,000.00	\$15,000.00
17	1	LS	Site Work		\$50,000.00	\$50,000.00
18	1	LS	Concrete Work		\$98,000.00	\$98,000.00
19	1	LS	Metal Fabrications		\$0.00	\$0.00
20	1	LS	Electrical Work		\$129,000.00	\$129,000.00
21	1	LS	Plumbing Work		\$115,000.00	\$115,000.00
22	1	LS	Earthwork		\$10,000.00	\$10,000.00
23	1	LS	Fueling Equipment		\$1,135,000.00	\$1,135,000.00
24	1	LS	Liquid Fuel Equipment Installation		\$55,400.00	\$55,400.00
25	1	LS	Installation of New Exit Concrete Driveway		\$45,885.00	\$45,885.00
26	1	LS	Utility Gas Line Extension Allowance Profit and Overhead 12%		\$66,000.00	\$66,000.00
27	1	LS	Street Sign Pole Allowance Profit and Overhead 12%		\$4,200.00	\$4,200.00
28	1	LS	All other Construction Items not noted above		\$120,000.00	\$120,000.00
Sub-total Base Bid (Item #5)						\$1,897,845.00

Exhibit 2**RFQ 6016 - Construction of the CNG Fueling Station - Allowance Pricing Sheet**

The respondent shall complete the following section, which directly corresponds to the specifications. The contractor shall not make changes to this format.

1	Respondent's Name:	Zeit Energy, LLC				
2	Respondent is a Corporation, Partnership, sole	Limited Liability Company				
3	Total working days after Notice to Proceed is issued by City	150 Estimated*				
3a	Construction of the CNG Fueling Station, shall be scheduled to be completed on or before November 30, 2016. If this date cannot be met, please insert the date that your firm can complete the project. The remainder of the project shall follow the schedule provided in Specification Section 01310 Construction Schedules :	 Based on total working days after notice to proceed				
4	Total working days after Notice to Proceed is issued by City					
Proposal Pricing:						
5	Base Pricing for Design-Build project per specifications:	\$585,000.00				
Pricing in typed words						
Allowance Detail Costs						
Item #	QTY	UOM	Product Description	Subcontractor	Unit Price	Total
6	1	LS	Utility Gas Line Extension Allowance		\$550,000.00	\$550,000.00
7	1	LS	Street Sign Pole Allowance		\$35,000.00	\$35,000.00
					Total Price (Item #5)	\$585,000.00

* Utility Gas line installation schedule is an Allowance and could vary


ZEIT ENERGY

CNG FUELING SERVICES

 City of Denton
 Design and Build Services
 CNG Fueling Station
 Appendix A

Appendix A

3 year Maintenance Service Proposal

Zeit Energy will provide preventive and scheduled maintenance as detailed in our proposal for \$2100/month, including oil and filters. Repair and emergency maintenance are provided as needed and approved by the City. Maintenance services include only new CNG and Liquid Fuels equipment installed by Zeit Energy.

Labor Rate Sheet

Controls/Automation	\$119.00/hr or \$950/day (8 to 10hrs)
Training	\$1,200/day (8 to 10hrs)
Repair and emergency maintenance	\$104.00/hr
Repair and emergency maintenance (Preferred Contract Rate)	\$99.00/hr

(Contract Rate offers)

Discounted labor rate

Preferred service scheduling

Twenty Four/ Seven, telephone support

Over Time and Weekend's billed at rate times one point five

Holidays billed at rate times two

Vehicle mileage \$0.89/mi

Note: Preventive maintenance for liquid fuel dispensers includes yearly filters replacement only.

Exhibit B

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

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Scope of Work

The intent of this Contract is to obtain complete design-build of the project identified with the technical specifications, as detailed in the RFQ documents, per the plans, drawings, and technical specifications submitted by the Design-Builder, and approved by the City's Independent Engineer/Architect, as further identified within this contract, and in full compliance with the provision of Texas Government Code 2269. Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents. The work described in the Contract Documents is described in detail in the **Technical Specifications, the Plans, and the Drawings as submitted by the Design-Builder and approved by the City's Independent Engineer/Architect.** The proposal submitted accurately describes the Design-Builders' understanding of the objectives and scope of the requested design and construction services, and provides 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 Design-Builder, 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 Design-Builder shall be responsible for all spoil removals, and any excess soil that will require removal.**



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Appendix E

Scope of Services

Engineering/Construction Management

- Professional Engineering design.
- PE Sealed Construction Document.
- Construction Management and on-site Supervision.

Permitting

- City of Denton Building Permit

Civil Scope

- Construction signage and barricades.
- Trenching including backfill/compaction.
- Removing existing fuel island area concrete paving, grade and repave. (Approx 6000 sqft).
- Remove grass island section at the entrance of the fueling facility and pave with concrete.
- Compressor Concrete Pad.
- CNG Dryer Concrete Pad.
- Priority valve Panel Concrete Pad.
- Storage Concrete Pad.
- Modify Dispensers Islands to receive new dispensers
- Materials, labor, and equipment to set and anchor equipment (Dispensers, Dryer, Compressors, Storage Vessels, valve Panel, Fire Extinguishers, signs).
- Install pipe bollards around Electrical Utility transformer.
- Gravel aggregate in equipment area.
- Install painted CMU block wall around CNG equipment area with steel door.
- Project Signage and Fire Extinguishers.
- Project general (Temporary Toilet, Dumpster, Water Supply etc...).
- Permitting.

Electrical Scope

- Service Entrance disconnects/ Panels (Furnish and Install)
- Emergency Shutdown Buttons (Furnish and Install) and tie to existing ESD loop.
- All Conduits, Conductors and seal-offs (Furnish and Install).
- All CNG and liquid fuels equipment Terminations.
- Replace existing canopy lights
- Equipment Grounding.
- Permitting.

Piping Scope

- Furnish and Install Carbon Steel Pipe From gas riser at the CNG equipment area to Dryer.
- Furnish and Install Carbon Steel Pipe from Dryer to Compressor.
- Pressure Test Carbon Steel Pipe.

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Appendix E

- Provide and install all high pressure SS tubing Sleeves.
- Install SS tubing in sleeves.
- Provide and Install all high pressure fittings needed to connect SS tubing to CNG Equipment.
- Pressure test high pressure SS tubing.
- Mount and Connect fast fill dispensers.
- Permitting.

Liquid/CNG Fuels Scope

- Install 2 dual hose CNG dispensers with internal card readers and Comdata POS.
- Install 2 high flow dual hose biodiesel dispensers, with internal card readers and Comdata POS.
- Install 1 regular flow dual hose biodiesel dispenser with internal card readers and Comdata POS.
- Install 1 E85/Unleaded dual hose dispenser with internal card readers and comdata POS.
- Replace WARD fuel management system pedestal for DEF dispenser and overhead dispenser

Miscellaneous Scope

- Remove Existing Fuel Management Pedestals (WARD) and store on site.
- Remove existing acuumms and compressed air equipment and store on site.
- Remove existing liquid fuel dispensers (4 total) and store on site.

Landscaping Scope

- Install landscaping around Equipment area as required by code.
- Expand existing irrigation system to CNG equipment area.

Pole Street Sign

- Install new street pole sign. location , size and design to be determined.
- Installation includes electrical service.
- Permitting.

Gas line/Service

- Coordination and negotiation with Atmos Energy for Gas line extension to fueling site.
- Install gas pipe underground from gas meter location to CNG equipment area.
- Easement preparation.
- Permitting.

Equipment Services:

Commissioning & Start-up Support (Start-up): The program is designed to provide the basics of maintaining our systems and ensures that the installation of all site connections is complete and correct as well as validating warranty.



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Technical/cost proposal

Engineering & Construction Scope

Engineering/Construction Management

- Professional Engineering design.
- PE Sealed Construction Document.
- Construction Management and on-site Supervision.

Permitting

- City of Denton Building Permit

Civil Scope

- Construction signage and barricades.
- Trenching including backfill/compaction.
- Removing existing fuel island area concrete paving, grade and repave. (Approx 6000 sqft).
- Remove grass island section at the entrance of the fueling facility and pave with concrete.
- Compressor Concrete Pad.
- CNG Dryer Concrete Pad.
- Priority valve Panel Concrete Pad.
- Storage Concrete Pad.
- Modify Dispensers Islands to receive new dispensers
- Materials, labor, and equipment to set and anchor equipment (Dispensers, Dryer, Compressors, Storage Vessels, valve Panel, Fire Extinguishers, signs).
- Install pipe bollards around Electrical Utility transformer.
- Gravel aggregate in equipment area.
- Install painted CMU block wall around CNG equipment area with steel door.
- Project Signage and Fire Extinguishers.
- Project general (Temporary Toilet, Dumpster, Water Supply etc...).
- Permitting.

Electrical Scope

- Service Entrance disconnects/ Panels (Furnish and Install)
- Emergency Shutdown Buttons (Furnish and Install) and tie to existing ESD loop.
- All Conduits, Conductors and seal-offs (Furnish and Install).
- All CNG and liquid fuels equipment Terminations.
- Replace existing canopy lights
- Equipment Grounding.
- Permitting.

Piping Scope

- Furnish and Install Carbon Steel Pipe From gas riser at the CNG equipment area to Dryer.
- Furnish and Install Carbon Steel Pipe from Dryer to Compressor.
- Pressure Test Carbon Steel Pipe.
- Provide and install all high pressure SS tubing Sleeves.
- Install SS tubing in sleeves.
- Provide and Install all high pressure fittings needed to connect SS tubing to CNG Equipment.
- Pressure test high pressure SS tubing.
- Mount and Connect fast fill dispensers.

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- Permitting.

Liquid/CNG Fuels Scope

- Install 2 dual hose CNG dispensers with internal card readers and Comdata POS.
- Install 2 high flow dual hose biodiesel dispensers, with internal card readers and Comdata POS.
- Install 1 regular flow dual hose biodiesel dispenser with internal card readers and Comdata POS.
- Install 1 E85/Unleaded dual hose dispenser with internal card readers and comdata POS.
- Replace WARD fuel management system pedestal for DEF dispenser and overhead dispenser

Miscellaneous Scope

- Remove Existing Fuel Management Pedestals (WARD) and store on site.
- Remove existing acuumms and compressed air equipment and store on site.
- Remove existing liquid fuel dispensers (4 total) and store on site.

Landscaping Scope

- Install landscaping around Equipment area as required by code.
- Expand existing irrigation system to CNG equipment area.

Pole Street Sign

- Install new street pole sign. location , size and design to be determined.
- Installation includes electrical service.
- Permitting.

Gas line/Service

- Coordination and negotiation with Atmos Energy for Gas line extension to fueling site.
- Install gas pipe underground from gas meter location to CNG equipment area.
- Easement preparation.
- Permitting.

EXHIBIT 5**ZEIT ENERGY**

CNG FUELING SERVICES

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CNG Fueling Station
Appendix D

Summary of Major Equipment

Equipment	Manufacturer	QTY	Unit Cost	Extended Total
NG300E Duplex Compressor Package, 999 scfm capacity @ 264.5 psig inlet pressure per compressor, 4,500 psi discharge, 250 Bhp, 480 VAC TEFC Electric Motor	ANGI	1	\$520,490	\$520,490
Duplex Motor Starter Panel	ANGI	1	\$36,120	\$36,120
Site Controller Panel for 2 compressors with remote monitoring	ANGI	1	\$15,100	\$15,100
Inlet Dryer, Model GD-024-S-M-460-300-3, rated for 2004 scfm at 270 psig	ANGI	1	\$72,270	\$72,270
Priority Valve Panel	ANGI	1	\$39,130	\$39,130
ASME storage 3-Pack, Storage capacity of 64,766 scf at 5,500 psig	FIBA	1	\$123,660	\$123,660
Fast Fill CNG Dispenser, Gilbarco Encore 700S, with chip reader	ANGI	2	\$79,600	\$159,200
Diesel Fuel Dispenser, Encore 700S High Flow dual hose Dispenser	GILBARCO	2	\$36,215	\$72,430
Diesel Fuel Dispenser, Encore 700S Regular Flow dual hose Dispenser	GILBARCO	1	\$28,800	\$28,800
E85/Unleaded Fuel Dispenser, Encore 700S Regular Flow dual hose Dispenser E85 on side Unleaded on the other side	GILBARCO	1	\$28,800	\$28,800
Pegasus Point of Sale pedestal	PEGASUS	1	\$13,200	\$13,200
Point of sale system software and hardware	COMDATA	1	\$25,800	\$25,800



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City of Denton
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CNG Fueling Station
Technical/cost proposal

Equipment Specifications

CNG Compressor (QTY: 1)

ANGI NG300E Duplex Compressor Package

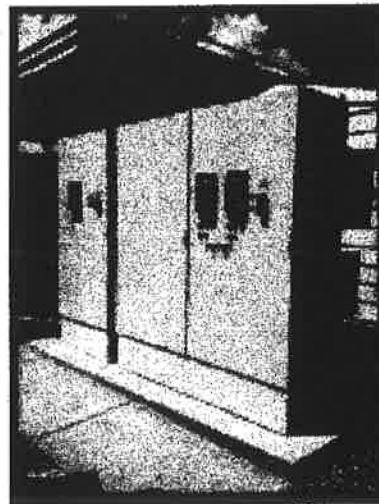
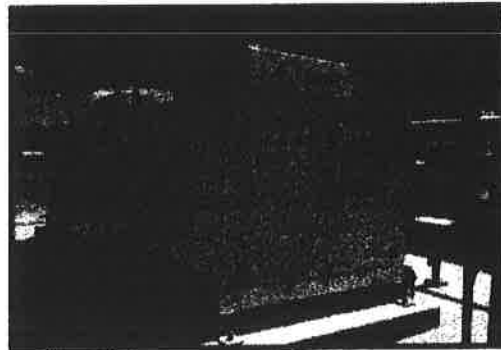
- Ariel JGQ/2, 3 Stage Reciprocating Compressor
- 999 SCFM capacity @ 264.5 psig per inlet pressure (249hp) per compressor, 4500 psi discharge.
- 250 BHP, 480 VAC, 1800 RPM TEFC Electric motor
- ANGI control system with Allen Bradley remote I/O (controlled by site controller-listed below)
- Protective enclosure includes sound attenuation, interior light, and gas detector
- Standard operating temperatures -20 to 105F

Duplex Motor Starter Panel: Two 250 hp motors, with Soft Start (QTY 1)

- UL approved with a short circuit current rating (SCCR) of 65 KAIC Main Circuit Breaker
- Assembled Nema 3R or equal (outdoor) enclosures
- Includes Equipment Control Power and ESD Control
- Main disconnect breaker 1000A, Factory Trip setting 760A
- Standard operating temperature -20 to 105 F

Site Controller panel for two (2) Compressors (QTY 1)

- Centralized control of all equipment
- Allen Bradley CompactLogix PLC with Red Lion 7" color touch screen interface
- Centralized control of all equipment through remote I/O panels
- Redundant backup PLC for a cold swap recovery process included
- Lead /lag compressor start / stop control to balance equipment run hours
- Gas control for customer specific fueling strategy
- Incorporated communication panel with data logging and fault notification
- Nema 4 enclosure can be located in a hazardous area.





ZEIT ENERGY

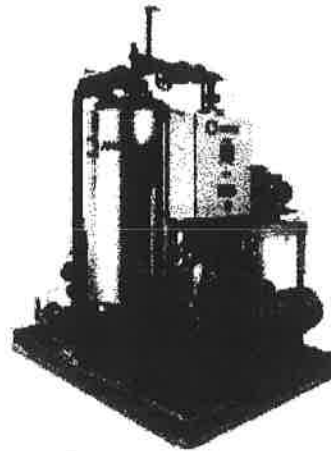
CNG FUELING SERVICES

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Inlet Gas Dryer (QTY:1)

ANGI Model GD-024-S-M-460-300-3

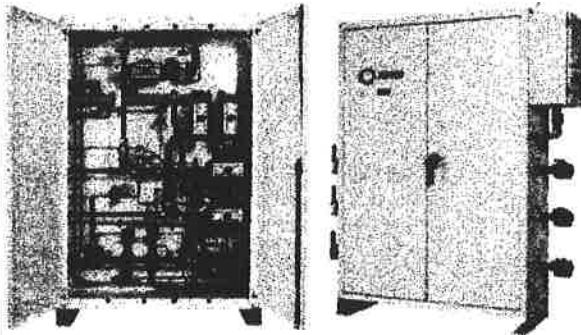
- Single Tower
- 2004 SCFM @270 psi Inlet
- Approximately 5.5 psi pressure drop
- Regen interval, 82 Hrs @ 7% of water per MMSCF)
- Digital Dew Point Monitor
- Vent stack



Priority Valve Panel (QTY: 1)

Angi Energy

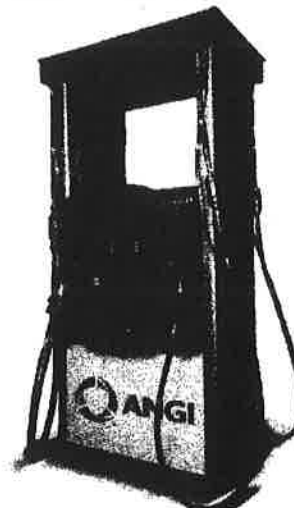
- Electronically controlled gas actuated valves
- 1" ported ball valves
- Three line feed to cascade storage field and dispensing
- Allen Bradley remote I/O control Panel controlled by centralized site control panel PLC



CNG Dispenser (QTY: 2)

Angi Gilbarco Encore 700S CNG Dispenser

- 5.7" color screen with HCR EMV ready hybrid card reader in dispenser (CRIND)
- 3-line in per hose configuration (sequencing in dispenser)
- Two (2) meters (one per side)
- 3/4" connections; 1" internal tubing
- 2-side; 2-hose configuration (one hose/nozzle assembly per side)





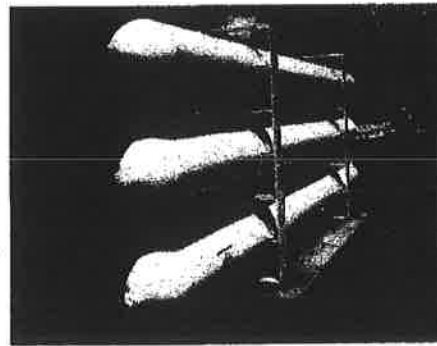
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Technical/cost proposal

ASME storage 3-Pack 38"(QTY 1):

- Can store 64,766 scf Natural Gas at 5500 psig. Each assembly includes inlet & relief valve isolation ball valves, ASME pressure relief valve for each vessel and I-beam mounting of vessel in a 1 wide, 3 high configurations.



Liquid Fuel Dispensers

Gilbarco Encore 700 S

- High Flow dual hose Diesel Dispenser (QTY 2)
- Regular Flow dual hose Diesel Dispenser (QTY1)
- Regular flow E85/Unleaded Dual hose dispenser (Qty1)
- 5.7" Color screen with HCR EMV ready hybrid card reader in dispenser (CRIND

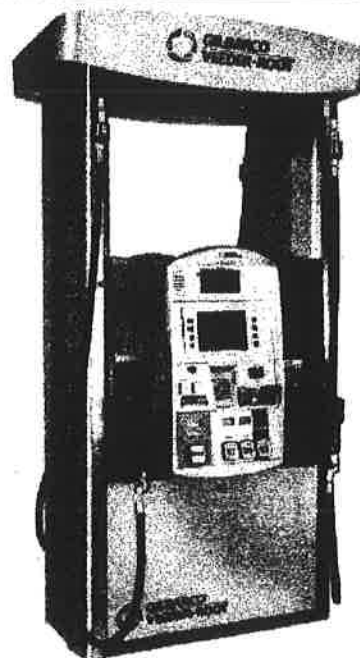


EXHIBIT 5



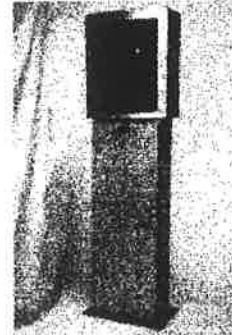
ZEIT ENERGY

CNG FUELING SERVICES

City of Denton
Design and Build Services
CNG Fueling Station
Technical/cost proposal

Point Of Sale System

Comdata fuel management system with Pegasus pedestal for DEF and overhead dispenser.



Pegasus IV Pedestal

Services:

Commissioning & Start-up Support (Start-up): The program is designed to provide the basics of maintaining our systems and ensures that the installation of all site connections is complete and correct as well as validating warranty.

Freight: CNG Equipment delivered to site

Requirements:

- 480 volt / 3 Phase from electric utility
- 270 psig inlet pressure from natural gas utility
- Internet connection

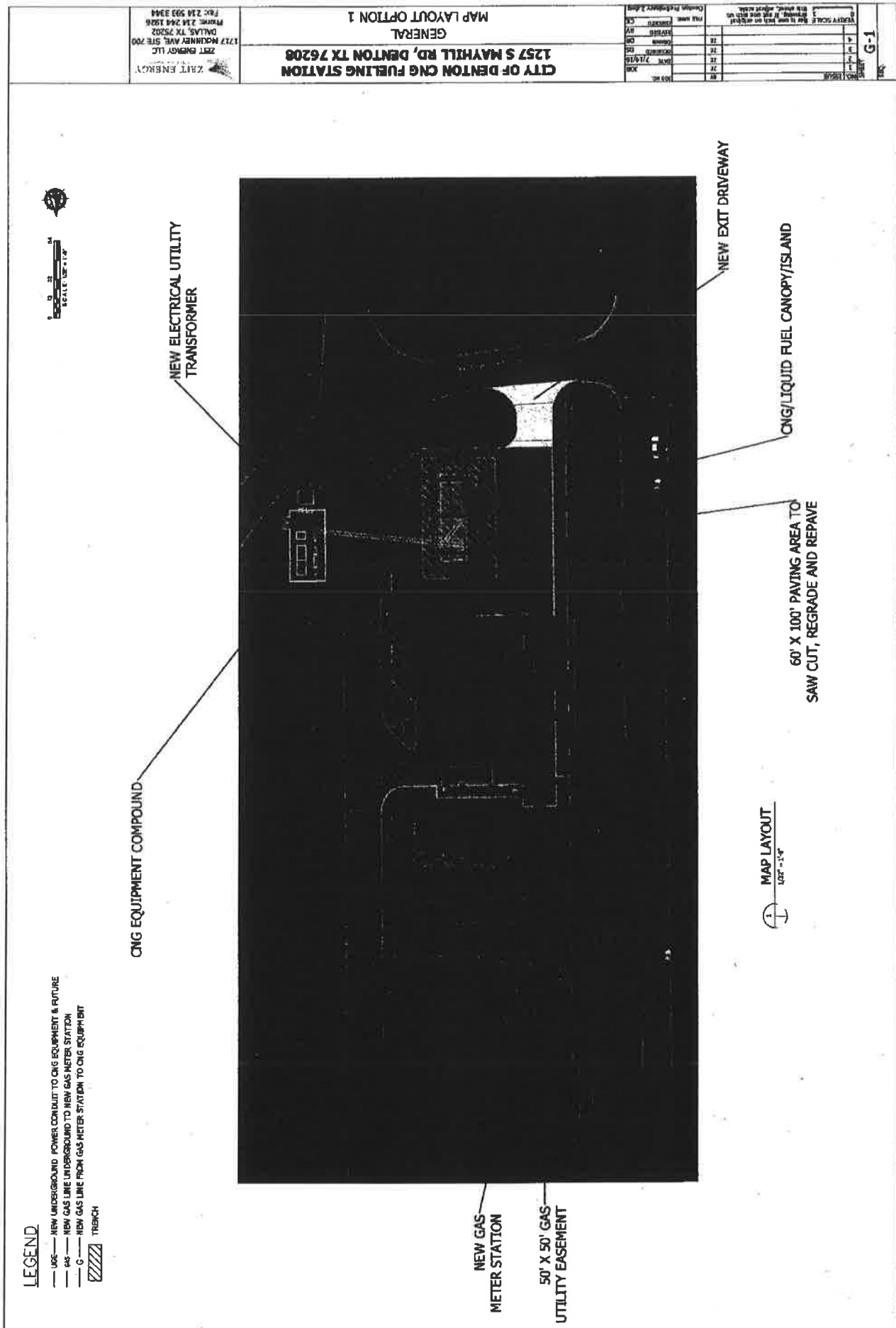


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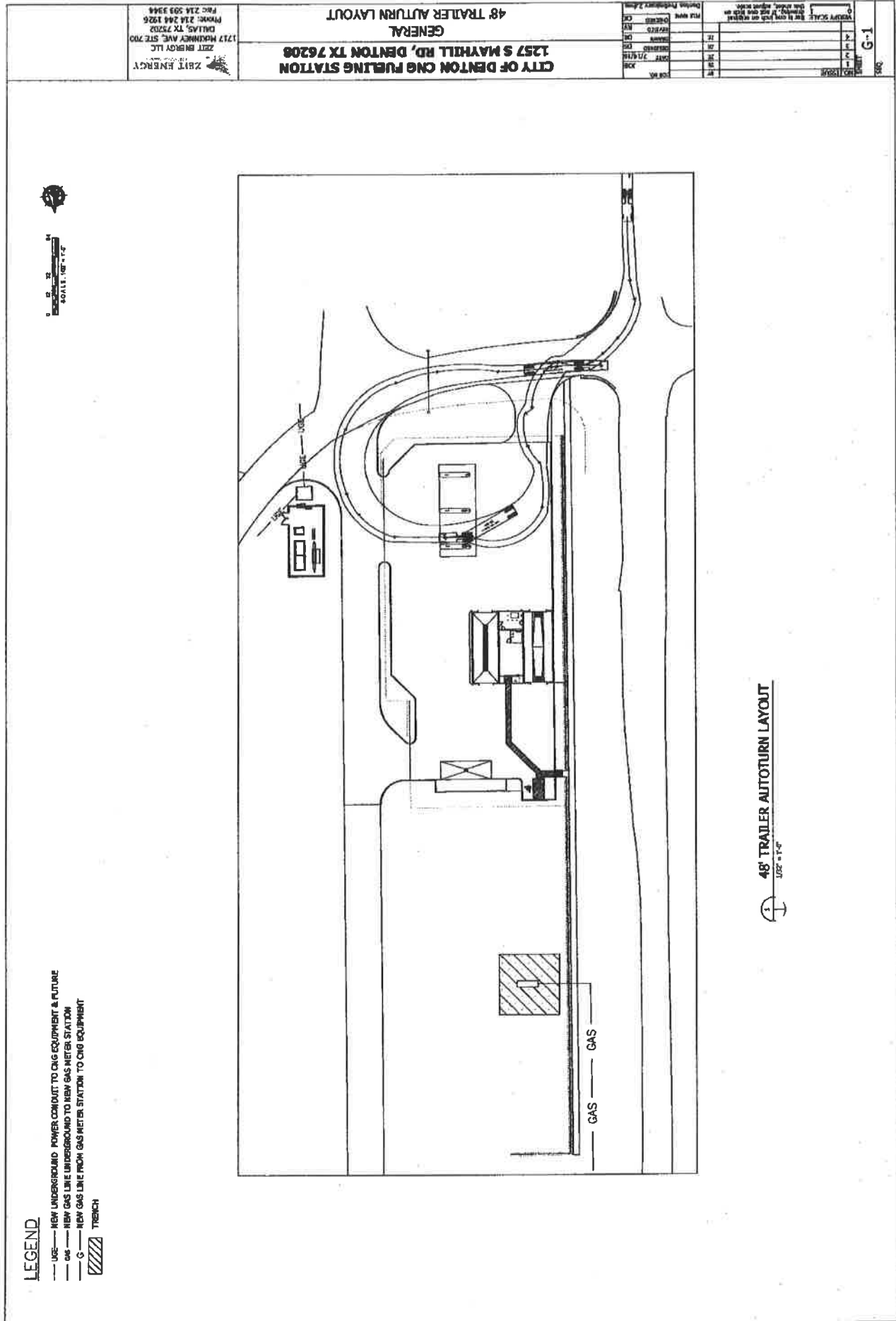


Exhibit C

**Design-Builder Payment and Performance
Milestones**

EXHIBIT 5

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

Invoices: Invoices shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299 with a copy to the attention of Vance Kemler, General Manager, City of Denton Solid Waste Department, 1527 S. Mayhill Rd, Denton, TX 76208. The copy may also be emailed to Vance Kemler at vance.kemler@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 Design-Builder 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 DESIGN-BUILDER FOR CONSTRUCTION PORTION OF THE PROJECT:

- 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 Design-Builder for construction accomplished during the preceding calendar month on the basis of completed construction certified to by the Design-Builder and approved by the Owner and Independent 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 Design-Builder prior to completion of the project. Upon the approval by the Owner of the Design-Builder's "Final Invoice for Payment" showing the total cost of the construction performed, the Owner shall make payment to the Design-Builder of all amounts to which the Design-Builder 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 Design-Builder.

EXHIBIT 5

- B. The Design-Builder shall be paid on the basis of the percentage of the work actually completed for each construction item. The total amount paid for periodic billings shall not exceed the maximum contract price for the construction of the project as set forth in the contract, unless such excess shall have been approved 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 Design-Builder is in default in respect of any of the provisions of this contract, and the Owner may withhold from the Design-Builder the amount of any claim by any third party against either the Design-Builder or the Owner based upon an alleged failure of the Design-Builder to perform the work hereunder in accordance with the provisions of this contract. This includes alleged failure of the Design-Builder to make payments to subcontractors.

4. RELEASE OF LIENS AND CERTIFICATE OF DESIGN-BUILDER:

Release of Liens and Certificate of Design-Builder shall be accomplished in accordance with Article 5.3 of the Standard Terms and Conditions for Building Construction.

5. PAYMENTS TO MATERIAL-MEN AND SUBCONTRACTORS:

The Design-Builder 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 Design-Builder for and on account of materials furnished or construction performed by each materialman or each subcontractor.

6. REMEDIES:

A. Completion of Design-Builder's Default

If default shall be made by the Design-Builder 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 Design-Builder and the Surety or Sureties upon the Design-Builder's bond or bonds a written notice requiring the Design-Builder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Design-Builder such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner and/or Engineer shall be made by the Design-Builder 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 Design-Builder, and the Design-Builder 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 Design-Builder 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 Design-Builder may have against third persons in connection with this contract and for such purpose the Design-Builder 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 Design-Builder 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 Design-Builder the sum of FIVE HUNDRED DOLLARS (\$500.00) per day for each and every day, including weekends, that such

EXHIBIT 5

construction is delayed on its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Design-Builder is insufficient to pay in full any such liquidated damages, the Design-Builder shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Design-Builder 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 Design-Builder to complete the construction of the project within the time herein agreed upon.

7. PAYMENTS TO THE DESIGN-BUILDER FOR THE DESIGN PORTION OF THE CONTRACT:

7.1 DIRECT PERSONNEL EXPENSE

7.1.1 Direct Personnel Expense is defined as the direct salaries of the Design Professional's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

7.2 REIMBURSABLE EXPENSES

7.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Design Professional and Design Professional's employees and consultants in the interest of the Project, as identified in the following Clauses.

7.2.1.1 Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

7.2.1.2 Expense of reproductions (except the reproduction of the sets of documents referenced in Subsection 2.6.19), postage and handling of Drawings, Specifications and other documents.

7.2.1.3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

7.2.1.4 Expense of renderings, models and mock-ups requested by the Owner.

7.2.1.5 Expense of computer-aided design and drafting equipment time when used in connection with the Project.

7.2.1.6 Other expenses that are approved in advance in writing by the Owner.

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7.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

7.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in *Exhibit A - Contract Pricing Details and as further detailed in the Scope of Work and Schedule of Delivery of the Agreement*.

7.3.2 If and to the extent that the time initially established in the Agreement is exceeded or extended through no fault of the Design Professional, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in *Exhibit A - Contract Pricing Details and as further detailed in the Scope of Work and Schedule of Delivery of the Agreement*.

7.3.3 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in *Exhibit A - Contract Pricing Details and as further detailed in the Scope of Work and Schedule of Delivery of the Agreement*, based on (1) the lowest bona fide price or (2) if no such price or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

7.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

7.4.1 Payments on account of the Design Professional's Additional Services and for Reimbursable Expenses shall be made monthly within 30 days after the presentation to the Owner of the Design Professional's statement of services rendered or expenses incurred.

7.5 PAYMENTS WITHHELD No deductions shall be made from the Design Professional's compensation on account of penalty, liquidated damages or other sums withheld from payments to Design-Builders, or on account of the cost of changes in the work other than those for which the Design Professional is responsible.

7.6 DESIGN PROFESSIONAL'S ACCOUNTING RECORDS Design Professional shall make available to Owner or Owner's authorized representative records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense for inspection and copying during regular business hours for three years after the date of the final Certificate of Payment, or until any litigation related to the Project is final, whichever date is later.

Exhibit D

City of Denton Construction
Terms and Conditions
and
Contractual Requirements
for
Design-Build Projects

CITY OF DENTON GENERAL CONDITIONS FOR ARCHITECTURAL /ENGINEERING SERVICES ON DESIGN-BUILD PROJECTS

ARTICLE 1. ARCHITECT OR ENGINEER'S RESPONSIBILITIES

1.1 For the Design Portion of the Project, the Architect or Engineer's services consist of those services for the Project (as defined in the agreement (the "Agreement") and proposal (the "Proposal") to which these General Conditions are attached) performed by the Architect or Engineer (hereinafter called the "Design Professional") or Design Professional's employees and consultants as enumerated in Articles 2 and 3 of these General Conditions as modified by the Agreement and Proposal (the "Services").

1.2 The Design Professional will perform all Services as an independent Design-Builder to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt timely actions (the "Degree of Care"). The Services shall be performed as expeditiously as is consistent with the Degree of Care necessary for the orderly progress of the Project. Upon request of the Owner, the Design Professional shall submit for the Owner's approval a schedule for the performance of the Services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by the Owner shall not, except for reasonable cause, be exceeded by the Design Professional or Owner, and any adjustments to this schedule shall be mutually acceptable to both parties.

ARTICLE 2 SCOPE OF BASIC SERVICES

2.1 BASIC SERVICES DEFINED The Design Professional's Basic Services consist of those described in Sections 2.2 through 2.6 of these General Conditions and include without limitation normal structural, civil, mechanical and electrical engineering services and any other engineering services necessary to produce a complete and accurate set of Construction Documents, as described by and required in Section 2.4. The Basic Services may be modified by the Agreement.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Design Professional, in consultation with the Owner, shall develop a written program for the Project to ascertain Owner's needs and to establish the requirements for the Project.

2.2.2 The Design Professional shall provide a preliminary evaluation of the Owner's program, construction schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subsection 5.2.1.

2.2.3 The Design Professional shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Design Professional shall prepare, for approval by the Owner, Schematic Design Documents

EXHIBIT 5

consisting of drawings and other documents illustrating the scale and relationship of Project components. The Schematic Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations.

2.2.5 The Design Professional shall submit to the Owner a preliminary detailed estimate of Construction Cost based on current area, volume or other unit costs and which indicates the cost of each category of work involved in constructing the Project and establishes an elapsed time factor for the period of time from the commencement to the completion of construction.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Design Professional shall prepare for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate, which shall comply with all applicable laws, statutes, ordinances, codes and regulations. Notwithstanding Owner's approval of the documents, Design Professional represents that the Documents and specifications will be sufficient and adequate to fulfill the purposes of the Project.

2.3.2 The Design Professional shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost in a further Detailed Statement as described in Section 2.2.5.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Design Professional shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail requirements for the construction of the Project, which shall comply with all applicable laws, statutes, ordinances, codes and regulations.

2.4.2 The Design-Builder shall ensure that any subcontractor pricing (bidding), if required for the project, is accomplished in accordance with the requirements of Texas Government Code 2269.

2.4.3 The Design-Builder shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

2.4.4 The Design-Builder shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5 CONSTRUCTION CONTRACT PROCUREMENT

2.5.1 The Design-Builder, following the Owner's approval of the Construction Documents and of the latest preliminary detailed estimate of Construction Cost, shall then, secure the resources necessary to complete the construction of the project, in compliance with Texas Government Code 2269.

2.5.2 If the construction contract amount for the Project exceeds the total construction cost of the Project as set forth in the approved Detailed Statement of Probable Construction Costs of the Project submitted by the Design-Builder, then the Design-Builder, at its sole cost and expense, will revise the

EXHIBIT 5

Construction Documents as may be required by the Owner to reduce or modify the quantity or quality of the work so that the total construction cost of the Project will not exceed the total construction cost set forth in the approved Detailed Statement of Probable Construction Costs.

2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Design-Builder's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract and terminates at the issuance to the Owner of the final Certificate for Payment, unless extended under the terms of Subsection 8.3.2.

2.6.2 The Design-Builder shall provide detailed administration of the Contract for Construction as set forth below. For design professionals the administration shall also be in accordance with AIA document A201, General Conditions of the Contract for Construction, current as of the date of the Agreement as may be amended by the City of Denton special conditions, unless otherwise provided in the Agreement. For engineers the administration shall also be in accordance with the Standard Specifications for Public Works Construction by the North Central Texas Council of Governments, current as of the date of the Agreement, unless otherwise provided in the Agreement.

2.6.3 Construction Phase duties, responsibilities and limitations of authority of the Design-Builder shall not be restricted, modified or extended without written agreement of the Owner and Design Professional.

2.6.4 The Design-Builder shall be a representative of and shall advise and consult with the Owner (1) during construction, and (2) at the Owner's direction from time to time during the correction, or warranty period described in the Contract for Construction. The Design-Builder shall have authority to act on behalf of the Owner only to the extent provided in the Agreement and these General Conditions, unless otherwise modified by written instrument.

2.6.5 The Design-Builder shall observe the construction site at least one time a week, while construction is in progress, and as reasonably necessary while construction is not in progress, to become familiar with the progress and quality of the work completed and to determine if the work is being performed in a manner indicating that the work when completed will be in accordance with the Contract Documents. Design-Builder shall provide Owner a written report subsequent to each on-site visit. On the basis of on-site observations the Design-Builder shall keep the Owner informed of the progress and quality of the work, and shall exercise the Degree of Care and diligence in discovering and promptly reporting to the Owner any observable defects or deficiencies in the work of Design-Builder or any subcontractors. The Design-Builder represents that he will follow Degree of Care in performing all Services under the Agreement. The Design-Builder shall promptly correct any defective designs or specifications furnished by the Design-Builder at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Design-Builder's Services hereunder or of the Project itself shall in no way alter the Design-Builder's obligations or the Owner's rights hereunder.

2.6.6 The Design-Builder shall have control over and charge of and shall be responsible for construction means, methods, techniques, sequences or procedures, and for safety precautions and programs in connection with the work. The Design-Builder shall be responsible for the Design-Builder schedules or failure to carry out the work in accordance with the Contract Documents except insofar as such failure may result from Design-Builder's negligent acts or omissions. The Design-Builder shall have control over or charge of acts or omissions of Design-Builder Subcontractors, or their agents or employees, or of any other persons performing portions of the work.

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2.6.7 The Design-Builder shall at all times have access to the work wherever it is in preparation or progress.

2.6.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Design-Builder shall communicate through any assigned Design Professional, and the Independent Architect or Engineer hired by the Owner to review the Work, in compliance with Texas Government Code 2269. Communications by and with the Design-Builder's consultants shall be through the Design-Builder.

2.6.9 Based on the Independent Architect or Engineer's observations at the site of the work and evaluations of the Design-Builder's Applications for Payment, the Independent Architect or Engineer shall review and certify the amounts due the Design-Builder.

2.6.10 The Design-Builder's certification for payment shall constitute a representation to the Owner, based on the Design-Builder's observations at the site as provided in Subsection 2.6.5 and on the data comprising the Design-Builder's Application for Payment, that the work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Design-Builder. The issuance of a Certificate for Payment shall further constitute a representation that the Design-Builder is entitled to payment in the amount certified. The Application for Payment shall be reviewed and approved by the Independent Architect or Engineer, prior to payment authorization by the Owner.

2.6.11 The Independent Architect or Engineer shall have the responsibility and authority to reject work which does not conform to the Contract Documents. Whenever the Independent Architect or Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Independent Architect or Engineer will have authority to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Independent Architect or Engineer nor a decision made in good faith either to exercise or not exercise such authority shall give rise to a duty or responsibility of the Independent Architect or Engineer to the Design-Builder, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing the construction portions of the work.

2.6.12 The Design-Builder, in coordination and agreement with the Independent Architect or Engineer shall review and approve or take other appropriate action upon Design-Builder's submittals such as Shop Drawings, Product Data and Samples for the purpose of (1) determining compliance with applicable laws, statutes, ordinances and codes; and (2) determining whether or not the work, when completed, will be in compliance with the requirements of the Contract Documents. The Design-Builder shall act with such reasonable promptness to cause no delay in the work or in the construction of the Owner or of separate Design-Builders, while allowing sufficient time in the Design-Builder's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Design-Builder, all of which remain the responsibility of the Design-Builder to the extent required by the Contract Documents. The Design-Builder's review shall constitute approval of safety precautions as specifically stated by the Design-Builder's, construction means, methods, techniques, sequences or procedures. The Design-Builder's approval of a specific item shall indicate approval of an assembly of which the item is a component. When professional

EXHIBIT 5

certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Design-Builder shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Design-Builder shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Design-Builder as provided in Subsections 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.14 On behalf of the Owner, the Independent Architect or Engineer shall conduct inspections to determine the dates of Substantial Completion and Final Completion, and if requested by the Owner, the Design-Builder shall issue Certificates of Substantial and Final Completion. The Design-Builder will receive and review written guarantees and related documents required by the Contract for Construction to be assembled by the Design-Builder and shall issue a final certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 The Design-Builder shall interpret and provide recommendations on matters concerning performance under the requirements of the Contract Documents on written request of either the Owner or the Independent Architect/Engineer. The Design-Builder's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

2.6.16 Interpretations and decisions of the Design-Builder shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Design-Builder shall endeavor to secure faithful performance Design-Builder of the Contract, and shall not be liable for results or interpretations or decisions so rendered in good faith in accordance with all the provisions of this Agreement and in the absence of negligence.

2.6.17 The Independent Architect or Engineer shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Design-Builder relating to the execution or progress of the work as provided in the Contract Documents.

2.6.18 The Design-Builder (1) shall render services under the Agreement in accordance with the Degree of Care; (2) will reimburse the Owner for all damages caused by the defective designs the Design-Builder prepares; and (3) by acknowledging payment by the Owner of any fees due, shall not be released from any rights the Owner may have under the Agreement or diminish any of the Design-Builder's obligations thereunder.

2.6.19 The Design-Builder shall provide the Owner with four sets of reproducible prints showing all significant changes to the Construction Documents during the Construction Phase.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

EXHIBIT 5

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in the Agreement or Proposal, and they shall be paid for by the Owner as provided in the Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Design-Builder's control, the Design-Builder shall notify the Owner in writing and shall not commence such additional services until it receives written approval from the Owner to proceed. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Design-Builder shall have no obligation to provide those services. Owner will be responsible for compensating the Design-Builder for Contingent Additional Services only if they are not required due to the negligence or fault of Design-Builder.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subsection 2.6.5 is required, the Design-Builder shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Design-Builder, and the Design-Builder shall be compensated therefor as agreed by the Owner and Design-Builder.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making material revisions in Drawings, Specifications or other documents when such revisions are:

1. Inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
2. Required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or
3. Due to changes required as a result of the Owner's failure to render decision in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, or the Owner's schedule, except for services required under Subsection 2.5.2.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, and providing other services in connection with Change Orders and Construction Change Directives.

3.3.4 Providing consultation concerning replacement of work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work.

3.3.5 Providing services made necessary by the default of the Design-Builder, by major defects or deficiencies in the work of the Design-Builder, or by failure of performance of either the Owner or Design-Builder under the Contract for Construction.

EXHIBIT 5

3.3.6 Providing services in evaluating an extensive number of claims submitted by the Design-Builder or others in connection with the work.

3.3.7 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Design-Builder is party thereto.

3.3.8

3.3.9 Notwithstanding anything contained in the Agreement, Proposal or these General Conditions to the contrary, all services described in this Article 3 that are caused or necessitated in whole or in part due to the negligent act or omission of the Design-Builder shall be performed by the Design-Builder as a part of the Basic Services under the Agreement with no additional compensation above and beyond the compensation due the Design-Builder for the Basic Services. The intervening or concurrent negligence of the Owner shall not limit the Design-Builder's obligations under this Subsection 3.3.9.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing financial feasibility or other special studies.

3.4.2 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.3 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

3.4.4 Providing services relative to future facilities, systems and equipment.

3.4.5 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

3.4.6 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

3.4.7 Providing coordination of construction performed by separate Design-Builders or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.4.8 Providing detailed quantity surveys or inventories of material, equipment and labor.

3.4.9 Providing analyses of operating and maintenance costs.

3.4.10 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.12 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance and consultation during operation.

3.4.13 Providing interior design and similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

EXHIBIT 5

3.4.14 Providing services other than as provided in Section 2.6.4, after issuance to the Owner of the final Certificate for Payment and expiration of the Warranty period of the Contract for Construction.

3.4.15 Providing services of consultants for other than architectural, civil, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

3.4.16 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

3.4.17 Preparing a set of reproducible record drawings in addition to those required by Subsection 2.6.19, showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the Design-Builder to the Design-Builder.

3.4.18 Notwithstanding anything contained in the Agreement, Proposal or these General Conditions to the contrary, all services described in this Article 3 that are caused or necessitated in whole or in part due to the negligent act or omission of the Design-Builder shall be performed by the Design-Builder as a part of the Basic Services under the Agreement with no additional compensation above and beyond the compensation due the Design-Builder for the Basic Services. The intervening or concurrent negligence of the Owner shall not limit the Design-Builder's obligations under this Subsection 3.4.18.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall consult with the Design-Builder regarding requirements for the Project, including (1) the Owner's objectives, (2) schedule and design constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, systems and site requirements, as more specifically described in Subsection 2.2.1.

4.2 The Owner shall establish and update an overall budget for the Project, including the Design Cost, the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 If requested by the Design-Builder, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project (Independent Architect or Engineer). The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Design-Builder in order to avoid unreasonable delay in the orderly and sequential progress of the Design-Builder's services.

4.5 Where applicable, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below

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grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.

4.6 Where applicable, the Owner shall furnish the services of geotechnical engineers when such services are requested by the Design-Builder. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.

4.6.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Design-Builder and are not retained by the Design-Builder as part of its Basic Services or Additional Services.

4.7 When not a part of the Additional Services, the Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests of hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Design-Builder's Applications for Payment or to ascertain how or for what purposes the Design-Builder has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Owner under Sections 4.5 through 4.8 shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof in the absence of any negligence on the part of the Design-Builder.

4.10 The Owner shall give prompt written notice to the Design-Builder if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

4.11 Design-Builder shall propose language for certificates or certifications to be requested of the Design-Builder or Design-Builder's consultants and shall submit such to the Owner for review and approval at least fourteen (14) days prior to execution. The Owner agrees not to request certifications that would require knowledge or services beyond the scope of the Agreement.

ARTICLE 5 CONSTRUCTION COST

5.1 CONSTRUCTION COST DEFINED

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Construction of the Project designed or specified by the Design-Builder.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design-Builder. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of award and for changes in the work during construction.

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5.1.3 Project Construction Cost does not include the compensation of the Design-Builder, for the Design Portion of the Contract, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Design and Construction Cost and detailed estimates of Construction Cost prepared by the Design Professional represent the Design Professional's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Design-Builder has agreed to a firm-fixed cost for the Design Portion of the Project and the Construction of the Project.

5.2.2 A fixed limit or amount of Construction Cost shall be established by the Design-Builder as a condition of the Agreement by the furnishing, proposal or establishment of a Project cost. If such a fixed cost has been established, the Design-Builder shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Design-Build.

5.2.3 The Design-Builder shall submitted the final specifications, plans, and drawings (Construction Documents) to the Owner for final approval, prior to commencement of Construction. The Owner shall have thirty (30) days to review the Construction Documents. The Owner may request modifications to the Construction Documents. If the Construction Phase portion of the Project has not commenced within 90 days after the Design-Builder submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which Construction has initiated.

ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS

6.1 The Drawings, Specifications and other documents prepared by the Design Professional for this Project are instruments of the Design-Builder's service and shall become the property of the Owner upon payment in full for all Work performed under the Contract Documents. The Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier. The Design-Builder is entitled to retain copies of all such documents. Such documents are intended only be applicable to this Project, and Owner's use of such documents in other projects shall be at Owner's sole risk and expense. In the event the Owner uses any of the information or materials developed pursuant to the Agreement in another project or for other purposes than are specified in the Agreement, the Design Professional is released from any and all liability relating to their use in that project.

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Design-Builder's reserved rights.

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6.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience, or if Design-Builder elects to terminate this Agreement, Design-Builder shall, upon Owner's *payment in full of the amounts due Design-Builder under the Contract Documents for the Design portion of the project only*, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 6.1 above, conditioned on the following:

6.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to Design-Builder; and

6.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 6.1 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 6.3 above.

ARTICLE 7 TERMINATION, SUSPENSION OR ABANDONMENT

7.1 The Design-Builder may terminate the Agreement upon not less than thirty days written notice should the Owner fail substantially to perform in accordance with the terms of the Agreement through no fault of the Design-Builder. Owner may terminate the Agreement or any phase thereof with or without cause upon thirty (30) days prior written notice to the Design-Builder. All work and labor being performed under the Agreement shall cease immediately upon Design-Builder's receipt of such notice. Before the end of the thirty (30) day period, Design-Builder shall invoice the Owner for all work it satisfactorily performed prior to the receipt of such notice. No amount shall be due for lost or anticipated profits. All plans, field surveys, and other data related to the Project shall become property of the Owner upon termination of the Agreement and shall be promptly delivered to the Owner in a reasonably organized form. Should Owner subsequently contract with a new Design-Builder for continuation of services on the Project, Design-Builder shall cooperate in providing information.

7.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Design-Builder shall be compensated for services satisfactorily performed prior to notice of such suspension. When the Project is resumed, the Design-Builder's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Design-Builder's services.

7.3 The Agreement may be terminated by the Owner upon not less than seven days written notice to the Design-Builder in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Design-Builder or the Owner may terminate the Agreement by giving written notice.

7.4 Failure of the Owner to make payments to the Design-Builder for work satisfactorily completed in accordance with the Agreement shall be considered substantial nonperformance and cause for termination.

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7.5 If the Owner fails to make payment to Design-Builder within thirty (30) days of receipt of a statement for services properly and satisfactorily performed, the Design-Builder may, upon seven days written notice to the Owner, suspend performance of services under the Agreement.

7.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for services properly and satisfactorily performed prior to termination.

ARTICLE 8 INDEMNITY

8.1 The Design-Builder shall indemnify and save and hold harmless the Owner and its officers, agents, and employees from and against any and all liability, claims, demands, damages, losses, and expenses, including, but not limited to court costs and reasonable attorney fees incurred by the Owner, and including, without limitation, damages for bodily and personal injury, death and property damage, resulting from the negligent acts or omissions of the Design-Builder or its officers, shareholders, agents, or employees in the performance of the Agreement.

8.2 Nothing herein shall be construed to create a liability to any person who is not a party to the Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to the Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

ARTICLE 9 INSURANCE During the performance of the Services under the Agreement, Design-Builder shall maintain the following insurance with an insurance company licensed or authorized to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A+ or above:

9.1 Comprehensive General Liability Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$250,000 in the aggregate.

9.2 Automobile Liability Insurance with bodily injury limits of not less than \$500,000 for each person and not less than \$500,000 for each accident, and with property damage limits of not less than \$100,000 for each accident.

9.3 Worker's Compensation Insurance in accordance with statutory requirements, and Employers' Liability Insurance with limits of not less than \$100,000 for each accident including occupational disease.

9.4 Professional Liability Insurance with limits of not less than \$1,000,000 annual aggregate.

9.5 The Design-Builder shall furnish insurance certificates or insurance policies to the Owner evidencing insurance in compliance with this Article 10 at the time of the execution of the Agreement. The General Liability and Automobile Liability insurance policies shall name the Owner as an additional insured, the Workers' Compensation policy shall contain a waiver of subrogation in favor of the Owner, and each policy shall contain a provision that such insurance shall not be canceled or modified without thirty (30) days' prior written notice to Owner and Design-Builder. In such event, the Design-Builder shall, prior to the effective date of the change

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or cancellation, furnish Owner with substitute certificates of insurance meeting the requirements of this Article 10.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 The Agreement shall be governed by the laws of the State of Texas. Venue of any suit or cause of action under the Agreement shall lie exclusively in Denton County, Texas.

10.2 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Design-Builder shall not assign its interests in the Agreement without the written consent of the Owner.

10.3 The term Agreement as used herein includes the executed Agreement, the Proposal, these General Conditions and other attachments referenced in Section 3 of the Agreement which together represent the entire and integrated agreement between the Owner and Design-Builder and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both Owner and Design-Builder. When interpreting the Agreement the executed Agreement, Proposal, these General Conditions and the other attachments referenced in Section 3 of the Agreement shall to the extent that is reasonably possible be read so as to harmonize the provisions. However, should the provisions of these documents be in conflict so that they cannot be reasonably harmonized, such documents shall be given priority in the following order:

1. The executed Agreement
2. Attachments referenced in Section 3 of the Agreement other than the Proposal
3. These General Provisions
4. The Proposal

10.4 Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Design-Builder.

10.5 Upon receipt of prior written approval of Owner, the Design-Builder shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Design-Builder's promotional and professional materials. The Design Professional's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Design-Builder in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Design-Builder on the construction sign and in the promotional materials for the Project.

10.6 Approval by the Owner shall not constitute, nor be deemed a release of the responsibility and liability of the Design-Builder, its employees, associates, agents, subcontractors, and sub-consultants for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect in the design or other work prepared by the Design-Builder, its employees, subcontractors, agents, and consultants.

10.7 All notices, communications, and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below signature block on the Agreement, certified mail, return receipt

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requested, unless otherwise specified herein. All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days after mailing.

10.8 If any provision of the Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of the Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform the Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

10.9 The Design-Builder shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as they may now read or hereinafter be amended during the term of this Agreement.

10.10 In performing the Services required hereunder, the Design-Builder shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

10.11 The captions of the Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of the Agreement.

CITY OF DENTON GENERAL CONDITIONS FOR BUILDING CONSTRUCTION FOR DESIGN BUILD PROJECTS

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 Design-Build Agreement between the Owner and the Design-Builder, 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 Independent Architect/Engineer as described in Paragraph 7.3.

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The Contract Documents also include solicitation documents such as the Owner's Instructions to Bidders, sample forms, the Design-Builder's Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Design-Build Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Design-Builder.

b) THE CONTRACT

The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and made a part of the formal Design-Build Agreement between the Owner and the Design-Builder 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 Design-Builder 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) Independent Architect/Engineer;
- (2) between the Owner and a Subcontractor or Sub-subcontractor; or
- (3) between any persons or entities other than the Owner and Design-Builder.

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

c) THE WORK

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

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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, sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner, 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 Proposal 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 Design-Builder's Proposal.

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:

- (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

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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 Design-Build Agreement shall be signed by duly authorized representatives of the Owner and Design-Builder as provided in the Agreement.
- (b) Execution of the Design-Build Agreement by the Design-Builder is a representation that the Design-Builder 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 Design-Builder. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Design-Builder 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 Design-Builder 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

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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 Independent Architect/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 Design-Builder 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 Independent 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 Design-Build Agreement;
 - (3) addenda, with those addenda of later date having precedence over those of an earlier date;
 - (4) the Supplementary General Conditions and Special Provisions, if any;
 - (5) the General Conditions for Building Construction;
 - (6) the Specifications and Drawings.

1.3 OWNERSHIP AND USE OF DESIGN BUILDER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications, and copies thereof furnished by the Design-Builder 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

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- (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 Design-Build 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 DESIGN-BUILDER ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.
- (b) Except for permits and fees which are provided for in Subparagraph 3.7(a), the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.
- (c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Design-Builder 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 Design-Builder as scheduled and Design-Builder is not prepared to accept or act on such information or services, then Design-Builder 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 Design-Builder 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. Design-Builder 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 Design-Builders), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).
- (f) The Owner shall forward all instructions to the Design-Builder through the Independent 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 Independent Architect/Engineer in the performance of the Independent Architect/Engineer's duties and to verify the Design-Builder'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 Design-Builder's Applications for Payment.

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2.3 OWNER'S RIGHT TO STOP THE WORK

If the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder'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 Independent Architect/Engineer's compensation for additional services and expenses made necessary by the failure or refusal of the Design-Builder from payments then or thereafter due to the Design-Builder. The cost of correction is subject to verification (but not approval) by the Independent Architect/Engineer. If payments then or thereafter due the Design-Builder are not sufficient to cover the cost of correction, the Design-Builder shall pay the difference to the Owner.

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 Design-Builder, the Design-Builder 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 Design-Builder shall not be entitled to any increase to the Contract Sum whatsoever for this reason.

ARTICLE 3 THE DESIGN-BUILDER

3.1 DEFINITION OF DESIGN-BUILDER

The Design-Builder is the person or business entity identified as such in the Design-Build Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized employees or representatives.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN-BUILDER

- (a) The Design-Builder shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Independent Architect/Engineer in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Design-Builder may discover. The

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Design-Builder shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Design-Builder'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 Design-Builder 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 Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder 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 Design-Builder shall be responsible to the Owner for the acts and omissions of the Design-Builder's employees, Design-Builder's Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Design-Builder or with any Subcontractor, and all other persons or entities for which the Design-Builder 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 Design-Builder.
- (c) The Design-Builder shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Independent Architect/Engineer in the Independent Architect/Engineer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Design-Builder.
- (d) The Design-Builder 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 Design-Builder's responsibility under this paragraph will not in any way eliminate the Independent Architect/Engineer's responsibility to the Owner under the Independent Architect/Engineer/Owner Agreement.

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- (e) Any Design-Builder, Subcontractor, Sub-subcontractor, or separate Contractor who commences Work over, in, or under any surface prepared by the Owner or by any other Design-Builder, subcontractor, sub-subcontractor or separate Contractor without the Design-Builder having given written notice to the Independent 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 Independent 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 Independent 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 Design-Builder. The Design-Builder is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Each Design-Builder 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 Independent Architect/Engineer before commencing any Work affected by these conditions. Design-Builder 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 Design-Builder 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 Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- (b) The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- (c) The Design-Builder 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 Design-Builder warrants to the Owner that all Work shall be accomplished in a good and workmanlike manner and that all materials and equipment furnished

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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 Design-Builder's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Independent Architect/Engineer, the Design-Builder 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 DESIGN-BUILDER TO REPLACE DEFECTIVE MATERIALS AND RE-EXECUTE DEFECTIVE WORK THAT IS DISCLOSED BY THE OWNER TO THE DESIGN-BUILDER 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 Design-Builder 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 Design-Builder'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 Design-Builder shall issue an exemption certificate in lieu of the tax on such purchases.

3.7 PERMITS, FEES AND NOTICES

- (a) The Design-Builder will apply and arrange for the issuance of the City of Denton Building Permit. The Design-Builder 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 Design-Builder 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 the Design-Builder's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Design-Builder observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Design-Builder shall promptly notify the

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Independent Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.

- (d) If the Design-Builder performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Independent Architect/Engineer and the Owner, the Design-Builder 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 Design-Builder 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 Design-Builder shall not be required to employ persons or entities against which the Design-Builder 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 Design-Builder of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts;
 - (3) the amount of each allowance includes the Design-Builder'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 Design-Builder's costs under Clause (b) (3);
 - (5) the Owner retains the right to review and approve Subcontractors selected by the Design-Builder to perform work activities covered by allowances.

3.9 SUPERINTENDENT

The Design-Builder 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 Design-Builder, and communications given to the superintendent shall be as binding as if given to the Design-Builder. 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 Design-Builder replace its superintendent at any time and the Design-Builder will replace said superintendent at the Owner's direction.

3.10 DESIGN-BUILDER'S CONSTRUCTION SCHEDULES

- (a) The Design-Builder shall, immediately after award of the Contract and before submittal of the first Application for Payment, prepare and submit the construction schedule for the Independent

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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 Design-Builder; and
 - (ii) the latest date for approval by the Independent 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.
- (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 Design-Builder shall prepare and submit to the Independent 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 Design-Builder'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 Design-Builder's status schedules reflect that the Design-Builder has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Design-Builder shall prepare a recovery schedule

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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 Design-Builder 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 DESIGN-BUILDER BASING HIS PROPOSAL 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 Design-Builder shall also prepare and keep current, for the Independent Architect/Engineer's approval, a schedule of submittals which is coordinated with the Design-Builder's construction schedule and allows the Independent Architect/Engineer reasonable time to review submittals.
 - (c) The Design-Builder shall conform to the most recent schedules approved as to form by the Independent Architect/Engineer and the Owner. Any subsequent revisions made by the Design-Builder 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 Design-Builder shall take such steps as may be necessary to improve his progress, and the Independent 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 Design-Builder shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Independent Architect/Engineer and shall be delivered to the Independent 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 Design-Builder 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 Design-Builder 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.

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- (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 Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Independent Architect/Engineer is subject to the limitations of Paragraph 4.2.
- (e) The Design-Builder shall review, approve and submit to the Independent 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 Design-Builders. Submittals made by the Design-Builder which are not required by the Contract Documents may be returned without action.
- (f) The Design-Builder 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 Independent Architect/Engineer. Work requiring this submittal and review shall be in accordance with approved submittals and any identified exceptions noted by the Independent Architect/Engineer.
- (g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder 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 Design-Builder's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.
- (h) The Design-Builder shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Independent Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Design-Builder has specifically informed the Independent Architect/Engineer in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Independent Architect/Engineer, subject to a formal Change Order signed by the Owner, Independent Architect/Engineer and Design-Builder, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Independent Architect/Engineer's approval thereof. Further, notwithstanding any approval of a submittal by the Independent Architect/Engineer, the Design-Builder 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 Design-Builder to the Independent Architect/Engineer at the time of the above-mentioned submittals, including additional consulting fees, if any, in any and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.
- (i) The Design-Builder 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 Independent Architect/Engineer on previous submittals..
- (j) Informational submittals upon which the Independent 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 Design-Builder shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF THE PROJECT SITE

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The Design-Builder 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 Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- (b) The Design-Builder shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or separate Design-Builders by cutting, patching, or otherwise altering the construction, or by excavating. The Design-Builder shall not cut or otherwise alter the construction by the Owner or a separate Sub-Contractor except with the written consent of the Owner and of the separate Sub-Contractor; consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate Sub-Contractor the Design-Builder'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 Design-Builder 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 Design-Builder shall remove from and about the Project site all waste materials, and rubbish, and all of the Design-Builder's tools, construction equipment, machinery, and surplus materials.
- (b) If the Design-Builder 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 Design-Builder.

3.16 ACCESS TO WORK

The Design-Builder shall provide the Owner and the Independent Architect/Engineer access to the Work in preparation and progress wherever located during the course of construction.

3.17 TESTS AND INSPECTIONS

- (a) Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of governmental entities or agencies having jurisdiction over the Work shall be made at appropriate times. Unless otherwise provided, the Design-Builder 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 Design-Builder shall bear all related costs of tests, inspections, and approvals. The Design-Builder shall give the Independent Architect/Engineer timely notice of when and where tests and inspections are to be made so the Independent 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.

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- (b) If the Independent 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 Independent Architect/Engineer will, upon written authorization from the Owner, instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Independent Architect/Engineer of when and where tests and inspections are to be made so that the Independent 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 Design-Builder shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Independent Architect/Engineer's services and expenses, if any. The Design-Builder 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 Design-Builder and promptly delivered to the Independent Architect/Engineer.
- (e) If the Independent Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Independent 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 Design-Builder shall pay all royalties and license fees. DESIGN-BUILDER SHALL COMPLETELY DEFEND, INDEMNIFY AND HOLD OWNER AND INDEPENDENT ARCHITECT/ENGINEER HARMLESS FROM ANY AND ALL SUITS OR CLAIMS FOR INFRINGEMENT OF PATENT RIGHTS, REGARDLESS OF WHETHER OR NOT THE OWNER OR THE INDEPENDENT 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 Design-Builder has reason to believe that a particular design, process or product specified infringes a patent, the Design-Builder shall immediately notify the Owner and the Independent Architect/Engineer of same.

3.19 INDEMNIFICATION

- (a) THE DESIGN-BUILDER AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE INDEPENDENT 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

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WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY DESIGN-BUILDER'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 DESIGN-BUILDER, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE DESIGN-BUILDER 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 DESIGN-BUILDERS, OR OF THE INDEPENDENT ARCHITECT/ENGINEER, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE DESIGN-BUILDER, THE OWNER, AND THE INDEPENDENT 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 Design-Builder, 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 Design-Builder 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 Independent 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 Design-Builder specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Design-Builder and that the obligations of the Owner, its officers, agents, and employees, and the Independent Architect/Engineer under the above-mentioned laws and regulations are secondary to those of the Design-Builder.

ARTICLE 4 CONTRACT ADMINISTRATION

4.1 THE DESIGN PROFESSIONAL (ARCHITECT/ENGINEER) FOR THE DESIGN-BUILDER

- (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 Design-Build Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Independent Architect/Engineer" means the Architect/Engineer or

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the Architect/Engineer's authorized representative of the Owner. The Owner shall, designate a qualified Owner representative to serve as the Independent 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 Independent Architect/Engineer shall apply to the Owner-designated Independent Architect/Engineer representative and the Owner-designated Independent Architect/Engineer representative shall be accorded that same status by the Design-Builder, in compliance with Texas Government Code 2269.

- (b) In the event the Independent Architect/Engineer is an outside person or firm and the Independent Architect/Engineer's employment is terminated, the Owner may, at its option, contract with a new outside Independent Architect/Engineer to replace the former, or may designate a qualified Owner representative to serve as the Independent Architect/Engineer. The replacement Independent Architect/Engineer, whether an Owner representative, an Independent Architect/Engineer or any other qualified person or entity, shall be regarded as the Independent Architect/Engineer for all purposes under the Contract Documents and shall be accorded that same status by the Design-Builder. 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 Design-Builder's Construction Phase responsibility. Owner shall notify the Independent Architect/Engineer and Design-Builder 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 Independent Architect/Engineer, with the Owner notifying the Design-Builder of any such changes. The Independent 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 Design-Builder's responsibility. The Owner will not be responsible for the Design-Builder'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 Design-Builder, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2 DESIGN-BUILDER'S RESPONSIBILITIES DURING CONSTRUCTION

- (a) The Design-Builder will administer the Contract as described in the Contract Documents and in accordance with the terms of the Design-Build agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Design-Builder, the provisions of the Owner/Independent Architect/Engineer Agreement will be made available to the Design-Builder.
- (b) The Independent Architect/Engineer shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent necessary to personally familiarize themselves with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents. The Independent 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 Independent Architect/Engineer and submitted to the Owner. The Design-Builder shall employ all reasonable

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measures to safeguard the Owner against defects and nonconformities in the Work. The Independent 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 Independent 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 Design-BUILDER or any Subcontractor which are not in the best interests of the Owner or the Project.

- (c) The Independent 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 Design-BUILDER's responsibility as provided in Paragraph 4.3. The Independent Architect/Engineer and the Owner will not be responsible for the Design-BUILDER's failure to carry out the Work in accordance with the Contract Documents. The Independent Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Design-BUILDER, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Design-BUILDER is responsible.
- (d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Design-BUILDER shall endeavor to communicate through the Independent Architect/Engineer. Communications by and with the Design Builder or its consultants shall be through the Independent Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Design-BUILDER. Communications by and with separate contractors will be through the Owner. The Design-BUILDER shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Independent Architect/Engineer.
- (e) Based on the Independent Architect/Engineer's observations and evaluations of the Design-BUILDER's Applications for Payment, the Independent Architect/Engineer will review and certify the amounts due the Design-BUILDER and will issue Certificates for Payment in such amounts.
- (f) The Independent Architect/Engineer and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Independent Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Independent 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 Independent 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 Independent Architect/Engineer to the Design-BUILDER, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.
- (g) The Independent Architect/Engineer will review and approve or take other appropriate action upon the Design-BUILDER'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 Independent Architect/Engineer's action will be taken with such reasonable promptness as to not delay the Work or the activities of the Owner, Design-BUILDER, or separate Sub-Contractor(s). Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as

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dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Contract Documents. The Independent Architect/Engineer's review of the Design-Builder's submittals shall not relieve the Design-Builder of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Independent Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Independent Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Independent Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- (h) The Independent Architect/Engineer will approve Change Order requests from the Design-Builder and may recommend to the Owner, authorization of minor changes in the Work as provided in Paragraph 7.3.
- (i) The Independent 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 Design-Builder, and shall review, and may recommend to the Owner approval for a final Certificate for Payment upon compliance by the Design-Builder with the requirements of the Contract Documents.
- (j) If the Owner and Independent Architect/Engineer agree, the Independent Architect/Engineer will provide one or more Project representatives to assist in carrying out the Independent 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 Independent 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 Design-Builder. The Independent Architect/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Independent Architect/Engineer shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Design-Builder 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 Independent 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 Independent Architect/Engineer will endeavor to secure faithful performance by the Design-Builder.
- (m) The Independent 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 Independent Architect/Engineer and the Design-Builder 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 Design-Builder arising out of or relating to the Project or the

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Contract Documents, including but not limited to claims that work was outside the scope of the Contract Documents. The responsibility to substantiate the Claim and the burden of demonstrating compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Design-Builder, 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 INDEPENDENT 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 Design-Builder, 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 Design-Builder by his signature) of the Design-Builder, verifying the truth and accuracy of the Claim. **THE DESIGN-BUILDER 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 Independent Architect/Engineer. Claims, disputes, and other matters in question between the Design-Builder and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Independent Architect/Engineer for recommendation to the Owner, which recommendation the Independent Architect/Engineer will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Design-Builder to submit the Claim to the Independent 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 Design-Builder 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 Independent Architect/Engineer determine that:
 - (i) prior to submitting its bid for the Work, the Design-Builder used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and

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

- (e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE INDEPENDENT ARCHITECT/ENGINEER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE DESIGN-BUILDER AT THE DESIGN-BUILDER'S OWN RISK. THE OWNER AND THE INDEPENDENT ARCHITECT/ENGINEER DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.
- (f) Claims for Additional Cost. If the Design-Builder 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 Design-Builder'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 Independent 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 Design-Builder believes that additional cost is involved for reasons including but not limited to:
- (1) a written interpretation from the Independent Architect/Engineer;
 - (2) a written order for a minor change in the Work issued by the Independent 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 Design-Builder was not at fault; or
 - (6) other reasonable grounds.
- (g) Injury or Damage to Person or Property. If the Design-Builder 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 Independent Architect/Engineer and the Owner to investigate the matter.
- (h) Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Design-Builder asserts a claim to the Design-Builder that the Design-Builder seeks to pass through to the Owner under the Contract Documents, any entitlement of the Design-Builder to submit and assert the claim against the Owner shall be subject to:

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- (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 Design-Builder to seek and assert such claim against the Owner:

(ii) The Design-Builder 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 Design-Builder shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Design-Builder 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 Design-Builder'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 Design-Builder to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Design-Builder in the claim submittal materials.

(ii) The Design-Builder 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 Design-Builder shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Design-Builder 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 Design-Builder 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 Design-Builder in the claim submittal materials.

- (3) Any failure of the Design-Builder 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 Design-Builder 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 Design-Builder falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Design-Builder 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 Design-Builder shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Design-Builder to

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additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).

- (2) In the event that the Design-Builder 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 Design-Builder provided within fourteen (14) days after receipt of the Design-Builder's Claim. If the Owner denies the Design-Builder's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Design-Builder 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 Design-Builder 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 Design-Builder may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Design-Builder 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 Design-Builder 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 DESIGN-BUILDER SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING.

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

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS OF SUBCONTRACTOR

- (a) A Subcontractor is person or entity who has a direct contract with the Design-Builder to perform a portion of the Work at the Project site or to supply materials or equipment to the Design-Builder 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 Design-Builder or subcontractors of a separate Design-Builder.
- (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 Design-Build Agreement is signed by the Design-Builder and the Owner, the Design-Builder shall furnish to the Independent Architect/Engineer in writing, for acceptance by the Owner and the Independent 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 Design-Builder shall immediately notify the Owner in writing of any changes in the list as they occur. The Independent Architect/Engineer will promptly reply to the Design-Builder in writing stating whether or not the Owner or the Independent Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Independent Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.
- (b) The Design-Builder shall not contract with a proposed person or entity to whom the Owner or Independent Architect/Engineer has made reasonable and timely objection.
- (c) The Independent Architect/Engineer's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Design-Builder 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 Design-Builder. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the

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Owner or Independent Architect/Engineer. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.

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

5.3 SUBCONTRACTUAL RELATIONS

- (a) By appropriate agreement, written where legally required for validity, the Design-Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Design-Builder by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Design-Builder all the obligations and responsibilities which the Design-Builder, by the Contract Documents, assumes toward the Owner and the Independent Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Independent 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 Independent Architect/Engineer. Where appropriate, the Design-Builder shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Design-Builder 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 Design-Builder is solely responsible for making payments properly to the Design-Builder's Subcontractors on the Project. During performance of the Work, the Design-Builder shall comply with the following additional rules regarding Subcontractor payments:
 - (1) The Design-Builder 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 Design-Builder (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 Design-Builder 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 Design-Builder of the construction of the project, but prior to final payment to the Design-Builder, the Design-Builder 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 Design-Builder 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

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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 Design-Builder is notified of such notice within ten (10) days of receipt of such notice. The Design-Builder shall ensure that resolution has 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 Design-Builder is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Design-Builder shall note the amount withheld and that payment is in dispute. The Owner may require the Design-Builder 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 Design-Builder 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 Design-Builder has knowingly provided false information regarding payment of any Subcontractor; or
 - (iii) the Design-Builder has otherwise failed to make payments properly to any Subcontractor.
- (4) THE DESIGN-BUILDER SHALL NOT HAVE ANY RIGHT TO MAKE A CLAIM FOR ADDITIONAL TIME OR ADDITIONAL COMPENSATION AS A RESULT OF THE OWNER'S OR INDEPENDENT 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 INDEPENDENT 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 DESIGN-BUILDER.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of a termination of this Contract by the Owner under Article 14, the Design-Builder 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 Design-Builder 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, Design-Builder 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.

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ARTICLE 6 CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- (a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder 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 Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder 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 Design-Builder, separate contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Design-Builder believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Design-Builder shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Design-Builder's Change Order proposal is denied by the Owner, the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder's construction and operations with the separate contractors as required by the Contract Documents.
- (b) If part of the Design-Builder's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Independent Architect/Engineer and Owner apparent discrepancies or defects in the other construction that would render it unsuitable for

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proper execution and results. Failure of the Design-Builder 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 Design-Builder's Work, except as to defects not then reasonably discoverable.

- (c) The Owner shall not be liable to the Design-Builder for damages suffered by the Design-Builder 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 Independent Architect/Engineer. Should any interference occur between the Design-Builder and a separate Design-Builder, the Independent Architect/Engineer or the Owner may furnish the Design-Builder with written instructions designating priority of effort or change in methods, whereupon the Design-Builder shall immediately comply with such direction. In such event, the Design-Builder shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Independent Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Design-Builder.
- (d) The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder 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 Design-Builder cause damage to the work or property of any separate contractor on the Project, the Design-Builder 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 Design-Builder who shall defend such proceedings, at the Design-Builder's expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Design-Builder 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 Design-Builder in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Design-Builder, 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 Independent Architect/Engineer recommends to be just.

ARTICLE 7 AMENDMENTS

7.1 CHANGE ORDERS

- (a) A Change Order is a written order to the Design-Builder, signed by the Owner and the Independent 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

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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 Independent Architect/Engineer, the Design-Builder shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Design-Builder refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Independent Architect/Engineer to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Design-Builder 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 Design-Builder shall constitute conclusive evidence of the Design-Builder's agreement to the ordered changes in the Work. The Design-Builder 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 Independent 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 Independent 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 Design-Builder for whatever reason refuses to sign the Change Order in question, the Design-Builder, provided he receives a written order signed by the Owner, shall promptly

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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 Design-BUILDER shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Independent Architect/Engineer and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to the Independent Architect/Engineer each day during the performance of force account work, with copies to the Owner.

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

- (1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and 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 Design-BUILDER 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 Independent 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 Independent 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

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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 Independent 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 Design-Builder. The Design-Builder 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. Design-Builder shall have no Claim for any minor change ordered to the Work under this Paragraph 7.3 unless the Design-Builder 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 Design-Builder's responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Independent Architect/Engineer a minimum of thirty (30) calendar days after receipt by the Independent Architect/Engineer to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. All of the Design-Builder'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 Design-Builder 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 Design-Builder, or of persons or entities for whom the Design-Builder is responsible to act promptly to

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commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed through no fault of the Design-Builder, the Design-Builder 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 Independent 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 Design-Build Agreement, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.
- (b) The Design-Builder 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 Design-Builder as required by Article 11. The date of commencement of the Work shall not be changed by the effective date of insurance required by Article 11.
- (c) Liquidated Damages. The Design-Builder shall proceed expeditiously with adequate forces, materials, and equipment, and shall achieve Substantial Completion within the Contract Time. If the Design-Builder fails or refuses to complete the Work within the Contract Time as specified in the Bid Proposal form, the Design-Build Agreement, or in any proper extension of the Contract Time granted by the Owner, then the Design-Builder 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 Proposal form and the Design-Build Agreement for each calendar day that the Design-Builder 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 Design-Builder 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 Design-Builder'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 Design-Builder. In the event the portion of the Contract Sum retained by the Owner is insufficient to recover the Stipulated Amount, then the Design-Builder or the Design-Builder'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 Design-Builder dispute the Owner's determination of liquidated damages due, however, or should the Design-Builder, or the Design-Builder'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 Design-Builder, as an alternative to all liquidated damages due.

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8.3 DELAYS AND EXTENSIONS OF TIME

- (a) If the Design-Builder is delayed at any time in the progress of the Work by an act or neglect of the Owner or Independent Architect/Engineer, or of an employee of either, or of a separate Design-Builder 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 Design-Builder's control, or by delay authorized by the Owner pending a claim, or by other causes which the Independent Architect/Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Independent 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 DESIGN-BUILDER SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR UNFORESEEN, WHICH INCREASES THE TIME TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE INDEPENDENT ARCHITECT/ENGINEER, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE DESIGN-BUILDER'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 Design-Builder shall promptly suspend the Work when either the Design-Builder or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Design-Builder will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Design-Builder 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 Independent 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 Independent 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 Design-Builder 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 Design-Builder 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 Design-Builder shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Design-Builder shall not suspend the Work in whole or in part without written authority from the Independent Architect/Engineer or the Owner, and

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shall resume the Work promptly when notified by the Independent Architect/Engineer or the Owner to resume operations.

- (g) In the event of a delay that is the responsibility of the Design-Builder or any of the Subcontractors, for which the Design-Builder 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 Design-Builder is entitled to a time extension, as determined by the Independent Architect/Engineer, Owner may similarly direct acceleration and the Design-Builder agrees to perform same on the basis that the Design-Builder will be reimbursed only to the extent described in Subparagraph 4.3(i). THE DESIGN-BUILDER 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 Design-Build Agreement and, including authorized adjustments, is the total amount of compensation payable by the Owner to the Design-Builder for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Design-Builder shall submit to the Independent Architect/Engineer and the Owner 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 Independent Architect/Engineer may require. This schedule, when approved by the Independent Architect/Engineer and the Owner, shall be used as a basis for the Design-Builder's Application for Payment. The schedule of values shall follow the trade division of the Specifications. Design-Builder'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 Design-Builder shall submit to the Independent 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 Design-Builder's right to payment as the Owner or Independent 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. Design-Builder'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 Design-Builder does not intend to pay to a Subcontractor because of a good faith dispute, unless the Design-Builder complies with Clause 5.3(b) (2) of these General Conditions and the Design-Builder's Payment Bond Surety consents in writing to payment to the Design-Builder of the funds deemed to be in dispute.

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- (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 DESIGN-BUILDER WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.
- (d) The Design-Builder 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 Design-Builder 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 Design-Builder, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.
- (e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an "early delivery." All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Design-Builder shall, at Design-Builder'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 Design-Builder fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Design-Builder's sole expense, and amounts may be withheld from the Design-Builder'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 Design-Builder, no payment applied for will be payable under the Contract until the Work has been Finally Completed and accepted.

9.4 CERTIFICATES FOR PAYMENT

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- (a) The Independent Architect/Engineer will, within ten (10) days after receipt of the Design-Builder's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Design-Builder, for such amount as the Independent Architect/Engineer determines is properly due, or notify the Design-Builder and Owner in writing of the Independent Architect/Engineer's reasons for withholding certification in whole or in part as provided in 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 Independent Architect/Engineer to the Owner, based on the Independent 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 Independent 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 Independent Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Design-Builder 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 Independent Architect/Engineer has:
 - (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
 - (2) reviewed construction means, methods, techniques, sequences or procedures;
 - (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Design-Builder's right to payment; or
 - (4) made examination to ascertain how or for what purpose the Design-Builder 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 Design-Builder within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Independent 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 Design-Builder 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 Design-Builder, approval of final completion by the Independent Architect/Engineer, and final acceptance of the Work by the Owner. Unless

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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 Independent 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 Independent Architect/Engineer's or Owner's opinion the representations to the Owner required by Subparagraph 9.4(b) cannot be made. If the Independent Architect/Engineer or the Owner is unable to certify payment in the amount of the Application, the Independent Architect/Engineer or the Owner will notify the Design-Builder as provided in Subparagraph 9.4(a). If the Design-Builder and Independent Architect/Engineer or the Owner cannot agree on a revised amount, the Independent Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Independent Architect/Engineer is able to make the required representations to the Owner. The Independent 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 Independent Architect/Engineer's or Owner's opinion, to protect the Owner from loss because of:
 - (1) defective or nonconforming Work not remedied;
 - (2) third party claims filed or reasonable evidence indicating probable filing of such claims;
 - (3) failure of the Design-Builder 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 Design-

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Builder, 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 Independent 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 Independent 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 Independent 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 Design-Builder default remains uncured.
- (b) The Design-Builder shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder 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 Design-Builder on account of such Subcontractors portion of the Work. The Design-Builder shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.
- (c) The Independent Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Independent Architect/Engineer and the Owner on account of portions of the Work done by such Subcontractor.
- (d) Neither the Owner nor the Independent 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 Design-Builder or, in the event of the Design-Builder'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 Independent Architect/Engineer when construction is sufficiently completed in accordance with the City Of Denton General Conditions For Building Construction.

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- (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 Design-Builder considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Design-Builder shall prepare and submit to the Independent Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The Design-Builder 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 Design-Builder to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Independent Architect/Engineer will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Independent 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 Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Independent Architect/Engineer. The Design-Builder shall then submit a request for another inspection by the Independent Architect/Engineer to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Independent 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 Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Design-Builder 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 Design-Builder 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 Design-Builder and certification by the Independent Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

9.8 PARTIAL OCCUPANCY OR USE

- (a) The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate Supplemental Agreement with the Design-Builder, 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 Design-Builder 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 Design-Builder considers a portion Substantially Complete, the Design-Builder shall prepare and submit a list to the Independent Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder or, if no agreement is reached, by decision of the Independent Architect/Engineer.

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- (a) Immediately prior to such partial occupancy or use, the Owner, Design-Builder, and Independent 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.
- (b) 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 Independent Architect/Engineer, accompanied by the Owner's representative, will promptly make final inspection and, when the Independent Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Independent Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Independent 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 Design-Builder and noted in said final Certificate is due and payable. The Independent 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 Design-Builder'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 Design-Builder.
- (b) Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Independent Architect/Engineer and Owner:
 - (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 Design-Builder 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 Design-Builder's affidavit under Clause (b)(1) shall state that the Design-Builder 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 Design-Builder has not paid each of his subcontractors, laborers or materialmen in full, the Design-Builder shall state in the affidavit the amount owed and the name of each subcontractor, laborer or materialmen to whom such

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payment is owed. IN ANY EVENT, THE DESIGN-BUILDER 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 Design-Builder or by issuance of Change Orders affecting final completion and the Independent Architect/Engineer confirms the delay, the Owner shall, upon application by the Design-Builder and certification by the Independent 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 Design-Builder to the Independent 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 Design-Builder 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 Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and will comply with all applicable City, County, State and Federal health and safety regulations.

10.2 SAFETY OF PERSONS AND PROPERTY

- (a) The Design-Builder 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 Design-Builder or the Design-Builder'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 Design-Builder 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.

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- (c) The Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder 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 Independent 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 Design-Builder 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 INDEPENDENT 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 Design-Builder shall furnish the Owner and the Independent Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury, which insurance shall either include the Owner and the Independent Architect/Engineer as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Independent 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 Design-Builder shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Design-Builder'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 Design-Builder of any responsibility for damage resulting from any blasting operations.
- (f) The Design-Builder 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 Design-Builder, 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 Design-Builder is responsible under Clauses 10.2(a)(2) and 10.2(a)(3),

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except damage or loss attributable to acts or omissions of the Owner or Independent 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 Design-Builder or any of its Subcontractors. The foregoing obligations of the Design-Builder are in addition to the Design-Builder'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 Design-Builder 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 Design-Builder shall designate a responsible member of the Design-Builder's organization at the site whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner and Independent Architect/Engineer.
- (h) The Design-Builder 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 Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Design-Builder 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 Design-Builder shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.
- (b) The Owner reserves the right to remedy any neglect on the part of the Design-Builder 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 Design-Builder. 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 Design-Builder's neglect shall be deducted from the Contract Sum. The Design-Builder 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 Design-Builder shall, when directed by the Independent Architect/Engineer or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Design-Builder is required to construct temporary bridges or make other arrangements for crossing over ditches or around

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structures, the Design-Builder'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 Design-Builder shall, at the Design-Builder'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 Design-Builder'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 Design-Builder 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 Independent Architect/Engineer may order the damaged portion immediately removed and replaced by the Design-Builder at Design-Builder's cost and expense. The Design-Builder'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 Independent 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 Design-Builder'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 Design-Builder.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, the Design-Builder shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Design-Builder shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers; for this purpose, the Design-Builder shall provide and maintain, at the Design-Builder's own expense, adequate pumping facilities and temporary outlets or diversions. The Design-Builder shall, at the Design-Builder'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 Independent 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 Design-Builder desires to use the Owner's water in connection with the Work, the Design-Builder shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the Design-Builder 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 Design-Builder 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 Design-Builder shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Design-Builder through the City of Denton.

10.9 USE OF FIRE HYDRANTS

The Design-Builder, 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 Design-Builder and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A. §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.
- (b) In the event the Design-Builder 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 Design-Builder shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Independent 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 Design-Builder or through a Change Order with the Design-Builder. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Design-Builder or any of its Subcontractors, the Design-Builder shall be responsible for

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remediating the condition at the sole expense of the Design-Builder in accordance with the Design-Builder'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 Design-Builder shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Design-Builder or any Subcontractor or Supplier. The Design-Builder 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 Independent Architect/Engineer so that they may observe the activities; provided, however, that it shall be the Design-Builder'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 Design-Builder 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 Design-Builder'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 Design-Builder 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 Design-Builder or a Subcontractor:
 - (1) The Design-Builder shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the Design-Builder shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.
 - (2) The Design-Builder shall immediately respond in accordance with the SPRP in the event of a spill.
 - (3) The Design-Builder 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 Design-Builder 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 Design-Builder's records for reference purposes, to be provided upon request of the Independent Architect/Engineer, the Owner,

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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 DESIGN-BUILDER.

- (4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.
- (e) Clean Air Management Plan. The Design-Builder shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the Design-Builder selection process. The Owner reserves the right, at the Design-Builder'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 Design-Builder 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 Design-Builder 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 Design-Builder's records for reference purposes, to be provided upon request to the Independent Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter.
- (g) The Design-Builder 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 Design-Builder 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 Design-Builder shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable.
- (i) The Owner reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the Owner and without an extension of the Contract Time, in the event the Design-Builder 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:

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

Design-Builders shall refer to Attachment A for all City of Denton insurance requirements.

11.2 PROPERTY INSURANCE

Design-Builders shall refer to Attachment A for all City of Denton insurance requirements.

11.3 'UMBRELLA' LIABILITY INSURANCE

Design-Builders shall refer to Attachment A for all City of Denton insurance requirements.

11.4 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

Design-Builders 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 Design-Builder 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 Design-Builder, 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-Authority clearly establishing the extent and limitations of the authority of each signer to so sign:

- (1) Performance Bond. A good and sufficient bond in an amount equal to 100% of the total 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.

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- (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 Design-Builder. 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 Design-Builder may elect to furnish a Performance Bond in the same amount if the Design-Builder so chooses. If the Contract Sum is less than or equal to \$25,000, the Design-Builder may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid to the Design-Builder until final completion and acceptance of all work by Owner. If the Design-Builder 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 Design-Builder 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 Design-Builder.
- (e) The failure of the Design-Builder 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 Design-Builder's bid proposal and the Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Design-Builder'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 Design-Builder 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 Independent Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, the Work must, if required in writing by the Independent Architect/Engineer, be uncovered for the Independent Architect/Engineer's observation and be replaced at the Design-Builders expense without change in the Contract Time.
- (b) If a portion of the Work has been covered which the Independent Architect/Engineer has not specifically requested to observe prior to it being covered, the Independent Architect/Engineer may request to see such Work and it shall be uncovered by the Design-Builders. 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 Design-Builders shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate Design-Builders in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

- (a) The Design-Builders shall promptly correct Work rejected by the Independent 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 Design-Builders shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Independent 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 Design-Builders shall correct it promptly after receipt of written notice from the Independent Architect/Engineer or the Owner to do so unless the Owner has previously given the Design-Builders a written acceptance or waiver of the defect or nonconformity. The Design-Builders's obligation to correct defective or nonconforming Work remains in effect for:
 - (1) one year after the date of Substantial Completion of the Work or designated portion of the Work;
 - (2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or
 - (3) the stipulated duration of any applicable special warranty required by the Contract Documents.
- (c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.
- (d) The obligations of the Design-Builders under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Design-

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Builder 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 Design-Builder 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 Independent 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 Design-Builder 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 Design-Builder 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 Design-Builder nor accepted by the Owner.
- (f) If the Design-Builder fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Independent Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.4. If the Design-Builder does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Independent Architect/Engineer, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Design-Builder's expense. If the Design-Builder 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 Design-Builder, including compensation for the Independent 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 Design-Builder should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Design-Builder then or thereafter are not sufficient to cover the deficiency, the Design-Builder shall pay the difference to the Owner.
- (g) The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate Design-Builders, whether the construction is completed or partially completed, that is caused by the Design-Builder'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 Design-Builder 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 Design-Builder 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 Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.
- (i) Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 FINAL COMPLETION OF CONTRACT

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Independent 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 Independent Architect/Engineer will make a detailed inspection of the Work and will advise the Design-Builder and the Design-Builder's Surety of the items that require correction. The Independent Architect/Engineer will make a subsequent inspection and if the corrections have been properly performed, the Independent Architect/Engineer will issue a letter of release on the maintenance stipulations to the Design-Builder and the Surety. If for any reason the Design-Builder 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 Design-Builder, including but not limited to the following causes:
 - (1) Failure or refusal of the Design-Builder 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 Design-Builder is insufficient to complete the Work within the specified time.
 - (3) Failure or refusal of the Design-Builder to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.
 - (4) A reasonable belief that the Design-Builder has abandoned the Work.
 - (5) A reasonable belief that the Design-Builder has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.
 - (6) Failure or refusal on the part of the Design-Builder to observe any requirements of the Contract Documents or to comply with any written orders given by the Independent Architect/Engineer or the Owner as provided for in the Contract Documents.

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- (7) Failure or refusal of the Design-Builder 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 Independent 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 Design-Builder 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 Design-Builder 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 Design-Builder and the surety or its authorized agents, assume the obligations of the Design-Builder for the Work or that portion of the Work which the Owner has ordered the Design-Builder 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 Design-Builder 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 Design-Builder's default.

In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the Design-Builder'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 Design-Builder 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 Independent Architect/Engineer and attorney's fees, as a result of such termination.

- (c) The balance of the Contract Sum remaining at the time of the Design-Builder'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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Design-Builder to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder. The Design-Builder 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 Independent 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 Design-Builder, then the Owner may pay to the Design-Builder (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Design-Builder (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 Design-Builder, then the Design-Builder 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 Design-Builder 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 Design-Builder. Upon the Design-Builder's receipt of such written notice, the Design-Builder shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder for any reason, including but not limited to:

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- (1) the causes described in Clauses 13.1(a)(1) through (a)(10) above;
 - (2) where other provisions in the Contract Documents require or permit temporary suspension of the Work;
 - (3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or
 - (4) other unforeseen conditions or circumstances.
- (b) The Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder 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 Independent 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.

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- (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 Design-Builder shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Design-Builder respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Design-Builder 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 Design-Builder attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Design-Builder 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 Design-Builder, 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 Design-Builder 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 Design-Builder, 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.

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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 there by forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.7 VENUE

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

14.8 INDEPENDENT DESIGN-BUILDER

In performing the Work under this Contract, the relationship between the Owner and the Design-Builder is that of an independent Design-Builder. The Design-Builder 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 Design-Builder an agent, servant, or employee of the Owner, or making the Design-Builder or any of the Design-Builder'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 Design-Builder covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder 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.

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- (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 Design-Builder to remove any employee of the Design-Builder 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 Design-Builder as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.

ARTICLE 15 RIGHT TO AUDIT DESIGN-BUILDER'S RECORDS

By execution of the Design-Build Agreement, the Design-Builder grants the Owner the right to audit, at the Owner's election, all of the Design-Builder's records and billings relating to the performance of the Work under the Contract Documents. The Design-Builder 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 Design-Builder 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. Design-Builder 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 E
City of Denton
Special Terms and Conditions

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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

Or mail to:
City of Denton
Attn: Purchasing Manager
RFP # 5687
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

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to the Independent 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 Independent 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 Design-Builder agrees to indemnify and hold harmless the City from any claim involving patent right infringement or copyrights on goods supplied.

Asbestos Free Materials

The Design-Builder 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 Design-Builder 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 Design-Builder upon completion, termination, or cancellation of this contract. Design-Builder may, at its own expense, keep copies of all its writings for its personal files. Design-Builder shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Design-Builder's obligations under this contract without the prior written consent of the City; provided, however, that Design-Builder 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 Design-Builder 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.

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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 Design-Builder 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 for Denton County, Texas (WD-2509).

Notwithstanding any other provision of this Contract, the awarded Design-Builder hereby represents and warrants that the Design-Builder 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, Design-Builder shall produce proof of compliance with this provision by Design-Builder to the City. The City shall withhold payments due to Design-Builder until Design-Builder has complied with this provision. Prior to any payment being made for work satisfactorily completed and accepted, Design-Builder 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 Design-Builder shall work with identified City staff to obtain the necessary permits for construction of the project.

Contracts and Bonds

Successful awarded Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-

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Builder shall ensure that all laborers and mechanics employed in the performance of the project for which the 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 Design-Builder 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 Design-Builder shall allow City staff to conduct on-site wage interviews and shall post information concerning the Act as requested by the City.

All Design-Builders 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 "Design-Builder" 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 Design-Builder 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 an 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 Design-Builder 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 Design-Builder 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 Design-Builder 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

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approve an additional classification and wage rate and fringe benefits therefore only when all 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 Design-Builder 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 Design-Builder, 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 Design-Builder 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 Design-Builder does not make payments to a trustee or other third person, the Design-Builder 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 Design-Builder, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Design-Builder to set aside in a separate account assets for the meeting of obligations under

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the plan or program.

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 Design-Builder may have to pay.

Payrolls and Basic Records

- (a) Payrolls and basic records relating thereto shall be maintained by the Design-Builder 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 Design-Builder 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. Design-Builders 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 Design-Builder 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 Design-Builder 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 Design-Builder 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

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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 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 Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Design-Builder, 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 Design-Builder under this award or any other Federal award with the same Prime Design-Builder, or any other federally assisted award subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Design-Builder, 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 Design-Builder 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 Design-Builder, 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

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(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 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 Design-Builder 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 Design-Builder 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 Design-Builder'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 Design-Builder 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

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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 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 Design-Builder 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 Design-Builder 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 Design-Builder 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).

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- (b) The Design-Builder or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the articles entitled—
- (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 Design-Builder 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 Design-Builder 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 Design-Builder shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.
- (e) The Design-Builder 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

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award or in part for the Recovery Act covered work only, and for debarment as a Design-Builder and subcontractor as provided in 29 CFR 5.12.

Compliance with Davis-Bacon and Related Act Regulations

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 Design-Builder (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 Design-Builder certifies that neither it (nor he or she) nor any person or firm who has an interest in the Design-Builder'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 Design-Builder to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Design-Builder and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Design-Builder 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 Design-Builder 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

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produced in the United States ("Buy American requirement") including iron, steel, and manufactured goods provided by the Design-Builder pursuant to this Agreement. The Design-Builder hereby represents and warrants to and for the benefit of the Department of Energy (DOE) grantee that (a) the Design-Builder 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 complies with the Buy American requirement, unless an exception to the requirement is approved, and (c) the Design-Builder 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 Design-Builder shall permit the DOE grantee to recover as damages against the Design-Builder 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.

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- (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.

- (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

EXHIBIT 5

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 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					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 F

Payment and Performance Bonds

EXHIBIT 5

PERFORMANCE BOND

STATE OF TEXAS §

COUNTY OF DENTON §

KNOW ALL MEN BY THESE PRESENTS: That Zeit Energy, LLC, whose address is 1717 McKinney, Dallas, Texas 75202 hereinafter called Principal, and the City of Denton, a corporation organized and existing under the laws of the State of Texas, 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 Two-Million, Six Hundred and Eighty-Two Thousand, Four Hundred and Forty-five dollars and no cents (\$2,682,445.00), 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 13th Day of September, 2016, a copy of which is hereto attached and made a part hereof, for the Construction Services stated within Request for Qualifications (RFQ) #6016 – Professional Services (Design-Build) for the Compressed Natural Gas Fueling Station Project.

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 5

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 _____ copies, each one of which shall be deemed an original, this the _____ day of _____.

ATTEST:

PRINCIPAL

BY: _____
SECRETARY

BY: _____
PRESIDENT

ATTEST:

SURETY

BY: _____

BY: _____
ATTORNEY-IN-FACT

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

NAME: _____

STREET ADDRESS: _____

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

EXHIBIT 5

PAYMENT BOND

STATE OF TEXAS §

COUNTY OF DENTON §

KNOW ALL MEN BY THESE PRESENTS: That Zeit Energy, LLC, whose address is 1717 McKinney, Dallas, Texas 75202 hereinafter called Principal, and the City of Denton, a corporation organized and existing under the laws of the State of Texas, 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 Two-Million, Six Hundred and Eighty-Two Thousand, Four Hundred and Forty-five dollars and no cents (\$2,682,445.00), 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 13th Day of September, 2016, a copy of which is hereto attached and made a part hereof, for the Construction Services stated within Request for Qualifications (RFQ) #6016 – Professional Services (Design-Build) for the Compressed Natural Gas Fueling Station Project.

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 5

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 ____ copies, each one of which shall be deemed an original, this the ____ day of _____, _____.

ATTEST:

PRINCIPAL

BY: _____

SECRETARY

BY: _____

PRESIDENT

ATTEST:

SURETY:

BY: _____

BY: _____

ATTORNEY-IN-FACT

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

NAME: _____

STREET ADDRESS: _____

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

Exhibit G
Insurance Requirements
and Design-Builder Documentation



EXHIBIT 5 CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/18/2016

PRODUCER Goode Insurance Agency 1313 S State Hwy 208 Rockwall, Tx. 75032	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A: Colony Insurance	36927
	INSURER B: Farmers Truck	24392
	INSURER C: Texas Mutual	22945A
INSURED Zeit Energy LLC. 1717 McKinney Ave Ste. 700 Dallas, Tx. 75202	INSURER D:	
	INSURER E:	

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	<input checked="" type="checkbox"/>	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <u>Pollution Liab.</u> <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	PACE303551	07/01/2016	07/01/2017	EACH OCCURRENCE	\$3,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$50,000
						MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$3,000,000
						GENERAL AGGREGATE	\$3,000,000
						PRODUCTS - COMP/OP AGG	\$3,000,000
							\$
B	<input checked="" type="checkbox"/>	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____ <input type="checkbox"/> _____	604747791	06/10/2016	06/10/2017	COMBINED SINGLE LIMIT (Each Occurrence)	\$1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/>	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> _____				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
A	<input checked="" type="checkbox"/>	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$ _____	PACE303551	07/01/2016	07/01/2017	EACH OCCURRENCE	\$2,000,000
						AGGREGATE	\$2,000,000
							\$
							\$
							\$
C	<input checked="" type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	SB90001247567	09/04/2016	09/04/2017	<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000
A	<input checked="" type="checkbox"/>	OTHER Professional Liab.	PACE303551	07/01/2016	07/01/2017		3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Consulting, maintenance and building of CNG fueling stations

CERTIFICATE HOLDERCity of Denton
901B Texas Street
Denton, Texas 76209**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

EXHIBIT 5

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 Design-Builder 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 Design-Builder, the Design-Builder 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, Design-Builder shall file with the Purchasing Department satisfactory certificates of insurance, containing the contract number and title of the project. Design-Builder may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Design-Builders 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. Design-Builder 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 Design-Builder 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 5

- Should any of the required insurance be provided under a claims made form, Design-Builder 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 Design-Builder shall either double the occurrence limits or obtain Owners and Design-Builders 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 Design-Builder. 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 Design-Builders, 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 Design-Builders 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 5

☒ **Automobile Liability Insurance:**

Design-Builder 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.

☒ **Workers Compensation Insurance**

Design-Builder 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 Design-Builder 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 Design-Builder's Protective Liability Insurance**

The Design-Builder shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Design-Builder'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 Design-Builder'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 Design-Builder'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 Design-Builder or if a Design-Builder 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.

☐ **Builders' Risk Insurance**

EXHIBIT 5

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 Design-Builder 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 Design-Builder'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 Design-Builder has undertaken to perform on the project, regardless of whether that person contracted directly with the Design-Builder and regardless of whether that person has employees. This includes, without limitation, independent Design-Builders, 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.

B. The Design-Builder shall provide coverage, based on proper reporting of

EXHIBIT 5

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 Design-Builder providing services on the project, for the duration of the project.

- C. The Design-Builder must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the Design-Builder's current certificate of coverage ends during the duration of the project, the Design-Builder 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 Design-Builder 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 Design-Builder, 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 Design-Builder shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The Design-Builder shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all

EXHIBIT 5

employees of the person providing services on the project, for the duration of the project;

3. provide the Design-Builder, 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 Design-Builder:
 - 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 Design-Builder is representing to the governmental entity that all employees of the Design-Builder 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 Design-Builder to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Design-Builder's failure to comply with any of these provisions is a breach of contract by the Design-Builder which entitles the governmental entity to declare the contract void if the Design-Builder does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

Exhibit H
Design-Builder Business Information

EXHIBIT 5

City of Denton
RFQ 6016

ATTACHMENT A-BUSINESS OVERVIEW QUESTIONNAIRE AND FORMS

1. Contract Information (for formal contracting purposes):

The following information will be used to write a contract, should your firm be selected for award.

- Firm's Legal Name: *Zeit Energy, LLC*
- Address: *1717 McKinney Ave #700, Dallas TX 75202*
- Agent Authorized to sign contract (Name): *Clint Beauchamp*
- Agent's email address: *clint@zeitenergy.com*

1. Subsidiary of: *N/A*

2. Organization Class (circle):

Partnership

Corporation

Individual

Association

3. Tax Payer ID#:

4. Date Established: *2/17/09*

5. Historically Underutilized Business: Yes or No

6. Does your company have an established physical presence in the State of Texas, or the City of Denton? Yes or No, in which? *State of Texas, City of Dallas*

7. Please provide a detailed listing of all products and/or services that your company provides.

CNG Fueling Services:

Consulting, Design, Equipment, Construction, Maintenance

8. Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five years under your current company name or any other company name? If so provide details of the issues and resolution if available. Include lawsuits where Owner was involved.

No

9. Have you ever defaulted on or failed to complete a contract under your current company name or any other company name? If so, where and why? Give name and telephone number of Owner.

No

EXHIBIT 5

City of Denton
RFQ 6016

10. Have you ever had a contract terminated by the Owner? If so, where and why? Give name and telephone number (s) of Owner (s).

No

11. Has your company implemented an Employee Health and Safety Program compliant with 29 CFR 1910 "General Industry Standards" and/or 29 CFR 1926 "General Construction Standards" as they apply to your Company's customary activities?
http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1926

Yes

12. Provide details to support the evaluation criteria, including experience and delivery.

Zeit Energy provides CNG services across the U.S. for over 30 municipal & private fleet customers. Our work is on time and ~~at~~ at budget or better. Our customers have a great CNG station and are happy with their fueling experience.

13. Provide details on how firm meets the minimum qualifications stated in this Main document Section 3.

a. The details must be completed on this form, and shall not point to another document in the respondent's proposal.

b. Sign below and return form with final submission.

Zeit Energy performs design build CNG projects (50+) across the U.S.
We are licensed to do CNG work in TX and our financials support the work we do.

I certify that our firm meets the minimum qualifications as stated in this Main document, section 3.


Signature

Zeit Energy LLC
Company

2/15/16
Date

ATTACHMENT B-SUBMISSION EXCEPTIONS

EXHIBIT 5

City of Denton
RFQ 6016

ATTACHMENT D-REFERENCES

Please list three (3) references, other than the City of Denton, who can verify the quality of service your company provides. The City prefers customers of similar size and scope of work to this solicitation.

REFERENCE ONE

GOVERNMENT/COMPANY NAME: Pensacola Energy
LOCATION: Pensacola, FL
CONTACT PERSON AND TITLE: Dana Faessel
TELEPHONE NUMBER: 850-324-8003
SCOPE OF WORK: Design Build \$1.9mm Public/Private Fast Fill/Time Fill
CONTRACT PERIOD: 1/16/2012 - 9/18/2012

REFERENCE TWO

GOVERNMENT/COMPANY NAME: City of Rockport
LOCATION: Rockport, TX
CONTACT PERSON AND TITLE: Art Smith
TELEPHONE NUMBER: 361-463-9434
SCOPE OF WORK: Construction & Design Consulting \$1.75mm Public/Private Fast Fill
CONTRACT PERIOD: 3/3/2014 - 4/15/2015

REFERENCE THREE

GOVERNMENT/COMPANY NAME: City of Temple
LOCATION: Temple TX
CONTACT PERSON AND TITLE: Sam Weed
TELEPHONE NUMBER: 254-913-6831
SCOPE OF WORK: Design Build \$1.6mm Public/Private Fast Fill
CONTRACT PERIOD: 5/1/2013 - 12/1/2013

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.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2016-101308

Date Filed:
08/18/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

ZeitEnergy LLC
1717 McKinney Ave Ste 700, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Denton

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.

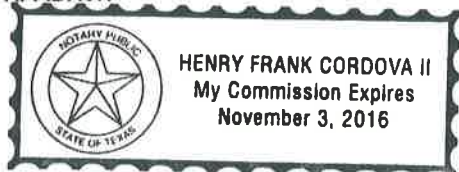
6016
Design Build Compressed Natural Gas Station

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	City of Denton	Denton, TX United States	X	

5 Check only if there is NO Interested Party.



6 AFFIDAVIT



I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.


Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Clint Beauchamp, this the 18 day of Aug, 2016, to certify which, witness my hand and seal of office.


Signature of officer administering oath

Henry Frank Cordova II
Printed name of officer administering oath

Notary Public
Title of officer administering oath

EXHIBIT 5**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: ZEITENERGY LLC

Tax ID/Social Security #: 26-4605916

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: CLINT BEAUCHAMP

Mailing Address:Company Name: ZEITENERGY LLCEmail: BILLS@ZEITENERGY.COMContact Name: CLINT BEAUCHAMPWebsite: WWW.ZEITENERGY.COMAddress: 1717 MCKINNEY AVEPhone Number: 832-693-4149STE 700Fax Number: 214-593-3344DALLAS TX 75202**Check appropriate box for federal tax classification (required):**
☐ Individual/
Sole
Proprietor

☐ Corporation

☐ Partnership

☐ Limited
Liability
Corporation

☒ Other
Please specify:

LIMITED LIABILITY
COMPANY -
PARTNERSHIP

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 5
Vendor Information Not Required for W-9 Form

Remit Address (if different from above)

Company Name: _____
Contact Name: _____
Address: _____

Email: _____
Phone Number: _____
Fax Number: _____

ACH Information-Voluntary

ABA Routing#: 111000614
Contact Name : CLINT BEAUCHAMP
Bank Account# 850050357
Bank Name : CHASE
ACH Email : BILLS@ZEITENERGY.COM
ACH Email : _____
Phone Number: 817-223-1401
Fax Number: 214-593-3344

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 CLINT BEAUCHAMP / MANAGING MEMBER

Date 8/18/16

List Products and/or Services Interested in Bidding:

DESIGN BUILD CNG STATIONS, MAINTENANCE ON CNG STATIONS, PARTS & EQUIPMENT SALES FOR CNG, CONSULTING ON CNG PROJECTS

For Internal Use Only

- ☐ New Vendor
☐ Vendor Change
☐ Refund

Vendor Number

Requesting Department: _____

Date: _____

Department Representative (**Printed Name**) _____

Purchasing Signature: _____

Date: _____



Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

ZeitEnergy, LLC
Filing Number: 801088390

Certificate of Formation

February 19, 2009

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on June 07, 2016.



A handwritten signature in black ink, appearing to read "Cascos", followed by a horizontal line.

Carlos H. Cascos
Secretary of State

EXHIBIT 5

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709



**Certificate of Formation
Limited Liability Company**

Filed in the Office of the
Secretary of State of Texas
Filing #: 801088390 02/19/2009
Document #: 247009610002
Image Generated Electronically
for Web Filing

Filing Fee: \$300

Article 1 - Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:

ZeitEnergy, LLC

The name of the entity must contain the words "Limited Liability Company" or "Limited Company," or an accepted abbreviation of such terms. The name must not be the same as, deceptively similar to or similar to that of an existing corporate, limited liability company, or limited partnership name on file with the secretary of state. A preliminary check for "name availability" is recommended.

Article 2 - Registered Agent and Registered Office

☒ A. The initial registered agent is an organization (cannot be company named above) by the name of:

Zeit Energy Management, Inc.

OR

☐ B. The initial registered agent is an individual resident of the state whose name is set forth below:

C. The business address of the registered agent and the registered office address is:

Street Address:

603 Shelmar Drive Euless TX 76039

Article 3 - Governing Authority

☒ A. The limited liability company is to be managed by managers.

OR

☐ B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Manager 1: (Business Name) **Zeit Energy Management, Inc.**

Address: **603 Shelmar Drive Euless TX, USA 76039**

Article 4 - Purpose

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

Supplemental Provisions / Information

[The attached addendum, if any, is incorporated herein by reference.]

Organizer

EXHIBIT 5

The name and address of the organizer are set forth below.

Derek Sandler **6600 LBJ Freeway, Suite 170, Dallas, TX 75240**

Effectiveness of Filing

☒ A. This document becomes effective when the document is filed by the secretary of state.

OR

☐ B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Derek Sandler

Signature of Organizer

FILING OFFICE COPY

Exhibit I
Form CIQ
Conflict of Interest Questionnaire