

ORIGINAL

STATE OF TEXAS

§ COUNTY OF DENTON §

**CONTRACT AGREEMENT #5753  
BY AND BETWEEN  
CITY OF DENTON, TEXAS AND MAG CONSTRUCTION SERVICES, LLC.**

THIS CONTRACT is made and entered into this 21<sup>st</sup> day of April 2015, by and between MAG CONSTRUCTION SERVICES, LLC, a corporation, whose address is 320 Little School Road, Kennedale, Texas 76060, hereinafter referred to as "Contractor," and the CITY OF DENTON, TEXAS, a Texas Municipal Corporation and Home-Rule City, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and the subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

WITNESSETH: That for and in consideration of the payments, covenants and agreements contained herein, and under the conditions expressed in the bonds attached hereto, Contractor agrees with the Owner to commence and complete the performance of the work specified within the agreement, in the amount of \$617,801.65 and for the mutual benefits to be obtained hereby, the parties agree as follows:

**SCOPE OF SERVICES**

Contractor shall provide construction services in accordance with the City's RFP#5753, and the Contractor's proposal in 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) Contractor Response to RFP#5545 - Pricing (**Exhibit "A"**)
- (b) Negotiated Scope of Work and Services and Technical Requirements, Drawings, Graphs, Charts, etc. (**Exhibit "B"**); (**Technical Specifications and Drawings are available at the Office of the Purchasing Manager and at <http://www.cityofdenton.com/departments-services/departments-g-p/materials-management-purchasing-distribution-center/bids-and-proposals/current-bids-proposals>**)
- (c) Contractor Payments and Performance Milestones (**Exhibit "C"**);
- (d) City of Denton Standard Terms and Conditions and Contractual Requirements (**Exhibit "D"**);
- (e) Special Terms and Conditions (**Exhibit "E"**);
- (f) Payment and Performance Bonds (**Exhibit "F"**);
- (g) Insurance Requirements and Documents from Contractor (**Exhibit "G"**);
- (h) Contractor's Business Information (**Exhibit "H"**);
- (i) Contractor 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 1

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.

**MAG CONSTRUCTION SERVICES, LLC.**

By: Ron Dailey  
AUTHORIZED SIGNATURE

TYPED NAME: Ron Dailey

TITLE: Owner

817-929-1352

PHONE NUMBER

rdailey@magconstructionservices.com

E-MAIL ADDRESS

ATTEST:

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

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By: George C. Campbell  
GEORGE C. CAMPBELL  
CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By: Jennifer Walters

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

By: Anita Burgess

**Exhibit A**

**Contract Pricing Details**

**EXHIBIT 1**

<b>RFP #5753</b>		<b>FINAL PRICING</b>	
<b>Construction of Airport Hangars</b>			
<b>Response Due Date: April 8, 2015</b>			
1	Respondent's Name:	Mag Construction	
2	Respondent is a Corporation, Partnership, sole Proprietorship, Individual?	Kennedale, Texas	
		Corporation	
<b>General Conditions</b>		Sum:	\$21,000.00
<b>Mobilization and Demobilization</b>			\$50,000.00
<b>Bonds (Labor, materials, and Performance)</b>			\$21,629.00
		Sum:	\$92,629.00
<b>Hangar Foundations (drilled piers, grade beams &amp; slab)</b>			\$224,575.00
<b>Erection of pre-Purchased Hangars</b>			\$137,175.00
<b>Electrical (Connection to existing conduit, distribution, power and lighting)</b>			\$139,517.65
<b>Chainlink Fencing and gates</b>			\$12,847.00
<b>Fireproofing (2 hour) of the four box hangar walls)</b>			\$4,000.00
<b>Overhead doors (2 - 10' X 10' doors at each nested T hangar, Total of 6)</b>			\$7,058.00
		Sum:	\$525,172.65
		Total Bid Amount:	\$617,801.65
Unit pricing for drilled piers and casing (Additive and Deductive) will be used from the previous b		Add	
		Deduct	
		Additional Discount	
		%	



**Exhibit B**

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

## EXHIBIT 1

### Scope of Work

The intent of this RFP is to obtain complete construction of the Denton Area Joint Training Facility that will serve as joint training facility for governmental entities. The work for which proposals are being solicited is described in detail in the **Technical Specification, and Drawings contained in Exhibit 3, of the original RFP. These have also been amended by Addendums, which are also included in the revised scope of work.** The proposal submission shall accurately describe the Proposer's understanding of the objectives and scope of the requested construction and provide an outline of the process to complete the requirements of the project.

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

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

**ADDENDUMS**



**Materials Management Division**  
**901-B Texas St.**  
**Denton, TX 76209**  
**(940) 349-7100**  
**[www.dentonpurchasing.com](http://www.dentonpurchasing.com)**

## **ADDENDUM #1**

**RFP # 5753**

### **CONSTRUCTION OF DENTON ENTERPRISE AIRPORT HANGARS AT THE CITY OF DENTON**

**Issue Date: January 20, 2015**  
**Response due Date and Time (Central Time):**  
**Tuesday, February 17, 2015, 11:00 a.m.**

## EXHIBIT 1

### ADDENDUM #1

#### Addendum #1 to be returned with Proposal

The following are a supplemental to the specifications:

1. Exhibit 4a – 5 Unit Nested T Drawings
2. Exhibit 4b – 3 Unit Box Hangar Drawings
3. Exhibit 5 – Hangar Structural Drawings from Erect-A-Tube
4. Word Document – Questions received and Answers Provided

All documents can be obtained by accessing the City of Denton's Materials Management website at: <http://www.cityofdenton.com/departments-services/departments-g-p/materials-management-purchasing-distribution-center/bids-and-proposals>

NO OTHER CHANGES AT THIS TIME.

*This form should be signed and returned with your proposal.*

Name: Ron Bailey  
Signature: Ron Bailey  
Company: Mag Construction Services  
Title: President  
Date: 4-14-15



## EXHIBIT 1

### **RFP 5753 – Construction of the Denton Airport Hangars Pre-submittal Questions and Answers**

1. When will the building materials and the hangars be available & delivered on the grounds?

**Erect-A-Tube has given me the following information:**

- Two 3-unit box hangars will be delivered to the site on March 16<sup>th</sup>.
- Two 3-unit box hangars will be delivered on March 23<sup>rd</sup>.
- Three 5-unit nested T hangars will be delivered on April 13.
- All materials are delivered via flat-bed tractor.
- The contractor will be responsible for off-loading the materials.
- Erect-A-Tube will send the floor sockets earlier so that they can be embedded in the concrete slab at the same time as the anchor bolts.
- Erect-A-Tube will send us pictures of the typical delivery packages.

2. Is the contractor responsible for his own power?

**The Airport will provide temporary construction power, Dave will contact DME regarding this.**

3. When is the deadline for questions?

**Please see page 4 of the RFP for the Schedule of Events. The deadline for submission of questions is Friday, 2/6/15 @11:00 am.**

4. Are there limits as to the contractors being able to visit the site after today?

**We ask if you need additional visits to the site, please call the Airport to schedule an additional time.**

5. Is there a secondary tap of 1 inch PVC pipe from building to building to the automated gate?

**Not currently installed. It will run from the electrical distribution panel on the outside of the building to where the gate controller will be set. This will be coordinated in the field.**

6. Are there meters already installed in each building?

**No. The plans call for a 100 amp panel at each hangar building. Contractor will coordinate with DME on the meter at each building.**

7. Will there be permit fees for the contractors?

**None charged to the contractors.**

8. As far as the concrete foundations are concerned. Will the contractor be responsible for pouring these?

## EXHIBIT 1

**Yes, the concrete piers, grade beams and slab are the contractors responsibility.  
See page 3, Project Description.**

9. What type of doors will be needed?

**The hangar doors and man-doors will be provided as a part of the Erect-A-Tube package. The overhead doors at selected hangar units will need to be purchased and installed by the contractor.**

10. Will there be any painting involved in the three in-line box hangars?

**Yes, painting on the interior walls separating the three in-line box hangars with intumescent paint for a two-hour fire separation.**

11. Are the buildings insulated and have interior paneling.

**Yes, the building envelopes (roofs and walls) are insulated with 3" blanket insulation and the interior walls are uninsulated metal panels.**

Please submit your questions in writing to: [Elton.brock@cityofdenton.com](mailto:Elton.brock@cityofdenton.com)

**From:** Brock, Elton D

**Sent:** Thursday, February 05, 2015 10:18 AM

**To:** 'DPowyszynski@aguirreroden.com'

**Cc:** Hawkins, Belinda M.; Hix, Quentin D

**Subject:** FW: RFI #1 for the Taxilane Quebec Hanger Development

Dave,

Please address.

As stated yesterday, Belinda will assemble all the questions and answers in one format, and post at the close of that process.

Elton

Elton D. Brock, MBA, CTPM, CTCM, C.P.M.

Manager, Materials Management and Purchasing

City of Denton

901B Texas Street

Denton, Texas 76209

940-349-7133

[elton.brock@cityofdenton.com](mailto:elton.brock@cityofdenton.com)



**From:** Faron Walker [<mailto:fwalker@walkcon.com>]

**Sent:** Thursday, February 05, 2015 10:15 AM

**To:** Brock, Elton D

**Cc:** Kelly Sellnow

**Subject:** RFI #1 for the Taxilane Quebec Hanger Development

Mr. Brock,

RFI #1 Concrete Paving.

Walkcon LTD. will be bidding on the RFP 5753 for the Taxilane Quebec Hanger Development.

## EXHIBIT 1

The Specification Section 32-13-13 for the Concrete Paving is not included in the Documents we downloaded.

We need the required Concrete Mix Design and the PSI for the Concrete Paving for bidding purposes.

Can you send us the Specifications for the Concrete Paving? **Concrete specifications are shown on Sheet S001.**

Thank you,

Faron Walker

Walkcon LTD.

Phone 817-560-6800

Fax 817-448-8234

[fwalker@walkcon.com](mailto:fwalker@walkcon.com)

**From:** David Powyszynski [mailto:DPowyszynski@aguirreroden.com]

**Sent:** Friday, February 06, 2015 6:32 AM

**To:** Hawkins, Belinda M.; Brock, Elton D

**Cc:** Hix, Quentin D

**Subject:** FW: Denton, TX Hangar Project

Elton, please include this email and the photos in our question responses.

Dave Powyszynski AIA, LEED AP, Senior Vice President



972.789.2610 OFC  
214.477.1274 CELL  
10670 N CENTRAL EXPWY  
6<sup>TH</sup> FLOOR  
DALLAS TX 75231

**From:** Jon Howell [mailto:jhowell@erect-a-tube.com]

**Sent:** Thursday, February 05, 2015 4:28 PM

**To:** David Powyszynski

**Subject:** Denton, TX Hangar Project

Dave:

As discussed earlier today, our trucks are loaded to maximize the shipping capacity. Some of the bi-fold door panels have trusses, girts or columns intertwined to accomplish this. The photos in the first PDF binder provide good examples of the materials and how the truck will be loaded.

The bundles are approx. 5,000 lbs. The contractor can utilize a crane to unload the components individually or a fork lift with fork extensions to lift and unload each bundle. This is quicker and more efficient, however, every contractor has their own methods. The trucking firms generally allow about 2-hrs to off-load a truck with our structural material.

The secondary material consisting of sheeting, trim, purlins and cee girts, will be comprised of 2,000 – 3,000 lbs. bundlers. The contractor should use a spreader bar to

## EXHIBIT 1

unload the longer roof sheeting to prevent buckling or damaging the sheeting panels. Generally, there is a 1 – 2 hour allowance to unload the truck. See second PDF.

Please be sure to have the contractor inspect the product thoroughly prior to off loading and afterwards, noting/photographing any damage they may have occurred during shipment or unloading. This is vital should there be any claims for damaged goods. Additionally, the contractor has 72-hrs. to inventory the product, verifying all materials are on site.

The passage doors, electric operator, boxes of hardware and insulation should be stored in a weather-tight facility to prevent damage or theft.

Should you have any questions, please contact me at the office.

Regards,

Jon

Jon Howell  
Erect-A-Tube, Inc.  
701 West Park St.  
P. O. Box 100  
Harvard, IL 60033  
P 815-943-4091, Ext. 220  
F 815-943-4095  
[www.erect-a-tube.com](http://www.erect-a-tube.com)

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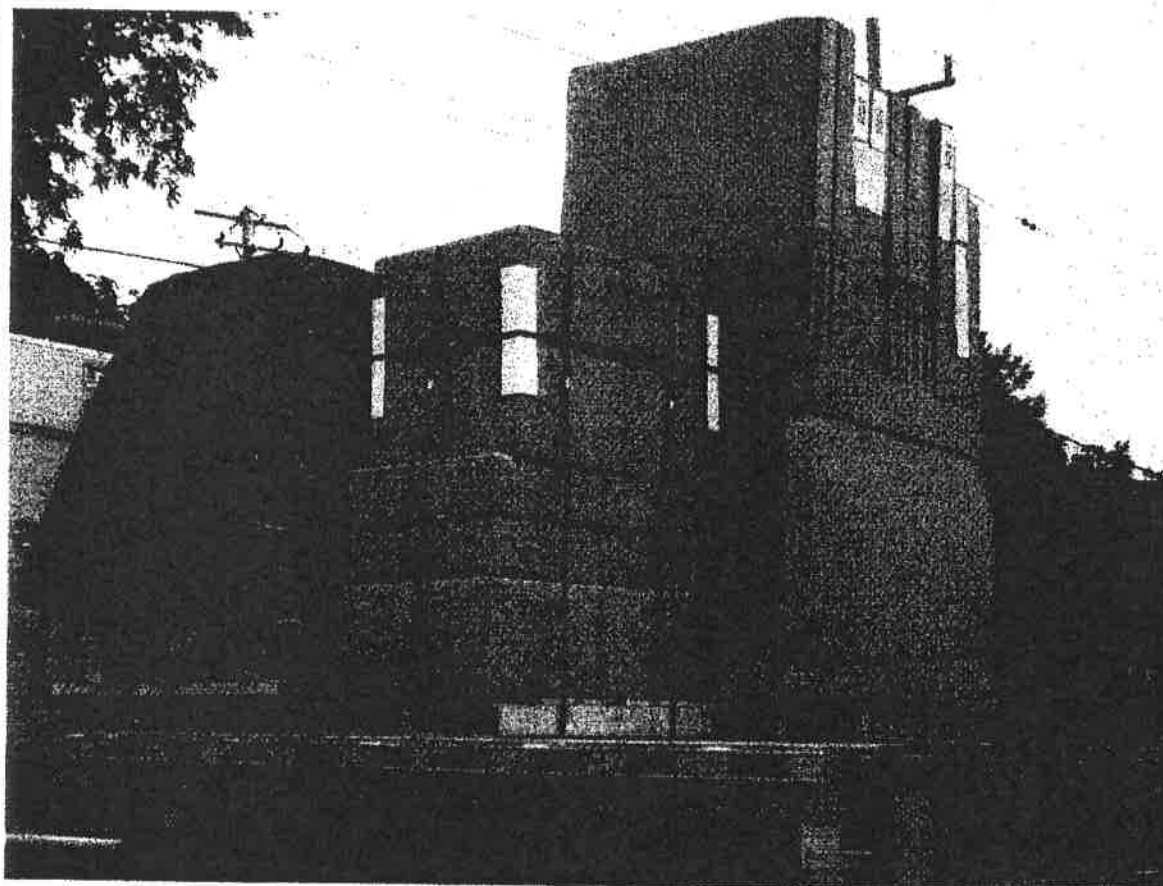




EXHIBIT 1

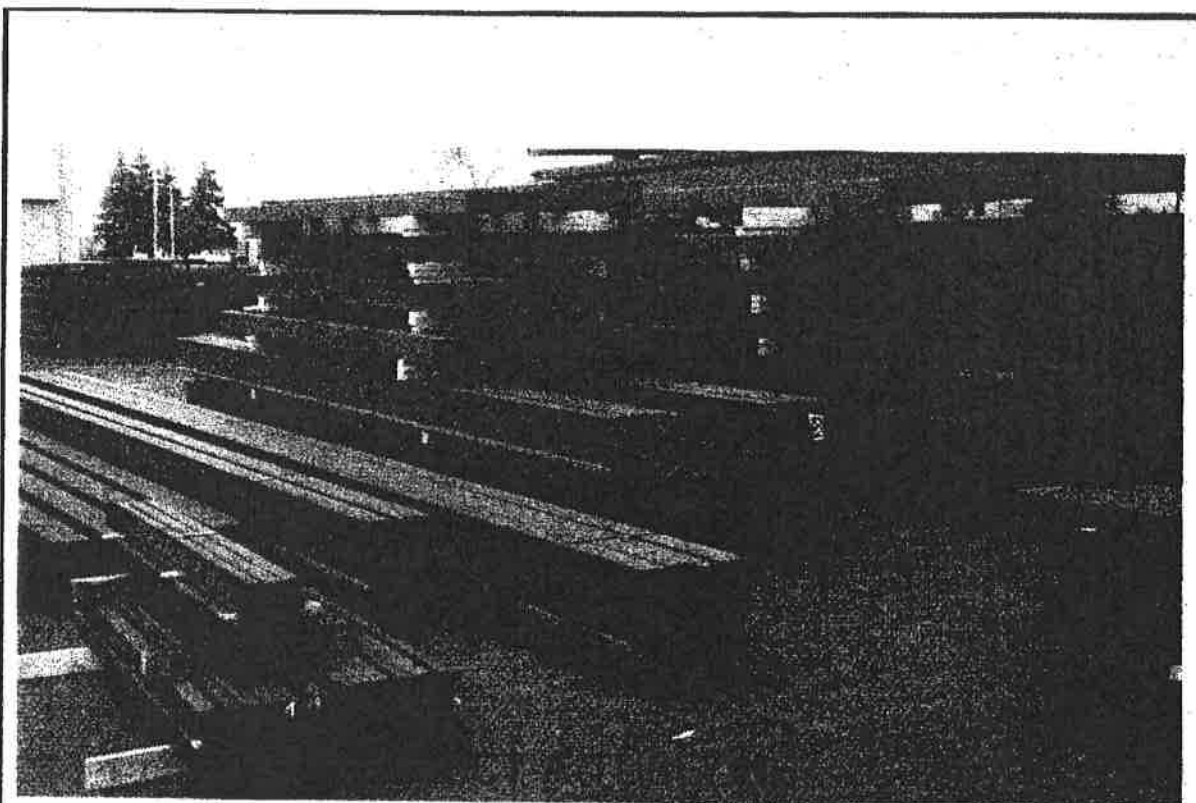


EXHIBIT 1

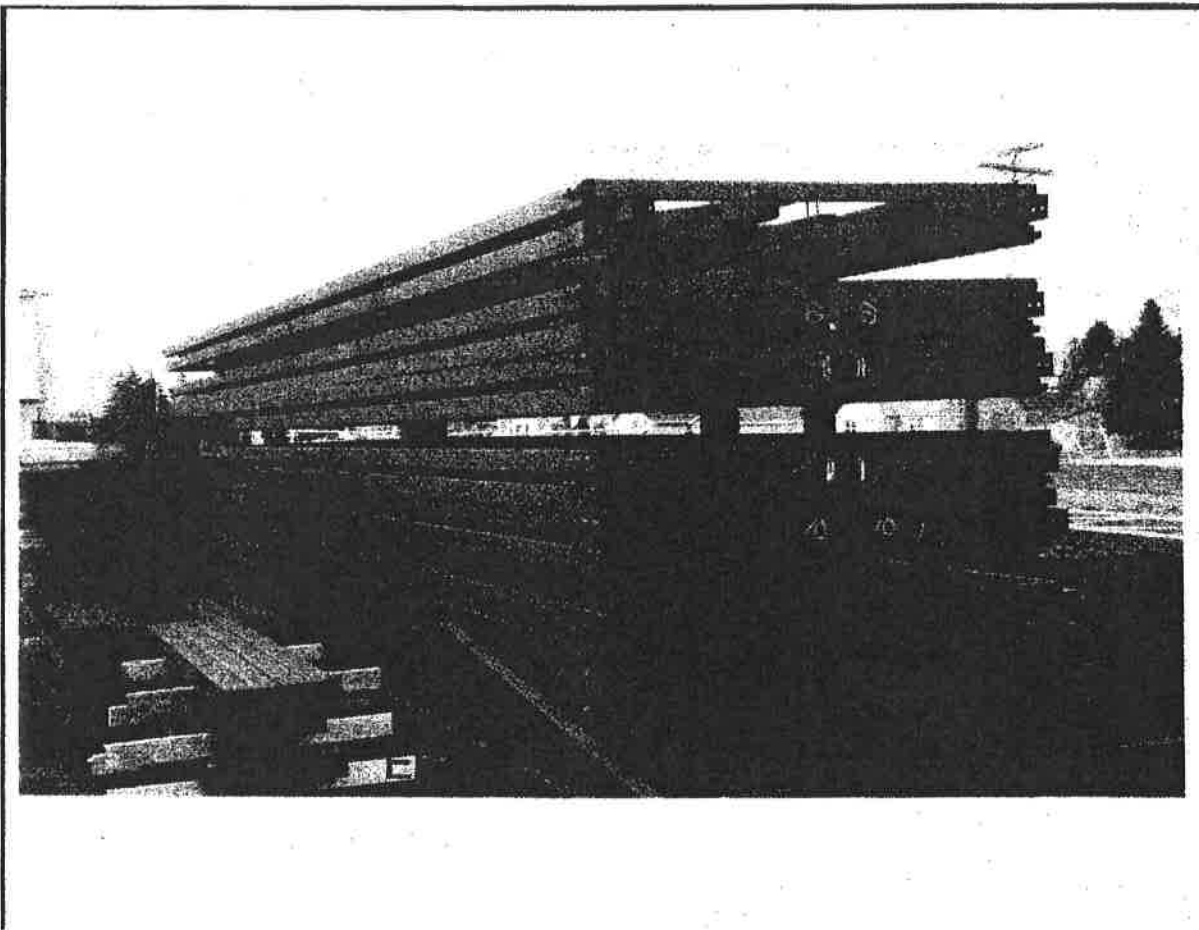
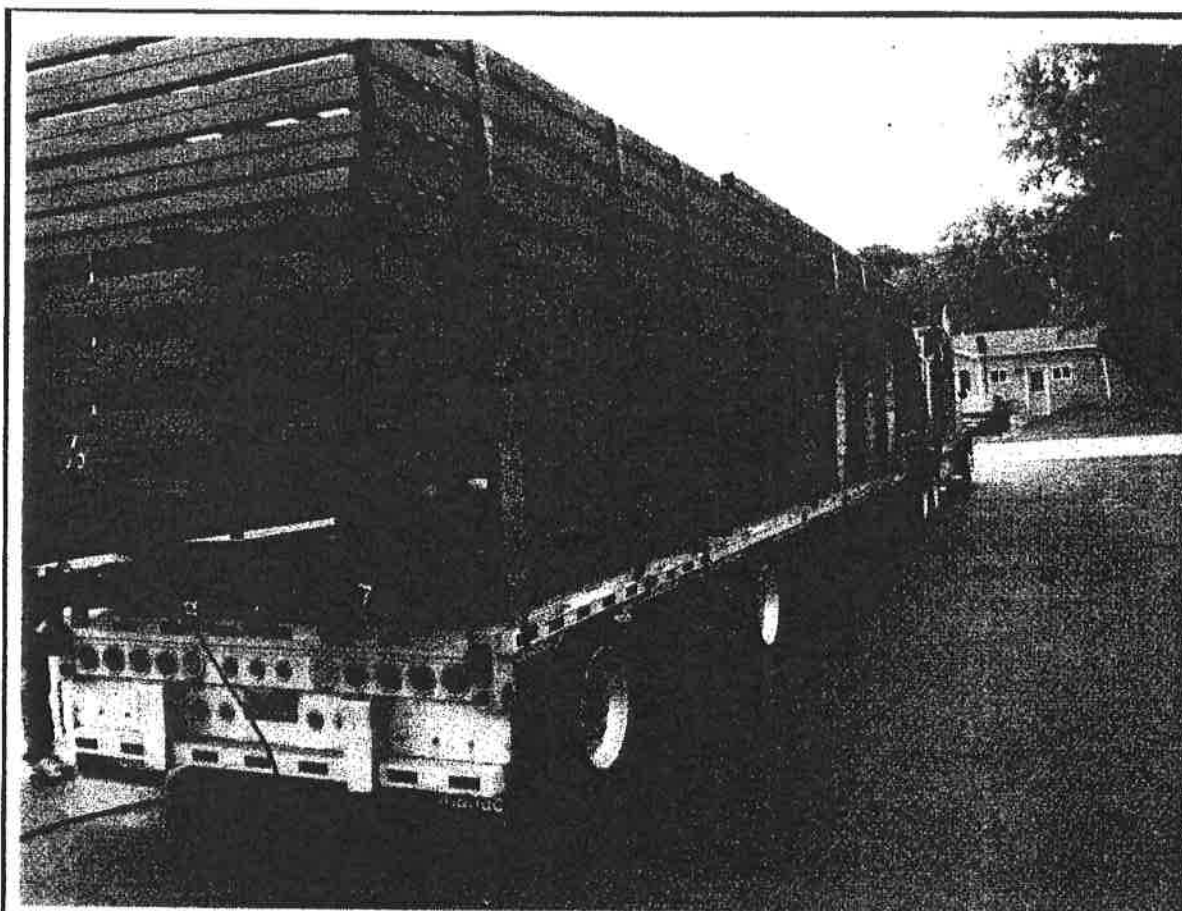
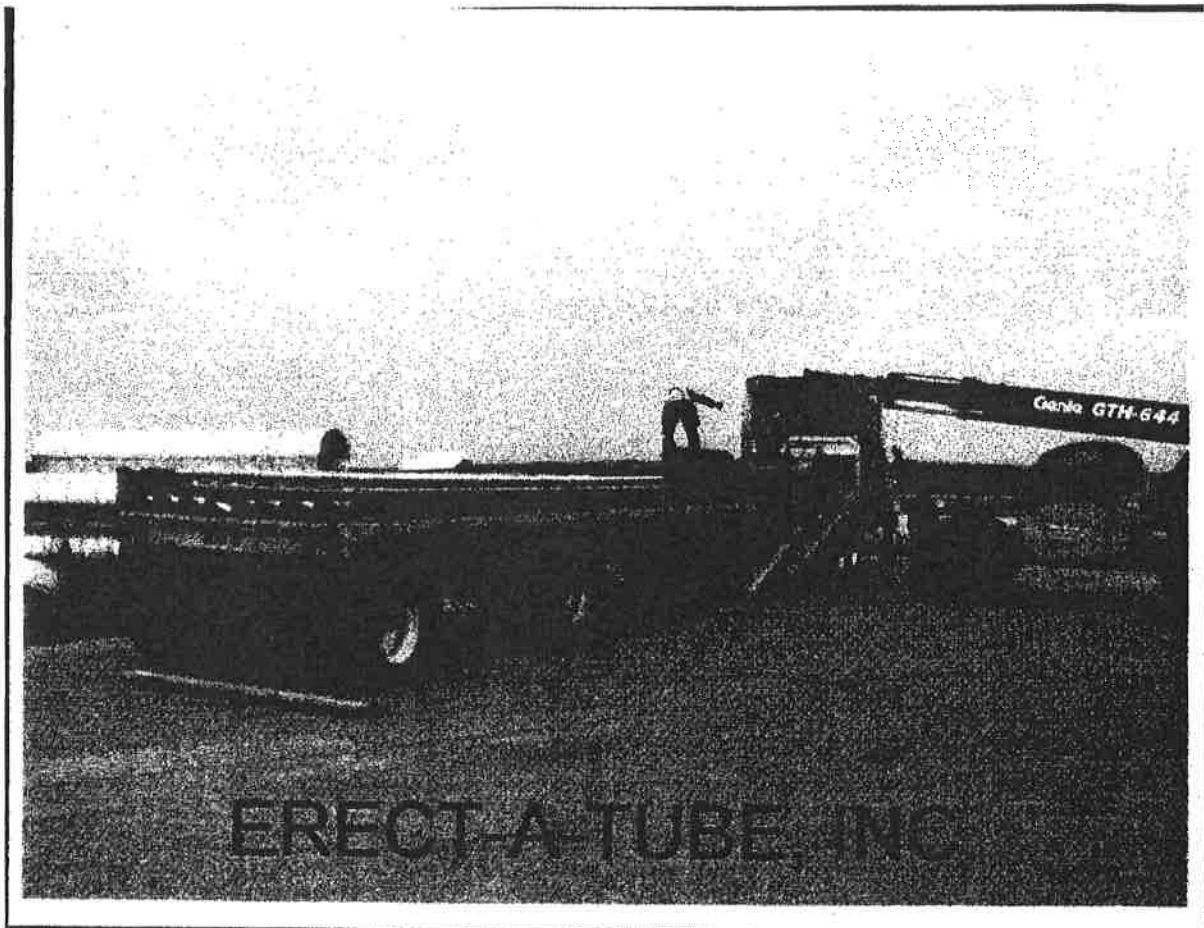


EXHIBIT 1



## EXHIBIT 1



**From:** Brock, Elton D.

**Sent:** Friday, February 06, 2015 9:45 AM

**To:** 'David Powyszynski'

**Cc:** Hawkins, Belinda M.; Hix, Quentin D

**Subject:** FW: RFP 5753 City of Denton Hangar Project Construction

More questions.

Elton D. Brock, MBA, CTPM, CTCM, C.P.M.  
Manager, Materials Management and Purchasing

## EXHIBIT 1

City of Denton  
901B Texas Street  
Denton, Texas 76209  
940-349-7133  
[elton.brock@cityofdenton.com](mailto:elton.brock@cityofdenton.com)



**From:** Judy Lembke [<mailto:jlembke@lemcocs.com>]

**Sent:** Friday, February 06, 2015 9:32 AM

**To:** Brock, Elton D

**Subject:** RE: RFP 5753 City of Denton Hangar Project Construction

**LEMCO QUESTIONS & ANSWERS:**

Elton, thanks so much for the e-mail invitation. We are diligently working on the project.

We have a few questions:

- 1) Drawing page G001 states all associated civil work will be under a separate contract. Please clarify this statement. **As you saw at the site, all major civil work has been completed on the concrete taxiways. The contractor will still be responsible for surveying to set building corners and any final grading required for the remaining parking area.**
- 2) Is it possible to receive a bill of materials for the City of Denton pre-purchased hangars? **No. The bill of materials will come with the delivery of the hangar buildings.**
- 3) What is the delivery schedule/date for the hangars? **This information was sent in an email on Thursday, Feb. 5<sup>th</sup>.**

Thanks,  
Judy Lembke



**Best Regards,**  
**LEMCO Construction Services, L.P.**

**Judy Lembke, CPC**  
**President & CEO**

14131 Midway Road, Ste. 660

Addison, TX 75001

Main: 214-637-4222

Fax: 214-637-4220

Email: [JLembke@lemcocs.com](mailto:JLembke@lemcocs.com)

Website: [www.LEMCOconstruction.com](http://www.LEMCOconstruction.com)

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## EXHIBIT 1

**From:** Brock, Elton D [<mailto:Elton.Brock@cityofdenton.com>]  
**Sent:** Friday, January 23, 2015 5:12 PM  
**To:** Brock, Elton D  
**Subject:** FW: RFP 5753 City of Denton Hangar Project Construction

All,

The City of Denton has released RFP 5753 for the Construction of Hangars at the Denton Enterprise Airport.

All solicitation documents can be located on the City's website:  
<http://www.cityofdenton.com/departments-services/departments-g-p/materials-management-purchasing-distribution-center-/bids-and-proposals>

Just scroll down till you find RFP 5753.

A non-mandatory pre-solicitation meeting has been scheduled for Feb 4, 2014 -- details are on the website.

The technical specifications and drawings are very large and can only be accessed through an FTP site. If you are interested in obtaining these documents, please use this information below:

<ftp.dmeftp.com>  
User Name: RFP5753  
Password: meangreen

Best regards,

Elton

Elton D. Brock, MBA, CTPM, CTCM, C.P.M.  
Manager, Materials Management and Purchasing  
City of Denton  
901B Texas Street  
Denton, Texas 76209  
940-349-7133  
[elton.brock@cityofdenton.com](mailto:elton.brock@cityofdenton.com)  
**From:** Brock, Elton D  
**Sent:** Friday, February 06, 2015 11:03 AM

## EXHIBIT 1

**To:** 'David Powyszynski'; Hix, Quentin D  
**Cc:** Hawkins, Belinda M.  
**Subject:** FW: Denton Enterprise Airport

More questions that need an answer.

Elton D. Brock, MBA, CTPM, CTCM, C.P.M.  
Manager, Materials Management and Purchasing  
City of Denton  
901B Texas Street  
Denton, Texas 76209  
940-349-7133  
[elton.brock@cityofdenton.com](mailto:elton.brock@cityofdenton.com)



### EQUISTAR CONSTRUCTION QUESTIONS & ANSWERS:

**From:** Joey Reynolds [<mailto:jreynolds@equistarconst.com>]  
**Sent:** Friday, February 06, 2015 11:02 AM  
**To:** Brock, Elton D  
**Subject:** Denton Enterprise Airport

Mr. Brock,

The scope sent by personal request to Erect-a-Tube states that all the steel provided is painted with a red oxide primer only, and is not intended for long term exposure. Is there any painting of the structural steel required in the contractors scope of work? **NO.**

Also, there shows to be a 1% slope inside the proposed hangars, is this slope compatible with the prefabricated building? **Yes. This is Erect-A-Tube's standard slab.**

Thanks,

Briley Worthington

**From:** Brock, Elton D  
**Sent:** Friday, February 06, 2015 11:04 AM  
**To:** 'David Powyszynski'; Hix, Quentin D  
**Cc:** Hawkins, Belinda M.  
**Subject:** FW: RFP 5753 City of Denton Hangar Project Construction

More questions that need answers.

Elton D. Brock, MBA, CTPM, CTCM, C.P.M.

## EXHIBIT 1

Manager, Materials Management and Purchasing  
City of Denton  
901B Texas Street  
Denton, Texas 76209  
940-349-7133  
[elton.brock@cityofdenton.com](mailto:elton.brock@cityofdenton.com)



**From:** Judy Lembke [<mailto:jlembke@lemcocs.com>]  
**Sent:** Friday, February 06, 2015 9:32 AM  
**To:** Brock, Elton D  
**Subject:** RE: RFP 5753 City of Denton Hangar Project Construction

Elton, thanks so much for the e-mail invitation. We are diligently working on the project.

We have a few questions:

- 1) Drawing page G001 states all associated civil work will be under a separate contract. Please clarify this statement.
- 2) Is it possible to receive a bill of materials for the City of Denton pre-purchased hangars?
- 3) What is the delivery schedule/date for the hangars?

Thanks,  
Judy Lembke



**Best Regards,**  
**LEMCO Construction Services, L.P.**

**Judy Lembke, CPC**  
**President & CEO**  
14131 Midway Road, Ste. 660  
Addison, TX 75001  
Main: 214-637-4222  
Fax: 214-637-4220  
Email: [JLembke@lemcocs.com](mailto:JLembke@lemcocs.com)  
Website: [www.LEMCOconstruction.com](http://www.LEMCOconstruction.com)

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you are hereby notified to destroy this e-mail and that any dissemination, copying, use or distribution of any information or materials transmitted in or with this message is strictly prohibited.

**From:** Brock, Elton D [<mailto:Elton.Brock@cityofdenton.com>]  
**Sent:** Friday, January 23, 2015 5:12 PM  
**To:** Brock, Elton D  
**Subject:** FW: RFP 5753 City of Denton Hangar Project Construction

All,

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Just scroll down till you find RFP 5753.

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The technical specifications and drawings are very large and can only be accessed through an FTP site. If you are interested in obtaining these documents, please use this information below:

<ftp.dmeftp.com>  
User Name: RFP5753  
Password: meangreen

Best regards,

Elton

Elton D. Brock, MBA, CTPM, CTCM, C.P.M.  
Manager, Materials Management and Purchasing  
City of Denton  
901B Texas Street  
Denton, Texas 76209  
940-349-7133  
[elton.brock@cityofdenton.com](mailto:elton.brock@cityofdenton.com)

## EXHIBIT 1



**From:** Brock, Elton D  
**Sent:** Friday, February 06, 2015 11:05 AM  
**To:** 'David Powyszynski'; Hix, Quentin D  
**Cc:** Hawkins, Belinda M.  
**Subject:** FW: RFP5753

More questions that need answers.

Elton D. Brock, MBA, CTPM, CTCM, C.P.M.  
Manager, Materials Management and Purchasing  
City of Denton  
901B Texas Street  
Denton, Texas 76209  
940-349-7133  
[elton.brock@cityofdenton.com](mailto:elton.brock@cityofdenton.com)



### **TYSON BUILDING QUESTIONS & ANSWERS:**

**From:** Dan Covington [<mailto:DCovington@tysonbuilding.com>]  
**Sent:** Friday, February 06, 2015 8:26 AM  
**To:** Brock, Elton D  
**Cc:** J.L. Davis  
**Subject:** RFP5753

2/6/15

Mr. Brock,

We have some questions concerning the project:

1. Is the conduit and wiring between the secondary tap can and meter bases to be included in the electrical contractor's scope, or in the utility provider? **The conduit and wiring is already in place, stubbed up near the building.**



## EXHIBIT 1

2. Are there any (explosion proof) Class 1 Division 1 areas in these hangars?

No.

3. Can we get the exact location of the electric gates verified? **The location of the gates is shown on the civil drawings. We will be installing the conduit underground to these locations, but it will be capped for future use. The gates are manual now.**

4. Will main breaker panels be acceptable or must we use MLO panels with separate disconnects on the service? **Bid the plans.**

5. What tpe of time is to be used on interior lights? I assume you mean "timer". **Simple spring -type timer.**

6. Please confirm that the owner is supplying temporary power to the project. **Confirmed.**

7. It is our understanding that the restroom/pavilion is not in our scope of work. Is that correct? **Correct.**

8. It is our understanding that no permits and/or other fees will be required. Is that correct? **Correct.**

9. Who unloads the building packages on delivery? **The contractor will be responsible for unloading and verifying the contents.**

10. Who is responsible for missing /stolen material after the buildings are delivered? **The contractor must provide his own security.**

11. Is testing by owner or GC? **Testing is done by the City.**

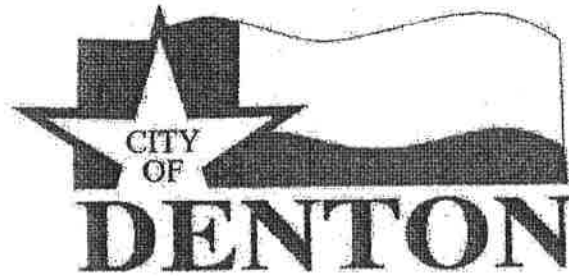
12. If compaction tests show unacceptable results, who is responsible for bringing the area to specified limits? **The contractor.**

13. Is the parking area in our scope of work? **Yes.**

Thanks.

Dan Covington

Tyson Building Corporation



Purchasing Department  
901-B Texas St.  
Denton, TX 76209  
(940) 349-7100  
[www.dentonpurchasing.com](http://www.dentonpurchasing.com)

## **ADDENDUM #2**

### **RFQ # 5753 CONSTRUCTION OF AIRPORT HANGARS FOR THE CITY OF DENTON**

**Issue Date: January 22<sup>th</sup>, 2015**  
**(Revised) Response due Date and Time (Central Time):**  
**Tuesday, March 3, 2015, 11:00 A.M.**

# EXHIBIT 1

## ADDENDUM #2

### Addendum #2 to be returned with Proposal

Please note the following documents and changes to this RFP:

1. Addendum dated March 31, 2015 from Architect of Record.
2. Drawing S101
3. Drawing S301
4. Drawing Sheet 3 of 8, Box Hangar Anchor Bolts
5. Drawing Sheet 3 of 8, Nested T Anchor Bolts

NO OTHER CHANGES AT THIS TIME.

*This form should be signed and returned with your proposal.*

Name: J. R. Dailey  
Signature: J R Dailey  
Company: MAG Construction Services LLC  
Title: Managing Member  
Date: 4-7-15

## EXHIBIT 1

AGUIRRE RODEN  
10670 N. CENTRAL EXPWY, 6<sup>TH</sup> FL.  
DALLAS, TEXAS 75231  
TEL. 972.788.1508  
FAX 972.788.1583  
WWW.AGUIRRERODEN.COM  
THE CAN-DO SPIRIT THAT GETS THE JOB DONE.®



### **ADDENDUM TO RFP 5753,**

### **Construction of Airport Hangars for the City of Denton**

March 31, 2015

#### **SCOPE OF WORK:**

1. Erect seven (7) pre-purchased Erect-A-Tube hangars and hangar doors on designated property along Taxilane Q at the Denton Enterprise Airport. These hangars have been delivered to the site and are being stored along the taxilane (See photo below). Permit fees will be paid by the City of Denton.



Erect-A-Tube Hangars Being Delivered to the Site

2. Construct the hangar foundations. The hangar foundations consist of 18" and 24" reinforced concrete drilled piers, reinforced concrete grade beams and hangar floor slabs (See attached Sheets S101, S301, Sheet 3 of 8, Nested T Anchor Bolts and Sheet 3 of 8, Box Hangar Anchor Bolts). **There is no other concrete in the scope of work. Concrete aprons are existing, and previously shown parking areas will be constructed by others.**
3. Extend the existing electrical power conduits and wire approximately five (5') feet to the individual hangar west exterior walls. Conduit will be surface-mounted on the west walls and will terminate at the meter boxes, disconnects and distribution panels as shown on Electrical sheets E001, E100, E101, E102 and E103. Meter boxes will be supplied by the City of Denton.

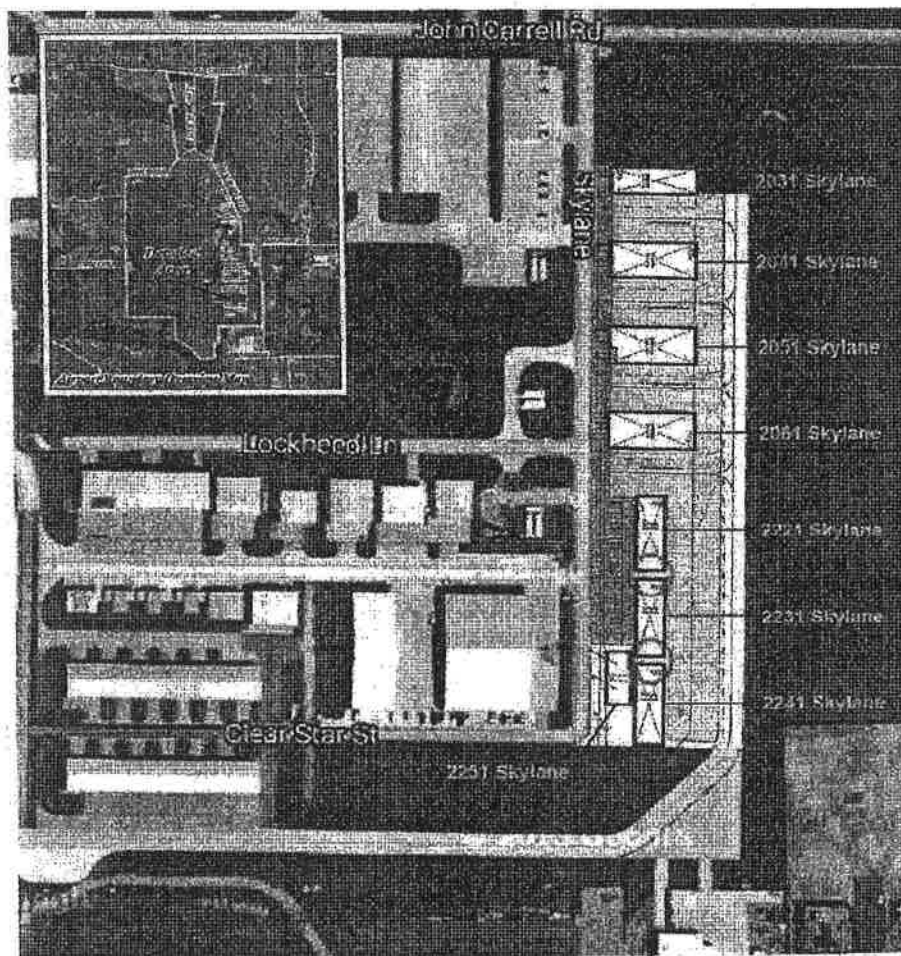
ARCHITECTURE ■ ENGINEERING ■ CONSTRUCTION ■ PROGRAM MANAGEMENT

## EXHIBIT 1

March 31, 2015  
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4. Provide and install power and lighting as shown on the previously mentioned electrical sheets with the following exceptions:
  - Interior lights do not need to be LED. Florescent lighting is acceptable.
  - Interior lights do not need emergency lighting ballasts. Provide "bug eye" type emergency lighting fixtures near the exit doors.
  - Exit lights are not required.
  - Grounding receptacles in the hangar floor are not required.
  - Exterior lights do not need to be LED. Other lighting types are acceptable.
5. Provide 2-hour fire coating on the inside of the four (4) walls that are separated by a sidewalk at the three in-line box hangars (See the red circles in the drawing below). This coating may be intumescent paint, cementitious coating or other methodologies approved by the Architect.



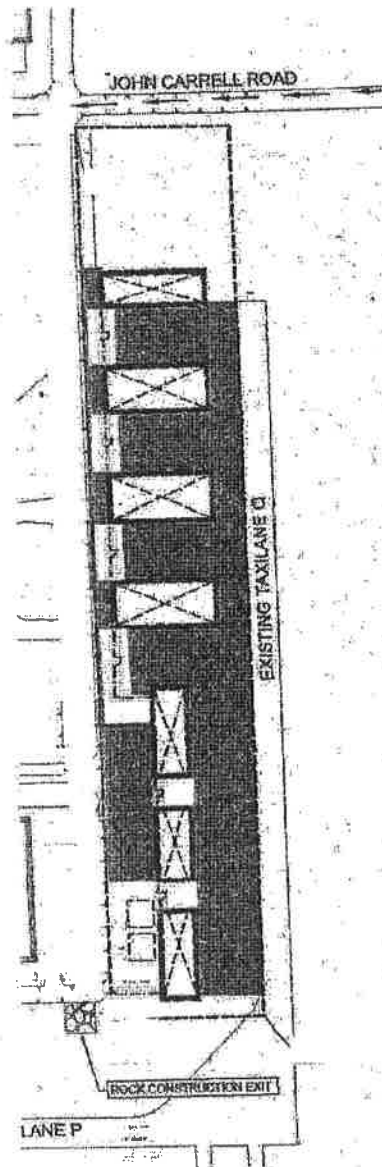
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# EXHIBIT 1

March 31, 2015  
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6. Provide and install the chain link fencing between the hangars as shown in yellow below. There are no sliding gates or power required. Provide six (6) man-gates as shown.

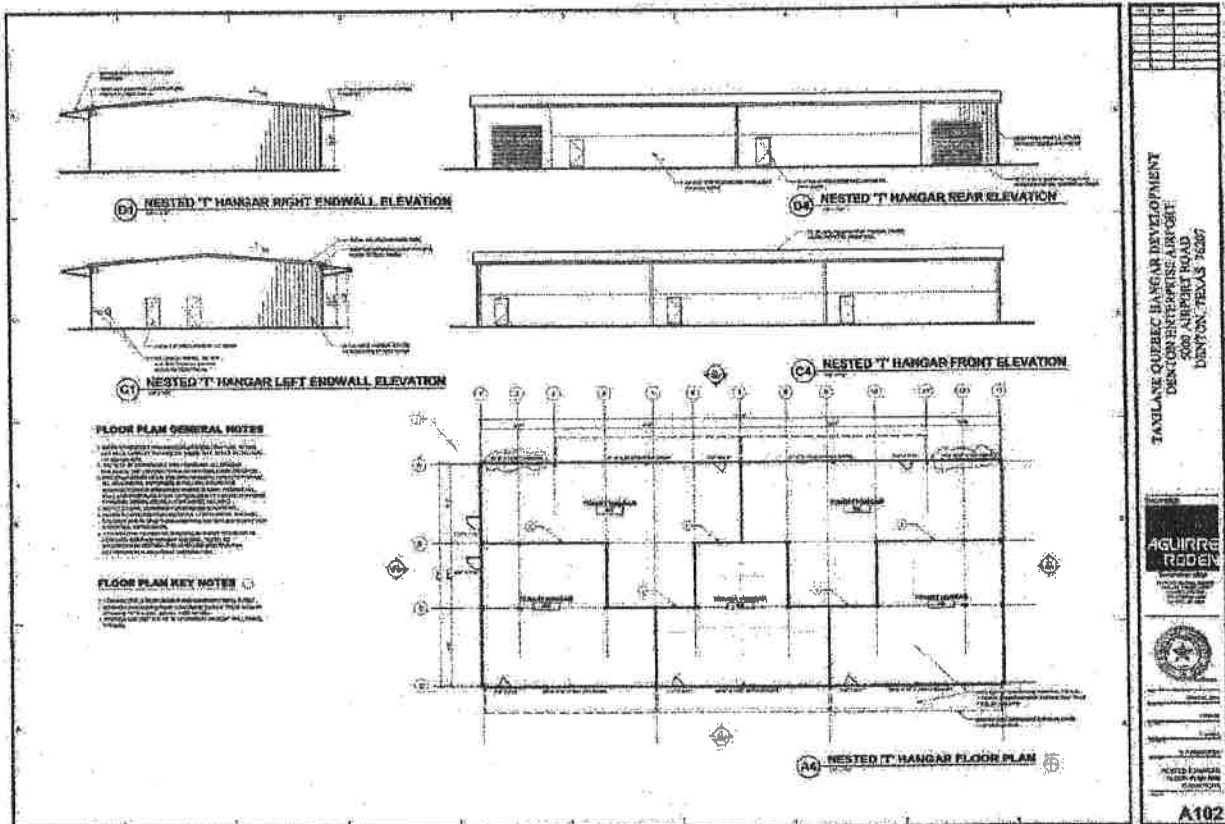


# EXHIBIT 1

March 31, 2015  
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7. Provide and install two (2) overhead segmented or coiling doors at each nested T hangar in the larger units, six (6) total. See the red circled areas in the drawing below.



END OF ADDENDUM

*J.R. Denney* Date *4-8-15*

# EXHIBIT 1

DENTON ENTERPRISE AIRPORT  
5000 Airport Road  
Denton, Texas 76207

GENERAL CONDITIONS	\$ 21,000
MOBILIZATION & DEMOBILIZATION	\$ 50,000
BONDS (Labor, Materials and Performance)	\$ 21,629
SUBTOTAL	\$ 92,629

HANGAR FOUNDATIONS (Drilled Piers, Grade Beams & Slab)	\$ 224,575
ERECTION OF PRE-PURCHASED HANGARS	\$ 137,175
ELECTRICAL (Connection to existing conduit, distribution, power and lighting)	\$ 139,517
CHAINLINK FENCING AND GATES	\$ 12,847
PAINTING (Fireproofing and Hangar Centerline Stripes)	\$ 4,000
OVERHEAD DOORS (2 - 10'X10' doors at each nested T hangar, Total of 6) sectional	\$ 7,058
TOTAL	\$ 617,801

J R Parley

4-8-15 Date

Unit pricing for drilled piers and casing (Additive and Deductive) will be used from the previous bid documents.



**Exhibit C**

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

## EXHIBIT 1

### 1. INVOICES AND PAYMENT PROCESSING:

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

**Direct deposit for payments:** Contractors are encouraged to arrange for receiving payments through direct deposit. Information regarding direct deposit payments is available from the City of Denton Purchasing website: [www.dentonpurchasing.com](http://www.dentonpurchasing.com).

**Invoices:** Invoices shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299 with a copy to the attention of Herman Lawson, City of Denton Facilities Management, 869 South Woodrow, Denton, TX 76205. The copy may also be emailed to Mr. Herman Lawson at [herman.lawson@cityofdenton.com](mailto:herman.lawson@cityofdenton.com). **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.** Invoices for partial payments on construction projects should normally be presented for payment within the first five days of the month, and submitted on the AIA Pay Application Form.

### 2. TAX EXEMPTION:

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

### 3. PAYMENT APPLICATIONS AND PAYMENTS TO CONTRACTORS:

A. Upon presentation of valid payment requests invoices, which should be within the first week of each month, the Owner shall make partial payments to the Contractor for construction accomplished during the preceding calendar month on the basis of completed construction certified to by the Contractor and approved by the Owner and Architect/Engineer solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety-five percent (95%) of each payment request approved during the construction of the project shall be paid by the Owner to the Contractor prior to completion of the project. Upon the approval by the Owner of the Contractor's "Final Invoice for Payment" showing the total cost of the construction performed, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled there under which shall not have been paid: Provided, however, that such final payment shall be made not later than thirty (30) days after the date of completion of construction of the project, as specified in the Final Invoice for Payment, unless withheld because of the fault of the Contractor.

## EXHIBIT 1

- B. The Contractor shall be paid on the basis of the percentage of the work actually completed for each construction item. The total amount paid for periodic billings shall not exceed the maximum contract price for the construction of the project as set forth in the contract, unless such excess shall have been approved by the Owner, and Owner's Representative, and in writing by the Purchasing Agent as part of a change order.
- C. No payment shall be due while the Contractor is in default in respect of any of the provisions of this contract, and the Owner may withhold from the Contractor the amount of any claim by any third party against either the Contractor or the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of this contract. This includes alleged failure of the Contractor to make payments to subcontractors.

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

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

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

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

#### **6. REMEDIES:**

##### **A. Completion of Contractor's Default**

If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety or Sureties upon the Contractor's bond or bonds a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner and/or Engineer shall be made by the Contractor or its Surety or Sureties, the Owner may take over the construction of the project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor and its Surety or Sureties shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, appliances, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the project. The Owner in such contingency may exercise any rights, claims or demands which the Contractor may have against third persons in connection with this contract and for such purpose the Contractor does hereby assign, transfer and set over unto the Owner all such rights claims and demands.

##### **B. Liquidated Damages**

The time of the completion of construction of the project is of the essence of the contract. Should the Contractor neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such money which may be then due

## EXHIBIT 1

or which may become due and payable to the Contractor the sum of FIVE HUNDRED DOLLARS (\$500.00) per day for each and every day, including weekends, that such construction is delayed on its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Contractor is insufficient to pay in full any such liquidated damages, the Contractor shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Contractor in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

### C. Cumulative Remedies

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

**Exhibit D**

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

## **EXHIBIT 1**

### **CITY OF DENTON GENERAL CONDITIONS FOR BUILDING CONSTRUCTION**

#### **ARTICLE 1 GENERAL PROVISIONS**

##### **GENERAL DEFINITIONS**

##### **1.1 The following definitions apply throughout these General Conditions and to the other Contract Documents:**

###### **a) THE CONTRACT DOCUMENTS**

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

- (1) a written Supplemental Agreement to the Contract signed by authorized representatives of both parties;
- (2) a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1(b) and Subparagraph 7.1(e); or
- (3) a written order for a minor change in the Work issued by the Architect/Engineer as described in Paragraph 7.3.

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

###### **b) THE CONTRACT**

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

- (1) between the Architect/Engineer and Contractor;
- (2) between the Owner and a Subcontractor or Sub-subcontractor; or
- (3) between any persons or entities other than the Owner and Contractor.

## EXHIBIT 1

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

**c) THE WORK**

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

**d) THE PROJECT**

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

**e) THE DRAWINGS**

The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

**f) THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

**g) THE PROJECT MANUAL**

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

**h) ALTERNATE**

An Alternate is a variation in the Work on which the Owner requires a price separate from the City Building General Conditions Base Proposal. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted prior to any Work under the alternate being performed or materials delivered to the Project site, the Owner will be entitled to a credit in the full value of the alternate as priced in the Contractor's Bid.

**i) BASE Proposal**

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

**j) HAZARDOUS SUBSTANCE**

The term Hazardous Substance is defined to include the following:

## EXHIBIT 1

- (1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;
- (2) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;
- (3) radon;
- (4) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;
- (5) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;
- (6) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;
- (7) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and
- (8) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

### **k) OTHER DEFINITIONS**

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

- (1) "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;
- (2) "shall" means the action of the party to which reference is being made is mandatory;
- (3) "as required" means as prescribed in the Contract Documents; and
- (4) "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

## **1.2 EXECUTION, CORRELATION AND INTENT**

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



## EXHIBIT 1

- (b) Execution of the Building Construction Services Agreement by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions, including subsurface conditions as described and identified in the Geotechnical Report, under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
- (c) The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- (d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- (e) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- (f) The Drawings and Specifications are intended to agree with one another, and Work called for by Drawings and not mentioned in Specifications, or vice versa, shall be furnished as if set forth by both. Specifications shall govern materials, methods and quality of work. In the event of a conflict on the Drawings between scale and dimension, figured dimensions shall govern over scale dimensions and large scale drawings shall govern over small scale drawings. Conflict between two or more dimensions applying to a common point shall be referred to the Architect/Engineer/Engineer for final adjustment. If discrepancies or conflicts occur within or between the Drawings and Specifications regarding the Work, or within or between other Contract Documents, the Contractor shall not perform such Work without having obtained a clarification from the Architect/Engineer and resolution by the Owner. The Owner's decision as to the appropriate resolution of a conflict or discrepancy shall be final. Should the Drawings or the Specifications disagree within themselves or with each other; the Base Bid will be based on the most expensive combination of quality and quantity of Work indicated.
- (g) Deviations from Contract Documents shall be made only after written approval is obtained from Architect/Engineer and Owner, as provided in Article 7.
- (h) The intention of the Contract Documents is to include all materials, labor, tools, equipment, utilities, appliances, accessories, services, transportation, and supervision required to completely perform the fabrication, erection and execution of the Work in its final position.
- (i) The most recently issued Drawing or Specification takes precedence over previous issues of the same Drawing or Specification. In the event of a conflict, the order of precedence of interpretation of the Contract Documents is as follows:
  - (1) Amendments (see Paragraph 7.2 for order of precedence between Amendments);
  - (2) the Building Construction Services Agreement;

## **EXHIBIT 1**

- (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 ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

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

### **1.4 CAPITALIZATION**

Terms capitalized in these General Conditions include those which are:

- (1) specifically defined in these General Conditions (except the terms defined in Subparagraph 1.1(j), which terms are of common grammatical usage and are not normally capitalized);
- (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses;
- (3) the titles of other documents published or used by the Owner as manuals or official policy statements; or
- (4) proper nouns or other words required under standard grammatical rules to be capitalized.

## **ARTICLE 2 THE OWNER**

### **2.1 DEFINITION OF OWNER**

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

### **2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

- (a) The Owner shall furnish the most recent survey describing the physical characteristics, legal limits, utility locations, and a permanent benchmark for the site of the Project. The Owner shall also furnish any environmental site assessments that may have been given to the Owner or conducted for the property upon which the Project is to be constructed. THIS INFORMATION IS FURNISHED TO THE CONTRACTOR ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.
- (b) Except for permits and fees which are provided for in Subparagraph 3.7(a), the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

## EXHIBIT 1

- (c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval, as required in Paragraph 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.
- (d) Unless otherwise provided in the Contract Documents, the Contractor will be furnished electronic copies of the Drawings and Specifications for bid purposes and one hard copy approved by Building Inspections upon execution of the Contract. Contractor may obtain additional copies by paying the cost of additional printing or reproduction.
- (e) The obligations described above are in addition to other duties and responsibilities of the Owner enumerated in the Contract Documents and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).
- (f) The Owner shall forward all instructions to the Contractor through the Architect/Engineer, except for the Owner's Notice to Proceed and the Owner's decision to carry out Work as described in Paragraph 2.4.
- (g) The Owner's employees, agents, and consultants may be present at the Project site during performance of the Work to assist the Architect/Engineer in the performance of the Architect/Engineer's duties and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, the equipment used in the performance of the Work, and for purpose of verification of Contractor's Applications for Payment.

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

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

### 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor fails or refuses to carry out the Work or perform any of the terms, covenants, or obligations of the Contract Documents, and fails or refuses to correct any failure or refusal with diligence and promptness within twenty (20) days after receipt of notice from the Owner, the Owner may correct the Contractor's failure or refusal or cause such failure or refusal to be corrected, without affecting, superseding, or waiving any other contractual, legal, or equitable remedies the Owner has, including but not limited to the Owner's termination rights under Article 13. In that case, an appropriate Change Order will be issued deducting the Owner's cost of correction, including Architect/Engineer's compensation for additional services and expenses made necessary by the failure or refusal of the Contractor from payments then or thereafter due to the Contractor. The cost of correction is subject to verification (but not approval) by the Architect/Engineer. If payments then or thereafter due the Contractor are not sufficient to cover the cost of correction, the Contractor shall pay the difference to the Owner.

## **EXHIBIT 1**

### **2.5 NOTICE TO PROCEED**

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

## **ARTICLE 3 THE CONTRACTOR**

### **3.1 DEFINITION OF CONTRACTOR**

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

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

- (a) The Contractor shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Architect/Engineer in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Contractor may discover. The Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Contractor will be held responsible for any known or reasonably discovered subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the Contractor continues to work on an item where an inconsistency, ambiguity, error, omission, conflict, or discrepancy exists without obtaining such clarification or resolution or commences an item of the Work without giving written notice of an error, omission, conflict, or discrepancy that might have been avoided by the check, study, and comparison required above, it shall be deemed that the Contractor bid and intended to execute the more stringent, higher quality, or state of the art requirement, or accepted the condition as is in the Contract Documents, without any increase to the Contract Sum or Contract Time. The Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Contractor's failure to give notice of and obtain a clarification or resolution of any error, omission, conflict, or discrepancy, without any right to any increase to the Contract Sum or Contract Time.
- (b) The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

- (a) The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents set forth specific instructions concerning these matters.

## EXHIBIT 1

- (b) The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Contractor or with any Subcontractor, and all other persons or entities for which the Contractor is legally responsible. All labor shall be performed by mechanics that are trained and skilled in their respective trades. Standards of work required throughout shall be of a quality that will bring only first class results. Mechanics whose work is unsatisfactory, or who are considered careless, incompetent, unskilled, or otherwise objectionable shall be dismissed promptly from the Work and immediately replaced with competent, skilled personnel. Any part of the Work adversely affected by the acts or omissions of incompetent, unskilled, careless, or objectionable personnel shall be immediately corrected by the Contractor.
- (c) The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.
- (d) The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Contractor's responsibility under this paragraph will not in any way eliminate the Architect/Engineer's responsibility to the Owner under the Architect/Engineer/Owner Agreement.
- (e) Any Contractor, Subcontractor, Sub-subcontractor, or separate contractor who commences Work over, in, or under any surface prepared by the Owner or by any other contractor, subcontractor, sub-subcontractor or separate contractor without the Contractor having given written notice to the Architect/Engineer of the existence of any known or reasonably discovered faulty surface or condition in the surface that prevents achieving the quality of workmanship specified by the Contract Documents and without having obtained the prior approval of the Architect/Engineer and the Owner to proceed is deemed to have accepted the surface or condition in the surface as satisfactory at the commencement of such Work. Any unsatisfactory Work subsequently resulting from such a faulty surface or condition in the surface that was not pre-approved by the Architect/Engineer or the Owner after notice as provided above may be rejected and replacement required, without any increase to the Contract Sum or Contract Time.
- (f) All grades, lines, levels, and benchmarks shall be established and maintained on an ongoing basis by the Contractor. The Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Each Contractor for his own Work shall verify all grades, lines, levels, and dimensions as indicated on Drawings. He shall report any errors, omissions, conflicts, or inconsistencies to Architect/Engineer before commencing any Work affected by these conditions. Contractor shall establish and safeguard benchmarks in at least two widely separated places and, as Work progresses, establish benchmarks at each level and lay out partitions on rough floor in exact locations as guides to all trades. The Contractor shall, from the permanent benchmark provided by the Owner, establish and maintain adequate horizontal and vertical control.

### 3.4 LABOR AND MATERIALS

- (a) Except as is otherwise specifically provided in the Contract Documents as being the responsibility of the Owner, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

- (b) The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- (c) The Contractor shall give preference, when qualified labor is available to perform the Work to which the employment relates, to all labor hired for the Project in the following order:
  - (1) to bona fide residents of the City of Denton, Texas;
  - (2) to bona fide residents of the County of Denton, Texas;
  - (3) to bona fide residents of the State of Texas;
  - (4) to bona fide residents of the United States.

### 3.5 WARRANTY

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

### 3.6 TAXES

The Owner qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the Owner shall not be liable for, or pay the Contractor's cost of, such sales and use taxes which would otherwise be payable in connection with the purchase of tangible personal property furnished and incorporated into the real property being improved under the Contract Documents or the purchase of materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for performance of the Contract which is to

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be completely consumed at the job site. The Contractor shall issue an exemption certificate in lieu of the tax on such purchases.

### 3.7 PERMITS, FEES AND NOTICES

- (a) The Architect/Engineer will apply and arrange for the issuance of the City of Denton Building Permit. The Contractor and Subcontractors will apply and arrange for the issuance of all other required permits, and will not be required to pay a fee for any City of Denton permits required for the Project. The Owner will pay all service extension charges, including tap fees, assessed by the Water Utilities Department.
- (b) The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of governmental entities or agencies applying to performance of the Work.
- (c) Except as provided in Subparagraph (d) below, it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Contractor shall promptly notify the Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.
- (d) If the Contractor performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Architect/Engineer and the Owner, the Contractor shall assume full responsibility for the Work and shall bear the attributable costs of the correction of the Work and any other Work in place that may be adversely affected by the corrective work.

### 3.8 ALLOWANCES

- (a) The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for the amounts identified in the Contract and by persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.
- (b) Unless otherwise provided in the Contract Documents:
  - (1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
  - (2) the amount of each allowance shall cover the cost to the Contractor of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts;
  - (3) the amount of each allowance includes the Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance Work;
  - (4) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect:
    - (i) the difference between actual costs and the allowances under Clause (b) (2); and

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

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

### 3.9 SUPERINTENDENT

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

### 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

(2) The construction schedule shall include all shop drawing and submittal data requirements, indicating for each:

- (i) the latest date to be submitted by the Contractor; and
- (ii) the latest date for approval by the Architect/Engineer.

(3) The construction schedule shall be in the form of a critical path management schedule, and shall indicate each critical task (the "predecessor") of all the major construction activities of the Work in a logical and sequential order (the "project network") which requires completion prior to commencement of the task next following (the "successor"). Each task shall be identified with:

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

(ii) the latest start date;

(iii) the latest finish date;

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

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

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

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



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- (5) On or before the first day of each month, following the date of commencement of the Work as stated in the notice to proceed, the Contractor shall prepare and submit to the Architect/Engineer and the Owner an up-to-date status report of the progress of the various construction phases of the Work in the form of an updated construction schedule. This status report shall consist of a time scale drawing indicating actual progress of the various phases of the Work and the percentage of completion of the entire Work. The original construction schedule shall be updated or changed to indicate any adjustments to the Contract Time granted by the Owner. The updated schedule must be submitted with the Contractor's Application for Payment. No application will be certified without a satisfactory update to the construction schedule.
- (6) The construction schedule will also be revised to show the effect of change orders and other events on Contract Time. No request for an increase in Contract Time will be considered unless it is accompanied by a schedule revision demonstrating the amount of time related to the cause of the request. If the Contractor's status schedules reflect that the Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Contractor shall prepare a recovery schedule demonstrating how it intends to bring its progress back within the Contract Time. This recovery schedule shall be in a form acceptable to the Owner.
- (7) Costs incurred by the Contractor in preparing and maintaining the required construction schedule, any updated schedule, and any recovery schedule required by the Owner will not be paid as an additional or extra cost and shall be included in the Contract Sum.
- (8) The Contract Sum is deemed to be based upon a construction schedule requiring the full Contract Time. NO CLAIM FOR ADDITIONAL COMPENSATION SHALL BE ALLOWED AS A RESULT OF THE CONTRACTOR BASING HIS BID ON AN EARLY COMPLETION SCHEDULE, OR AS A RESULT OF DELAYS AND COSTS ATTRIBUTABLE TO COMPLETION LATER THAN THE PLANNED EARLY COMPLETION DATE.
  - (b) The Contractor shall also prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.
  - (c) The Contractor shall conform to the most recent schedules approved as to form by the Architect/Engineer and the Owner. Any subsequent revisions made by the Contractor to schedules in effect shall conform to the provisions of Subparagraph 3.10(a)
  - (d) If the Work falls behind the approved construction schedule, the Contractor shall take such steps as may be necessary to improve his progress, and the Architect/Engineer and the Owner may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, and to submit for approval revised schedules in the form required above in order to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

### 3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes

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and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

### 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- (a) Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- (b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (c) Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
- (d) Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Paragraph 4.2.
- (e) The Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.
- (f) The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect/Engineer. Work requiring this submittal and review shall be in accordance with approved submittals and any identified exceptions noted by the Architect/Engineer.
- (g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within submittals with the requirements of the Work and of the Contract Documents. The Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.
- (h) The Contractor shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Architect/Engineer, subject to a formal Change Order signed by the Owner, Architect/Engineer and Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect/Engineer's approval thereof. Further, notwithstanding any approval of a submittal by the Architect/Engineer, the Contractor shall be responsible for all associated Project costs, including costs of coordination's, modifications, or impacts, direct or indirect, resulting from any and all substitutions, changes, additions, deletions, omissions, or deviations, whether or not specifically identified by the Contractor to the Architect/Engineer at

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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 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to additional revisions other than those requested by the Architect/Engineer on previous submittals. In the absence of such written notice, the Architect/Engineer's approval of a resubmission shall not apply to the additional revisions not requested.
- (j) Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.
- (k) When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

### 3.13 USE OF THE PROJECT SITE

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

### 3.14 CUTTING AND PATCHING

- (a) The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- (b) The Contractor shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering the construction, or by excavating. The Contractor shall not cut or otherwise alter the construction by the Owner or a separate contractor except with the written consent of the Owner and of the separate contractor; consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.
- (c) A Hot Work Permit must be obtained from the City of Denton's Facilities Management Department, 869 S. Woodrow Lane, Denton, Texas (940 349-7200) for any temporary operation involving open flames or producing heat and/or sparks. This includes, but is not limited to: Brazing, Cutting, Grinding, Soldering, Torch Applied Roofing and Welding.

### 3.15 CLEANING UP

- (a) The Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon the completion of the Work the Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Contractor's tools, construction equipment, machinery, and surplus materials.
- (b) If the Contractor fails to clean up as provided in the Contract Documents, the Owner may clean up and the Owner's cost of cleaning up shall be charged to the Contractor.

### 3.16 ACCESS TO WORK

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

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### 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 Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate governmental entity or agency, and the Contractor shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals which become requirements after bids or proposals are received.
- (b) If the Architect/Engineer, the Owner or other public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 3.17(a), the Architect/Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so that the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 3.17(c).
- (c) If procedures for testing, inspection, or approval under Subparagraphs 3.17(a) and 3.17(b) reveal deficiencies or nonconformities in the Work, the Contractor shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Architect/Engineer's services and expenses, if any. The Contractor shall bear the costs of any subsequent testing, inspection, or approval of the corrected Work.
- (d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect/Engineer.
- (e) If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing or inspection.
- (f) Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### 3.18 ROYALTIES AND PATENTS

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

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### 3.19 INDEMNIFICATION

- (a) THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT/ENGINEER, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR OF THE ARCHITECT/ENGINEER, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CONTRACTOR, THE OWNER, AND THE ARCHITECT/ENGINEER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.
- (b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.19 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers compensation acts, disability benefit acts or other employee benefit acts.
- (c) Indemnification under this Paragraph 3.19 shall include, but is not limited to, liability which could result to or be created for the Owner, its officers, agents, or employees, or the Architect/Engineer pursuant to State or Federal laws or regulations relating to pollution of the environment and State or Federal laws or regulations relating to the occupational safety and health of workers. The Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Contractor and that the obligations of the Owner, its officers, agents, and employees, and the Architect/Engineer under the above-mentioned laws and regulations are secondary to those of the Contractor.

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### ARTICLE 4 CONTRACT ADMINISTRATION

#### 4.1 THE DESIGN PROFESSIONAL (ARCHITECT/ENGINEER)

- (a) The design professional is the person lawfully licensed to practice architecture or engineering or a firm or other business entity lawfully practicing architecture/engineering identified as such in the formal Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect/Engineer" means the Architect/Engineer or the Architect/Engineer's authorized representative. The Owner may, at its option, designate a qualified Owner representative to serve as the Architect/Engineer on the Project instead of an outside firm or person. In such event, the references in these General Conditions that refer to the Architect/Engineer shall apply to the Owner-designated Architect/Engineer representative and the Owner-designated Architect/Engineer representative shall be accorded that same status by the Contractor.
- (b) In the event the Architect/Engineer is an outside person or firm and the Architect/Engineer's employment is terminated, the Owner may, at its option, contract with a new outside Architect/Engineer to replace the former, or may designate a qualified Owner representative to serve as the Architect/Engineer. The replacement Architect/Engineer, whether an Owner representative, an independent Architect/Engineer or any other qualified person or entity, shall be regarded as the Architect/Engineer for all purposes under the Contract Documents and shall be accorded that same status by the Contractor. Any dispute in connection with such appointment shall be reviewed and settled by the Owner, whose decision shall be final and binding.
- (c) Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect/Engineer's Construction Phase responsibility. Owner shall notify the Architect/Engineer and Contractor in writing at least 10 days in advance, if electing to appoint a representative empowered to act for the Owner during the Construction Phase. Similarly, from time to time the Owner may expand or reduce the Owner's delegation of powers to the Architect/Engineer, with the Owner notifying the Contractor of any such changes. The Architect/Engineer shall not be construed as a third party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth in this Subparagraph (c). In no event, however, shall the Owner have control over charge of, or be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

#### 4.2 ARCHITECT/ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION

- (a) The Architect/Engineer will administer the Contract as described in the Contract Documents and in accordance with the terms of the Architect/Engineer's agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Contractor, the provisions of the Owner/Architect/Engineer Agreement will be made available to the Contractor.
- (b) The Architect/Engineer shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent

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

- (c) The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 4.3. The Architect/Engineer and the Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Contractor is responsible.
- (d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect/Engineer. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors will be through the Owner. The Contractor shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Architect/Engineer.
- (e) Based on the Architect/Engineer's observations and evaluations of the Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- (f) The Architect/Engineer and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 3.17(b) and 3.17(c), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.
- (g) The Architect/Engineer will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such

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reasonable promptness as to not delay the Work or the activities of the Owner, Contractor, or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- (h) The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work as provided in Paragraph 7.3.
- (i) The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- (j) If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more Project representatives to assist in carrying out the Architect/Engineer's responsibilities at the site. The duties, responsibilities, and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated into the Contract Documents.
- (k) The Architect/Engineer will interpret and make recommendations to the Owner concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Architect/Engineer shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Contractor which change the scope of the Work or which modify or change the terms and conditions of any of the Contract Documents.
- (l) Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by the Contractor.
- (m) The Architect/Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents provided that the Architect/Engineer has prior written approval of the Owner.

### 4.3 CLAIMS AND DISPUTES

- (a) Definition; General Notice of Claim Procedure. As used in these General Conditions, a "Claim" means a demand or assertion by one of the parties to the Contract seeking an adjustment of the terms of the Contract Documents, of the Contract Sum, of the Contract Time, or some other relief in respect to the terms of the Contract Documents. The term also includes all other disputes between the Owner and the Contractor arising out of or relating to the Project or the Contract Documents, including but not limited to claims that work was outside the scope of the Contract



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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 Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, **MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT/ENGINEER AND THE OWNER WITHIN FOURTEEN (14) DAYS AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM.** Every Claim of the Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Contractor by his signature) of the Contractor, verifying the truth and accuracy of the Claim. **THE CONTRACTOR SHALL BE DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURE AND TIME LIMITS SET OUT IN THIS PARAGRAPH.**

- (b) Referral to the Architect/Engineer. Claims, disputes, and other matters in question between the Contractor and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Architect/Engineer for recommendation to the Owner, which recommendation the Architect/Engineer will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Contractor to submit the Claim to the Architect/Engineer for rendering of a recommendation to the Owner shall constitute a waiver of the Claim.
- (c) Continuing Contract Performance. Pending final resolution of a claim the Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents.
- (d) Claims for Concealed or Unknown Conditions. No adjustment in the Contract Sum or Time associated with concealed or unknown conditions will normally be considered or allowed; provided, however, that the Contract Sum or Time may be adjusted by the Owner in such circumstances only if:
  - (1) a concealed subsurface condition is encountered in the course of performance of the Work;
  - (2) a concealed or unknown condition in an existing structure is at variance with conditions indicated by the Contract Documents; or
  - (3) an unknown physical condition is encountered below the surface of the ground or in an existing structure which is of an unusual nature and materially different from those ordinarily encountered and generally recognized as inherent in the character of the Work; and
  - (4) a notice of claim with proper and adequate substantiation is presented pursuant to Subparagraph 4.3(a) of these General Conditions; and
  - (5) the Owner and the Architect/Engineer determine that:
    - (i) prior to submitting its bid for the Work, the Contractor used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and
    - (ii) the work caused or required by the concealed or unknown condition at issue can be considered extra work to the extent that additional new Drawings must be prepared and issued and new construction beyond the scope of the Contract Documents is required.

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- (e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE ARCHITECT/ENGINEER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE CONTRACTOR AT THE CONTRACTOR'S OWN RISK. THE OWNER AND THE ARCHITECT/ENGINEER DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.
- (f) Claims for Additional Cost. If the Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided in this Paragraph 4.3 shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. In addition, the Contractor's request for an increase in the Contract Sum for any reason (other than work performed under emergency conditions) shall be made far enough in advance of required work to allow the Owner and the Architect/Engineer a sufficient amount of time, without adversely affecting the construction schedule, to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates or proposals and to negotiate, execute and distribute a Change Order for the required work if the Contractor believes that additional cost is involved for reasons including but not limited to:
- (1) a written interpretation from the Architect/Engineer;
  - (2) a written order for a minor change in the Work issued by the Architect/Engineer;
  - (3) failure of payment by the Owner;
  - (4) termination of the Contract by the Owner;
  - (5) the Owner's temporary suspension of all or any portion of the Work where the Contractor was not at fault; or
  - (6) other reasonable grounds.
- (g) Injury or Damage to Person or Property. If the Contractor suffers injury or damages to person or property because of an act or omission of the Owner, or of any of the Owner's officers, employees or agents, written, sworn-to notice of any claim for damages or injury shall be given as provided in Subparagraph 4.3(a). The notice shall provide sufficient detail to enable the Architect/Engineer and the Owner to investigate the matter.
- (h) Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Contractor asserts a claim to the Contractor that the Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the Contractor to submit and assert the claim against the Owner shall be subject to:
- (1) the requirements of Paragraph 4.3 of these General Conditions; and
  - (2) the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Contractor to seek and assert such claim against the Owner:

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(ii) The Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Contractor in the claim submittal materials.

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

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

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

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

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

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

(2) In the event that the Contractor is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Subparagraph 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to the

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Contractor provided within fourteen (14) days after receipt of the Contractor's Claim. If the Owner denies the Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

- (3) If the Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by the Owner if not for the need and right to accelerate, the Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Contractor under Subparagraph 4.3(a) above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, not to exceed 5%, will be allowed on the claimed acceleration costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM.** The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (i)(3).
- (i) **Waiver of Claims; Final Payment.** The making of final payment shall constitute a waiver of claims by the Owner except those arising from:
- (1) claims, security interests, purported liens, or other attempted encumbrances arising out of the Contract and remaining unsettled;
  - (2) defective or nonconforming Work appearing after Substantial Completion;
  - (3) latent defects, as defined in Subparagraph 12.2(d), appearing after Final Completion; or
  - (4) the terms of general and special warranties required by the Contract Documents or allowed or implied by law.
- (k) **THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING.**
- (l) **No Waiver of Governmental Immunity. NOTHING IN THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.**

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### ARTICLE 5 SUBCONTRACTORS

#### 5.1 DEFINITIONS OF SUBCONTRACTOR

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

#### 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK. WITH REGARDS TO MWBE, THE CITY OF DENTON ONLY REQUIRE A GOOD FAITH EFFORT, THERE IS NO PERCENTAGE REQUIREMENT.

- (a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Contractor and the Owner, the Contractor shall furnish to the Architect/Engineer in writing, for acceptance by the Owner and the Architect/Engineer, a list of the names, addresses, telephone numbers, M/WBE certification numbers (where applicable), and type of work of the Subcontractors (including those who are to furnish materials or equipment fabricated to a special design), proposed for the principal portions of the Work, including furnishings when made a part of the Contract. The Contractor shall immediately notify the Owner in writing of any changes in the list as they occur. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.
- (b) The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect/Engineer has made reasonable and timely objection.
- (c) Architect/Engineer's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Contractor of his responsibility for performance of Work as called for under the Contract Documents, and shall not provide a basis for any claim for additional time or money on the part of the Contractor. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the Owner or Architect/Engineer. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.
- (d) The Contractor shall not change a Subcontractor previously selected if the Owner or Architect/Engineer makes reasonable objection to such change.

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### 5.3 SUBCONTRACTUAL RELATIONS

- (a) By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner and the Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Contract Documents (including but not limited to these General Conditions) with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the rights of the Owner and the Architect/Engineer. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.
- (b) The Contractor is solely responsible for making payments properly to the Contractor's Subcontractors on the Project. During performance of the Work, the Contractor shall comply with the following additional rules regarding Subcontractor payments:
- (1) The Contractor shall submit, beginning with the Second Application and Certificate for Payment, a Subcontractor Payment Report (the "Report") with each Application and Certificate for Payment, along with partial waivers of liens for all Work included in the application for payment. The Report shall show all payments made to date by the Contractor (plus existing retainage) to each Subcontractor involved in the Project. The Report shall be made on a form approved and supplied by the Owner. Pay applications will not be reviewed or certified by the Architect to the Owner without accompanying partial lien waivers after the first Certificate for payment. With each Application for Payment, the Contractor shall certify that there are no mechanics' or materialmen's Liens outstanding at the date of the Application for Payment, and that all bills due with respect to the Work have been paid to date, and that there is no known basis for filing of any liens against the Surety or the Owner in connection with the Work. Upon completion by the Contractor of the construction of the project, but prior to final payment to the Contractor, the Contractor shall deliver to the Owner conditional releases of all liens, which shall identify the remaining sums to be paid pending receipt of final payment. The conditional releases of liens, upon final payment by the Owner, shall release the Owner of all liens, and of all rights to claim any lien, from all manufacturers, material-men, and subcontractors furnishing services or materials for the project, to the effect that all materials or services used on or for the project have been paid for and indicating that the Owner is released from all such claims. As an alternative to the Report, the Contractor may furnish Affidavits of Payment Received with the Application and Certificate for Payment, which affidavits shall be executed by each Subcontractor owed money and paid during the previous progress payment period for work or materials furnished on the Project. RECEIPT BY THE OWNER OF THE REPORT OR AFFIDAVITS OF PAYMENT RECEIVED SHALL BE A CONDITION PRECEDENT TO PAYMENT ON ANY APPLICATION.

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

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within ten (10) days of receipt of such notice. The Contractor 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 Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Contractor shall note the amount withheld and that payment is in dispute. The Owner may require the Contractor to document and verify the dispute or other problem in question.

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

(i) the Report has not been properly completed;

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

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

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

### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

## ARTICLE 6 CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

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

(a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract

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identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make a claim as provided elsewhere in and in accordance with the Contract Documents.

- (b) When separate contracts are awarded for different portions of the Project or other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Building Construction Services Agreement with the Owner.
- (c) The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall, with the approval of the Owner, make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Contractor's Change Order proposal is denied by the Owner, the Contractor must submit any Claim pursuant to Paragraph 4.3 of the General Conditions.
- (d) Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under these General Conditions, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

### 6.2 MUTUAL RESPONSIBILITY

- (a) The Contractor shall afford the Owner and separate contractors' reasonable opportunity for access to and storage of their materials and equipment and the performance of their activities and shall coordinate the Contractor's construction and operations with the separate contractors as required by the Contract Documents.
- (b) If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.
- (c) The Owner shall not be liable to the Contractor for damages suffered by the Contractor due to the fault or negligence of a separate contractor or through failure of a separate contractor to carry out the directions of the Owner or the Architect/Engineer. Should any interference occur between the Contractor and a separate contractor, the Architect/Engineer or the Owner may furnish the Contractor with written instructions designating priority of effort or change in methods, whereupon the Contractor shall immediately comply with such direction. In such event, the



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Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Contractor.

- (d) The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2(e).
- (e) Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon due notice, settle with the separate contractor by agreement, if the separate contractor will so settle. If the separate contractor sues the Owner or submits a claim on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings, at the Contractor's expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and costs which the Owner has incurred.
- (f) The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

### 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project site and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect/Engineer recommends to be just.

## ARTICLE 7 AMENDMENTS

### 7.1 CHANGE ORDERS

- (a) A Change Order is a written order to the Contractor, signed by the Owner and the Architect/Engineer, issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, or an adjustment to the Contract Time, consistent with other applicable provisions of this Contract. The Owner, without invalidating the Contract and without requiring notice of any kind to the sureties, may order changes to the scope of Work under the Contract by additions, deletions, or other revisions, the Contract Sum and Contract Time to be adjusted consistent with other applicable provisions of this Contract. All Change Orders shall be executed on a Change Order form approved by the Owner and the Owner's City Attorney.
- (b) In addition to the Owner and the Architect/Engineer, the Contractor shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Contractor refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Architect/Engineer to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Contractor indicates his agreement with all of the changes approved, including the adjustment in the Contract Sum or the Contract Time. EACH CHANGE ORDER SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED

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IN THE CHANGE ORDER. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. The Contractor forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on other Work.

- (c) No extra work (except under emergency conditions) or changes shall be made nor shall any substitutions, changes or additions to or omissions or deviations from the requirements of the Drawings and Specifications be made unless pursuant to a written Change Order signed by the Owner and the Architect/Engineer, it being expressly understood that the Owner shall not be liable for the cost of extra work or any substitution, change, addition, omission or deviation from the requirements of the Drawings or Specifications unless the same shall have been authorized in writing by the Owner and the Architect/Engineer in a written change order or other Amendment. The provisions of this Paragraph 7.1 shall control in the event of any inconsistency between such provisions and the other provisions of this Article 7. See Subparagraph 10.3(a) of the General Conditions for Change Orders under emergency conditions.
- (d) The method of determining the cost or credit to the Owner for any change in the Work shall be one of the following:
  - (1) mutual acceptance of a guaranteed maximum price amount properly itemized and supported by sufficient substantiating data to permit evaluation;
  - (2) unit prices stated in the Contract Documents or subsequently agreed upon;
  - (3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
  - (4) the force account method provided in Subparagraph 7.1(e)
- (e) If the parties cannot agree to one of the methods of calculating cost provided in Clauses (d) (1), (d) (2), or (d) (3), or if the parties agree to a method but cannot agree to a final dollar figure, or if the Contractor for whatever reason refuses to sign the Change Order in question, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of the Work involved shall then be calculated on the basis of the reasonable jobsite expenditures and savings of those performing the Work attributable to the changes, including a reasonable allowance for overhead and profit, such allowance in any case never to exceed 15%. In such case, the Contractor shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Architect/Engineer and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to the Architect/Engineer each day during the performance of force account work, with copies to the Owner.

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

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- (1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
  - (2) costs of materials, supplies and equipment (but not to include off-site storage unless approved in writing by the Owner), whether incorporated or consumed;
  - (3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
  - (4) costs of premiums for all bonds and insurance related to the Work; and
  - (5) additional costs of supervision and field office personnel directly attributable to the changed Work. Pending final determination of cost to the Owner, payment of undisputed amounts on force account shall be included on the Architect/Engineer's Certificate of Payment as work is completed.
- (f) The amount of credit to be allowed to the Owner for any deletion of Work or any other change which results in a net decrease of the Contract Sum shall be the amount of actual net cost confirmed by the Architect/Engineer plus the stated percentage for overhead and profit. When both additions and deletions or credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease with respect to that change.

### 7.2 SUPPLEMENTAL AGREEMENTS

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

### 7.3 MINOR CHANGES IN THE WORK

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

### 7.4 TIME REQUIRED TO PROCESS AMENDMENTS

- (a) All of the Contractor's responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in

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

- (b) All Amendments require approval by either the City Council or, where authorized by the state law and City ordinance, by the City Manager pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution or Administrative Action. THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS. Pending the approval described above, the Contractor will proceed with the work under a pending Amendment only if directed in writing by the Owner.

### ARTICLE 8 CONTRACT TIME

#### 8.1 DEFINITIONS

- (a) Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- (b) The date of commencement of the Work is the date established in the notice to proceed from the Owner. The date of commencement shall not be postponed by the failure of the Contractor, or of persons or entities for whom the Contractor is responsible to act promptly to commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed through no fault of the Contractor, the Contractor shall be entitled only to an equitable extension of the Contract Time; the Contract Sum shall remain unchanged.
- (c) The date of Substantial Completion is the date certified by the Architect/Engineer in accordance with Paragraph 9.7.
- (d) The term "day" as used in the Contract Documents shall mean a calendar day, beginning and ending at 12:00 midnight, unless otherwise specifically defined by special provision.

#### 8.2 PROGRESS AND COMPLETION

- (a) Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Building Construction Services Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- (b) The Contractor shall not knowingly, except by agreement with or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance to be furnished by the Contractor as required by Article 11. The date of

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

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

### 8.3 DELAYS AND EXTENSIONS OF TIME

- (a) If the Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending a claim, or by other causes which the Architect/Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer and Owner may determine.
- (b) Claims relating to Contract Time and time extensions shall be made in accordance with the applicable provisions of Paragraph 4.3.
- (c) **No Damages for Delay.** NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, INCLUDING THE GENERAL CONDITIONS, NO ADJUSTMENT SHALL BE MADE TO THE CONTRACT SUM AND THE CONTRACTOR SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR UNFORESEEN, WHICH INCREASES THE TIME TO

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COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE ARCHITECT/ENGINEER, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE CONTRACTOR'S SOLE REMEDY.

- (d) The Owner shall have the right to occupy, without prejudice to the right of either party, any completed or largely completed portions of the structure or Work, notwithstanding the fact that the Contract Time for completing all or a portion of the Work may not have expired. Partial occupancy and use shall not be deemed as an acceptance of the Work taken or used.
- (e) The Contractor shall promptly suspend the Work when either the Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Contractor will also not be liable to the Owner for a delay caused in fact by the Work being suspended by a court order.
- (f) The Architect/Engineer, with the consent of the Owner, shall have the authority to suspend the Work, in whole or in part, for such period or periods as the Architect/Engineer deems necessary due to unusual or severe weather conditions as are considered unfavorable for the suitable prosecution of the Work, or due to failure on the part of the Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way, and shall take every precaution to prevent damage or deterioration of the Work performed. In cases of suspension of the Work under this Subparagraph, the Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Contractor shall not suspend the Work in whole or in part without written authority from the Architect/Engineer or the Owner, and shall resume the Work promptly when notified by the Architect/Engineer or the Owner to resume operations.
- (g) In the event of a delay that is the responsibility of the Contractor or any of the Subcontractors, for which the Contractor is not entitled to a time extension under the provisions of this Contract, the Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts, or resequencing. This acceleration shall be at no cost to the Owner and will continue until the Contract Time is restored. In the event of a delay for which the Contractor is entitled to a time extension, as determined by the Architect/Engineer, Owner may similarly direct acceleration and the Contractor agrees to perform same on the basis that the Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). THE CONTRACTOR EXPRESSLY WAIVES ANY OTHER COMPENSATION RESULTING FROM ACCELERATION, SUCH AS LOSS OF LABOR PRODUCTIVITY OR EFFICIENCY.

## ARTICLE 9 PAYMENTS AND COMPLETION

### 9.1 CONTRACT SUM

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

### 9.2 SCHEDULE OF VALUES

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

### 9.3 APPLICATIONS FOR PAYMENT

- (a) At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect/Engineer an itemized Application for Payment for Work completed in accordance with the schedule of values. The Application shall be notarized, if required, and supported by data substantiating the Contractor's right to payment as the Owner or Architect/Engineer may require, including but not limited to copies of requisitions from Subcontractors and material suppliers, and reflecting the applicable retainage as required in the Contract Documents. Contractor's Application for Payment shall also provide other supporting documentation as the Owner or the other applicable provisions of the Contract Documents may require.
- (b) Applications for Payment may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Contractor complies with Clause 5.3(b) (2) of these General Conditions and the Contractor's Payment Bond Surety consents in writing to payment to the Contractor of the funds deemed to be in dispute.
- (c) Unless otherwise provided in the Contract Documents, progress payments shall include payment for materials and equipment delivered and suitably stored at the Project site for subsequent incorporation into the Work within thirty (30) days after delivery to the Project site. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored away from the Project site at a location agreed upon in writing. Payment for costs incurred in storage of materials or equipment away from the Project site will NOT be made by Owner unless:
  - (1) the Owner has given prior approval of such off-site storage in writing;
  - (2) the materials or equipment are stored in a bonded warehouse located in Denton County and identified with the Project for which they are stored, as evidenced by warehouse receipts and appropriate documents of title; and
  - (3) the materials or equipment stored off-site will be incorporated into the Work within thirty (30) days after delivery. STORAGE IN FACILITIES OF THE MANUFACTURER OR THE CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.
- (d) The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

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- (e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an "early delivery." All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Contractor shall, at Contractor's expense or at the expense of the responsible Subcontractor or Supplier, cause such early delivery to be removed from the Project site and stored off-site until required at the Project site. All costs of labor, transportation and storage will be included as part of the expense. If the Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Contractor's sole expense, and amounts may be withheld from the Contractor's Application for Payment to reimburse the Owner for any costs incurred in removing unauthorized early delivery materials. OWNER WILL NOT BE RESPONSIBLE FOR THE PROTECTION OF OR RISK OF LOSS ON ANY EARLY DELIVERY MATERIALS OR EQUIPMENT, NOR WILL OWNER BE LIABLE FOR ANY PAYMENT FOR THE EARLY DELIVERY MATERIALS OR EQUIPMENT. Any materials or equipment classified as early delivery will not be approved for payment as stored materials prior to thirty (30) days before the incorporation of the materials or equipment into the Work, unless storage and payment at an earlier date is expressly approved in writing by the Owner.
- (f) If the Contract Sum is equal to or less than \$25,000.00 and performance and payment bonds are not furnished by the Contractor, no payment applied for will be payable under the Contract until the Work has been Finally Completed and accepted.

### 9.4 CERTIFICATES FOR PAYMENT

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



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- (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or
- (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- (d) Whenever the Application for Payment for Work done since the last previous Application for Payment exceeds one hundred dollars (\$100.00) in amount, Owner will pay a percentage of the Application, less applicable retainage, to the Contractor within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Architect/Engineer. The Application may include acceptable nonperishable materials delivered to the Work or stored as provided for in Paragraph 9.3(c) and the payment will be allowed on the net invoice value, less taxes and applicable retainage.
- (e) The City is required to withhold retainage for public works contracts in which the total contract price estimate at the time of execution is more than \$400,000; however, this requirement is typically applied by the City for all public works contracts in excess of \$50,000. The City may require varying percentage withholding amounts; however, the City typically requires five percent. For retainage percentages in excess of five percent, the City must deposit the retainage into an interest-bearing account and pay the interest earned to the contractor on completion of the contract. The retainage will be withheld by the Owner from each progress payment until final completion of the Work by the Contractor, approval of final completion by the Architect/Engineer, and final acceptance of the Work by the Owner. Unless otherwise required by state law, the retainage percentage as specified above is based upon the original Contract Sum, and will not be affected in the event the original Contract Sum is subsequently increased or decreased by Change Order.
- (f) No progress payments shall be made on contracts where performance and payment bonds are not required or furnished. In such instances, payment for the Work performed will be made upon final completion and acceptance by the Owner of all Work.

### 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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- (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;
  - (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
  - (5) damage to the Owner or another contractor;
  - (6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - (7) persistent failure to carry out the Work in accordance with the Contract Documents; or
  - (8) mathematical or other errors that are discovered in the Application for Payment.
- (b) When each of the above reasons that existed for withholding certification are removed or remedied, certification will be made for amounts previously withheld.
- (c) The Owner may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to the Owner from the Contractor, regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise and regardless of whether or not the debt due to the Owner has been reduced to judgment by a court.

### 9.6 PROGRESS PAYMENTS

- (a) After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect/Engineer. The Owner shall not be liable for interest on any late or delayed progress payment or final payment caused by any claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the Application for Payment or as a precondition to payment under the Contract Documents, or due to any payment the Owner or the Architect/Engineer has a right to withhold or not certify under the Contract Documents. Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contract Documents, including but not limited to those defaults set forth in Subparagraph 9.5(a), Clauses (1) through (7). The Owner shall not be deemed in default by reason of withholding payment while any Contractor default remains uncured.
- (b) The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractors portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.
- (c) The Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken

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

- (d) Neither the Owner nor the Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. That obligation belongs to the Contractor or, in the event of the Contractor's failure to pay a Subcontractor, to the Surety on the Payment Bond as required under Paragraph 11.3.
- (e) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6(b), (c), and (d).
- (f) A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not performed in accordance with the Contract Documents.

### 9.7 SUBSTANTIAL COMPLETION

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

- (a) the Contract Documents such that the Owner may beneficially occupy and use the Work, or designated portions of the Work, for the purposes for which it is intended and only trivial and insignificant items remain which do not affect the Work as a whole.
- (b) When the Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list (hereinafter called the "punch list"). Failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Architect/Engineer will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Architect/Engineer's inspection discloses any item, whether or not included on the punch list, which is not in accordance with the requirements of the Contract Documents and which renders the Work inspected not Substantially Complete the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Architect/Engineer. The Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list accompanying the Certificate.
- (c) The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of responsibilities assigned to them in the Certificate.
- (d) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect/Engineer, the Owner shall make payment,

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reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

### 9.8 PARTIAL OCCUPANCY OR USE

- (a) The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate Supplemental Agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.2(e) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion Substantially Complete, the Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the
- (a) progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect/Engineer.
- (b) Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect/Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- (c) Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### 9.9 FINAL COMPLETION AND FINAL PAYMENT

- (a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer, accompanied by the Owner's representative, will promptly make final inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9(b) as a condition precedent to the Contractor's being entitled to final payment have been fulfilled. Owner will normally make final payment within thirty (30) days after Owner's receipt and approval of the final Certificate for Payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided by separate agreement between the Owner and the Contractor.
- (b) Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect/Engineer:

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- (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
  - (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;
  - (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
  - (4) a consent of surety to final payment; and
  - (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.
- (c) As a precondition to final payment by the Owner under this Contract, the Contractor's affidavit under Clause (b)(1) shall state that the Contractor has paid each of his subcontractors, laborers or materialmen in full for all labor and materials provided to him for the Work under this Contract. In the event the Contractor has not paid each of his subcontractors, laborers or materialmen in full, the Contractor shall state in the affidavit the amount owed and the name of each subcontractor, laborer or materialmen to whom such payment is owed. **IN ANY EVENT, THE CONTRACTOR SHALL BE REQUIRED TO EXECUTE THE OWNER'S STANDARD AFFIDAVIT OF FINAL PAYMENT AND RELEASE AS A PRECONDITION TO RECEIPT OF FINAL PAYMENT.**
- (d) If, after Substantial Completion of the Work, final completion of the Work is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion and the Architect/Engineer confirms the delay, the Owner shall, upon application by the Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of payment. Payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- (e) The acceptance by the Contractor of the final payment shall operate as and shall be a complete release of the Owner from all claims or liabilities under the Contract, for anything done or furnished or relating to the Work or the Project, or for any act or neglect of the Owner relating to or connected with the Work or the Project.

## **ARTICLE 10 SAFETY, SECURITY AND UTILITY PROVISIONS; ENVIRONMENTAL COMPLIANCE**

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

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### 10.2 SAFETY OF PERSONS AND PROPERTY

- (a) The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- (1) employees on the Work and other persons who may be affected thereby;
  - (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
  - (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- (b) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- (c) The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- (d) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- (e) **USE OF EXPLOSIVES - CLAIMS AND TOTAL INDEMNIFICATION.** The Owner shall have the right to pre-approve the use of any explosives on the Project; the Contractor shall not assume in its bid that permission to use explosives will be granted. The Owner shall NOT be liable for any claim for additional time or compensation as a result of the Owner's denial of permission to use explosives. Where use of explosives is permitted by the Owner, the Contractor EXPRESSLY AGREES TO BE SOLELY RESPONSIBLE for the determination as to whether explosives shall actually be used, and for any result from the use, handling or storage of explosives, and shall INDEMNIFY, DEFEND AND HOLD COMPLETELY HARMLESS the Owner, its officers, agents and employees, and the Architect/Engineer against any and all claims, lawsuits, judgments, costs or expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, as the result of the use, handling or storage of the explosives by the Contractor or any Subcontractor, REGARDLESS OF WHETHER SAID USE, HANDLING OR STORAGE WAS NEGLIGENT OR NOT, AND REGARDLESS OF WHETHER THE DAMAGE OR INJURY WAS CONTRIBUTED TO IN ANY WAY BY THE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES, OR THE ARCHITECT/ENGINEER AND ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. In the event of conflict with any other indemnity paragraph in this Contract, this paragraph controls. This indemnity paragraph is intended solely for the benefit of the parties to this Contract and is not intended to create or grant any rights, contractual or otherwise, to or for any other person or entity. The Contractor shall furnish the Owner and the Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury,

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which insurance shall either include the Owner and the Architect/Engineer as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Architect/Engineer. All explosives shall be stored in a safe and secure manner, under the care of a competent watchman at all times, and all storage places shall be marked clearly "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives and highly flammable materials shall conform to Federal and State laws, City of Denton ordinances, and the City of Denton Fire Department regulations. The Contractor shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Contractor's intention to use explosives, and such notice shall be given sufficiently in advance to enable the telecommunications and public utility companies and private property owners to take such steps as they may deem necessary to protect their property from injury. The notice shall not relieve the Contractor of any responsibility for damage resulting from any blasting operations.

- (f) The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2(a)(2) and 10.2(a)(3), except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor or any of its Subcontractors. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.19. To the extent that any such damage or loss may be covered by property insurance or other insurance required by the Contract Documents, the Owner and the Contractor shall exercise their best efforts to make a claim and obtain recovery from the insurers to provide for the cost, in whole or in part, of the repair work or to provide for reimbursement for such damage or loss.
- (g) The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect/Engineer.
- (h) The Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger its safety.

### 10.3 EMERGENCIES

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

### 10.4 PUBLIC CONVENIENCE AND SAFETY

- (a) The Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or



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prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

- (b) The Owner reserves the right to remedy any neglect on the part of the Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Contractor's neglect shall be deducted from the Contract Sum. The Contractor shall notify the City Traffic Control Department when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Contractor shall, when directed by the Architect/Engineer or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

### 10.5 BARRICADES, LIGHTS AND WATCHMEN

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

### 10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

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



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### **10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS**

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

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

- (a) When the Contractor desires to use the Owner's water in connection with the Work, the Contractor shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the Denton Water Utilities Department.
- (b) The Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner or with Denton Municipal Electric in the event that separately metered electrical connections are required for the Project. The Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Contractor through the City of Denton.

### **10.9 USE OF FIRE HYDRANTS**

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

### **10.10 ENVIRONMENTAL COMPLIANCE**

- (a) The Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A. §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42

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U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

- (b) In the event the Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Architect/Engineer and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a Change Order with the Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Contractor or any of its Subcontractors, the Contractor shall be responsible for remediating the condition at the sole expense of the Contractor in accordance with the Contractor's APPROVED Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Paragraph 4.3 and Article 8.
- (c) The Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Contractor or any Subcontractor or Supplier. The Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Architect/Engineer so that they may observe the activities; provided, however, that it shall be the Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.
- (d) Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Contractor shall submit to the Owner for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Owner's Project Manager or other designated representative. The Contractor shall not commence any field work prior to approval of such plan by the Owner. The following additional rules shall apply with respect to spills caused by the Contractor or a Subcontractor:
  - (1) The Contractor shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of

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

- (2) The Contractor shall immediately respond in accordance with the SPRP in the event of a spill.
- (3) The Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the Contractor shall use only those transporters and disposal facilities that are approved in advance in writing by the Owner. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Contractor's records for reference purposes, to be provided upon request of the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter. ALL COSTS OF COLLECTION, CONTAINMENT, AND DISPOSAL OF SPILLED MATERIALS SHALL BE THE SOLE RESPONSIBILITY OF THE CONTRACTOR.
- (4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.
- (e) Clean Air Management Plan. The Contractor shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the contractor selection process. The Owner reserves the right, at the Contractor's sole expense, to require the removal or retrofitting of any equipment used in the course of construction that does not comply with the Plan submitted to and approved by the Owner.
- (f) The Contractor shall deposit surplus or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Contractor shall submit to the Owner for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Contractor's records for reference purposes, to be provided upon request to the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter.
- (g) The Contractor is responsible for obtaining all TXPDES Storm Water Permits from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities promulgated by EPA, including but not limited to cleaning, grading, and excavation that disturb the applicable amount of total land area. In addition, the Contractor shall comply with all regulations of the Owner relating to storm water and storm water runoff management at the Project site pursuant to Chapter 19, Article IX, Denton City Code, as amended.
- (h) The Contractor shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable.

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

- (1) suspend all or any portion of the Work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the Contractor and approved by the Owner;
- (2) if the Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and backcharge the Contractor for the cost of the remediation or correction; or
- (3) terminate the Contract for cause as provided in Article 13.

## **ARTICLE 11 INSURANCE AND BONDS**

### **11.1 CONTRACTOR'S INSURANCE**

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

### **11.2 PROPERTY INSURANCE**

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

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

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

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

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

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

- (a) Subject to the provisions of Subparagraph 11.3(b), the Contractor shall, with the execution and delivery of the Construction Services Agreement, furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses (a)(1) and (a)(2) below, which surety bonds shall be in accordance with the Charter of the City of Denton and the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.3(c) and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Authority clearly establishing the extent and limitations of the authority of each signer to so sign:

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- (1) Performance Bond. A good and sufficient bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any Amendments thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of two (2) year from the date of final completion and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.
- (2) Payment Bond. A good and sufficient bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract Documents and any Amendments thereto, and for the use and protection of each claimant.
- (b) If the Contract Sum, including Owner-accepted alternates and allowances, if any, is greater than \$100,000, Performance in 100% of the Contract Sum are mandatory and shall be provided by the Contractor. If the Contract Sum is greater than \$50,000 but less than or equal to \$100,000, only a Payment Bond in 100% of the Contract amount is mandatory; provided, however, that the Contractor may elect to furnish a Performance Bond in the same amount if the Contractor so chooses. If the Contract Sum is less than or equal to \$25,000, the Contractor may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid to the Contractor until final completion and acceptance of all work by Owner. If the Contractor elects to provide Performance and Payment Bonds 100% of the total Contract Sum, progress payments in accordance with these General Conditions shall be disbursed.
- (c) No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Denton County, Texas. Each surety shall designate an agent resident in Denton County, Texas to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.
- (d) The person or persons, partnership, company, firm, Limited Liability Company, association, corporation, or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with the Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on the Owner until it has been approved as to form by the City Attorney, executed for the Owner by the City Manager, the performance and payment bonds and evidence of insurance have been furnished as required by the Contract Documents, and the fully executed contract has been delivered to the Contractor.
- (e) The failure of the Contractor to execute the Contract or deliver the required statutory bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as the Owner can assemble and deliver the Contract shall constitute a material breach of the Contractor's bid proposal and the Owner may rescind the Contract award and collect or retain

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the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Contractor's failure to execute and furnish the statutory bonds and to sign the Contract within ten (10) days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.3(e). In the event the Owner should re-advertise for bids, the defaulting Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this Paragraph.

### ARTICLE 12 DEFECTIVE AND NONCONFORMING WORK

#### 12.1 UNCOVERING OF WORK

- (a) If a portion of the Work is covered contrary to the Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, the Work must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer's observation and be replaced at the Contractor's expense without change in the Contract Time.
- (b) If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to it being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If any Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### 12.2 CORRECTION OF WORK

- (a) The Contractor shall promptly correct Work rejected by the Architect/Engineer as failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby.
- (b) If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Architect/Engineer or the Owner to do so unless the Owner has previously given the Contractor a written acceptance or waiver of the defect or nonconformity. The Contractor's obligation to correct defective or nonconforming Work remains in effect for:
  - (1) one year after the date of Substantial Completion of the Work or designated portion of the Work;
  - (2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or
  - (3) the stipulated duration of any applicable special warranty required by the Contract Documents.

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- (c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.
- (d) The obligations of the Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Clauses (b)(1) and (b)(2) does not limit the ability of the Owner to require the Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect/Engineer at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one year period also does not relieve the Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.
- (e) The Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- (f) If the Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect/Engineer's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Contractor then or thereafter are not sufficient to cover the deficiency, the Contractor shall pay the difference to the Owner.
- (g) The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- (h) Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2(b) relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.



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

### **12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

## **ARTICLE 13 COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION**

### **13.1 FINAL COMPLETION OF CONTRACT**

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

### **13.2 WARRANTY FULFILLMENT**

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

### **13.3 TERMINATION BY THE OWNER FOR CAUSE**

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

- (1) Failure or refusal of the Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.
- (2) A reasonable belief that the progress of the Work being made by the Contractor is insufficient to complete the Work within the specified time.
- (3) Failure or refusal of the Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.
- (4) A reasonable belief that the Contractor has abandoned the Work.
- (5) A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.



## EXHIBIT 1

- (6) Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect/Engineer or the Owner as provided for in the Contract Documents.
  - (7) Failure or refusal of the Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect/Engineer.
  - (8) A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.
  - (9) Repeated and flagrant violation of safe working procedures.
  - (10) The filing by the Contractor of litigation against the Owner prior to completion of the Work.
- (b) When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3(e), the Contractor shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within twenty (20) days after the written notice of termination for cause has been served upon the Contractor and the surety or its authorized agents, assume the obligations of the Contractor for the Work or that portion of the Work which the Owner has ordered the Contractor to discontinue and may:
- (1) perform the Work with forces employed by the surety;
  - (2) with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or
  - (3) with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming Work, and compensate the Owner for any other loss sustained as a result of Contractor's default.
- In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or liquidated or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Architect/Engineer and attorneys fees, as a result of such termination.
- (c) The balance of the Contract Sum remaining at the time of the Contractor's default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Subparagraph 13.3(b), exercise its obligation to assume the obligations of the Contractor, or that portion of the Contract which the Owner has ordered the

## EXHIBIT 1

Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of the Architect/Engineer and attorney's fees), and liquidated or actual damages incurred as a result of the termination.

- (d) The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3(c), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Contractor, then the Owner may pay to the Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Contractor, then the Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the Contractor shall continue the remainder of the Work in conformity with the terms of the Contract, and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.
- (e) The right to terminate this Contract for the convenience of the Owner (including but not limited to nonappropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of termination for convenience to the Contractor. Upon the Contractor's receipt of such written notice, the Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Contractor for lost or anticipated profits.

### 13.4 TEMPORARY SUSPENSION OF THE WORK

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

## **EXHIBIT 1**

- (2) where other provisions in the Contract Documents require or permit temporary suspension of the Work;
  - (3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or
  - (4) other unforeseen conditions or circumstances.
- (b) The Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Contractor arising from a temporary suspension due to a cause described in Clause (a)(1) above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses (a)(2) through (a)(4), where the Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Contractor under Subparagraph 4.3 of these General Conditions:
- (1) an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Architect/Engineer and the Owner;
  - (2) an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and
  - (3) if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

### **ARTICLE 14 MISCELLANEOUS PROVISIONS**

#### **14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS**

- (a) This Contract shall be governed by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.
- (b) This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Denton and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

## **EXHIBIT 1**

### **14.2 SUCCESSORS AND ASSIGNS**

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

### **14.3 WRITTEN NOTICE**

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

### **14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER**

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

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

### **14.5 INTEREST**

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

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

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

## **EXHIBIT 1**

association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

### **14.7 VENUE**

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

### **14.8 INDEPENDENT CONTRACTOR**

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

### **14.9 NONDISCRIMINATION**

As a condition of this Contract, the Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

### **14.10 GIFTS TO PUBLIC SERVANTS**

- (a) The Owner may terminate this Contract immediately if the Contractor has offered, conferred, or agreed to confer any benefit on a City of Denton employee or official that the City of Denton employee or official is prohibited by law from accepting.
- (b) For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.
- (c) Notwithstanding any other legal remedies, the Owner may require the Contractor to remove any employee of the Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.

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

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

### ARTICLE 16 NOTICE OF CONTRACT CLAIM

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

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

**EXHIBIT 1**

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

## EXHIBIT 1

### ADDITIONAL TERMS AND CONDITIONS

#### **Contract Term**

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

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

#### **Pricing**

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

#### **Price Adjustments**

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

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

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

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

Or mail to:

City of Denton

Attn: Purchasing Manager

RFP # 4811

901B Texas Street

Denton, Texas 76209

Or call:

City of Denton Purchasing

(940) 349-7100

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

#### **Quantities**

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

#### **Substitutions**

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



## EXHIBIT 1

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

### **Product Changes During Contract Term**

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

### **Patent Rights**

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

### **Asbestos Free Materials**

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

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

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

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

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

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

### **Samples**

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

## **EXHIBIT 1**

### **Venue**

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

### **Silence of Specifications**

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

### **Prevailing Wage Rates**

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

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

### **Special Permitting Requirements**

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

### **Contracts and Bonds**

Successful awarded contractor will be required to sign original contract and submit a performance and payment bonds for 100 percent of the total proposal submitted before work is to commence. The contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended.

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

## **SPECIAL CONDITIONS FOR GRANT FUNDED PURCHASES**

### **DAVIS BACON COMPLIANCE REQUIREMENTS**

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

## EXHIBIT 1

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

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

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

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

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

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

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

### **Davis-Bacon Act**

(a) *Definition.*—"Site of the work"—

(1) Means--

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

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

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

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- (3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.
- (b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.
- (2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.
- (3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- (4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all

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the following criteria have been met:

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

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

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

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

## EXHIBIT 1

### Rates of Wages

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

### Payrolls and Basic Records

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

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

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

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



## EXHIBIT 1

Regulations, 29 CFR Part 3; and

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

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

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

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

### Withholding of Funds

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

### Apprentices and Trainees

(a) Apprentices.

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

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

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

## EXHIBIT 1

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

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

(b) Trainees.

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



## EXHIBIT 1

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

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

### **Compliance with Copeland Act Requirements**

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

### **Subcontracts (Labor Standards)**

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

## EXHIBIT 1

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

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

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

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

## EXHIBIT 1

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

### Disputes Concerning Labor Standards

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

### Certification of Eligibility

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

### Approval of Wage Rates

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

### BUY AMERICAN ACT COMPLIANCE REQUIREMENTS

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

## EXHIBIT 1

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

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

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

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

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

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

b. Domestic preference.

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

## EXHIBIT 1

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

None

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

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

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

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

## EXHIBIT 1

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

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			

name,

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 1**

**Exhibit F**

**Payment and Performance Bonds**

# EXHIBIT 1

Bond #1001027694

## PERFORMANCE BOND

STATE OF TEXAS                   §

COUNTY OF DENTON           §

KNOW ALL MEN BY THESE PRESENTS: That Mag Construction Services, LLC, whose address is 320 Little School Road, Kennedale, Texas 76060 hereinafter called Principal, and the U. S. Specialty Insurance Company, 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 SIX HUNDRED AND SEVENTEEN THOUSAND, EIGHT HUNDRED AND ONE DOLLARS AND SIXTY-FIVE CENTS (\$617,801.65), 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 21<sup>st</sup> Day of April, 2015, a copy of which is hereto attached and made a part hereof, for the Construction Services stated within Request for Proposals (RFP) #5753 – Construction of Airport Hangars.

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 1

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 two copies, each one of which shall be deemed an original, this the 12th day of May, 2015.

ATTEST:

PRINCIPAL

BY: Julia Klouch

SECRETARY

Mag Construction Services, LLC

BY: J. R. Bailey

PRESIDENT

WITNESS:

SURETY

BY: Reduta H. Erle

U. S. Specialty Insurance Company

BY: Tracy Tucker

ATTORNEY-IN-FACT - Tracy Tucker

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

NAME: Laura Braun

STREET ADDRESS: 804 Lake Grove Drive Little Elm, TX 75068

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

# EXHIBIT 1

Bond #1001027694

## PAYMENT BOND

STATE OF TEXAS                   §

COUNTY OF DENTON           §

KNOW ALL MEN BY THESE PRESENTS: That Mag Construction Services, LLC, whose address is 320 Little School Road, Kennedale, Texas 76060 hereinafter called Principal, and the U. S. Specialty Insurance Company, 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 SIX HUNDRED AND SEVENTEEN THOUSAND, EIGHT HUNDRED AND ONE DOLLARS AND SIXTY-FIVE CENTS (\$617,801.65), 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 21<sup>st</sup> Day of April, 2015, a copy of which is hereto attached and made a part hereof, for the Construction Services stated within Request for Proposals (RFP) #5753 – Construction of Airport Hangars.

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 1

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 two copies, each one of which shall be deemed an original, this the 12th day of May, 2015.

ATTEST:

PRINCIPAL

BY: Julia Klunick  
SECRETARY

Mag Construction Services, LLC  
BY: J R Bailey  
PRESIDENT

WITNESS:

SURETY:

BY: Roberta H Erb

U. S. Specialty Insurance Company  
BY: Tracy Tucker  
ATTORNEY-IN-FACT

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

NAME: Laura Braun

STREET ADDRESS: 804 Lake Grove Drive Little Elm, TX 75068

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

EXHIBIT 1

POWER OF ATTORNEY

AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company of the State of California, a California corporation, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, A Texas corporation (collectively, the "Companies"), do by these presents make, constituted and appoint:

TRACY D. TUCKER, W. LAWRENCE BROWN OR TOBIN TUCKER OF FORT WORTH, TEXAS

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed** \*\*\*\*\*TEN MILLION\*\*\*\*\* Dollars (\$ \*\*\*10,000,000.00\*\* ).

This Power of Attorney shall expire without further action on December 8, 2012. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

*Be it Resolved*, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

*Attorney-In-Fact* may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.


*Be it Resolved*, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 15<sup>th</sup> day of June, 2009.

AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

Corporate Seals

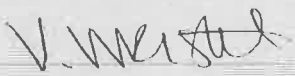


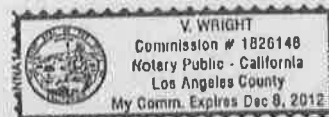
By:   
Daniel P. Aguilar, Vice President

State of California  
County of Los Angeles SS:

On this 15<sup>th</sup> day of June, 2009, before me, V. Wright, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature  (Seal)




I, Jeannie J. Kim, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 12<sup>th</sup> day of May, 2015.

Corporate Seals



Bond No. \_\_\_\_\_  
Agency No. 17031

  
Jeannie J. Kim, Assistant Secretary

## EXHIBIT 1

# U.S. Specialty Insurance Company

## TEXAS COMPLAINT NOTICE

### IMPORTANT NOTICE

1. To obtain information or make a complaint:
2. You may contact your agent.
3. You may call the company's toll free telephone number for information or to make a complaint at:

**1-800-486-6695**

4. You may also write to the company at:

601 S. Figueroa Street, Suite 1600  
Los Angeles, CA 90017

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

**1-800-252-3439**

6. You may write to the Texas Department of Insurance at:

Consumer Protection (111-1A)  
P.O. Box 149091  
Austin, TX 78714-9091  
Fax No. (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

7. **PREMIUM OR CLAIM DISPUTES:**

Should you have a dispute concerning your premium or about a claim you should contact the agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8. **ATTACH THIS NOTICE TO YOUR POLICY**

This notice is for information only and does not become a part or condition of the attached document.

### AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con su agente.

Usted puede llamar al numero de telefono gratis de la compania's para informacion o para someter una queja al:

**1-800-486-6695**

Usted tambien puede escribir a la compa  a:

601 S. Figueroa Street, Suite 1600  
Los Angeles, CA 90017

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

**1-800-252-3439**

Puede escribir al Departamento de Seguros de Texas al:

Consumer Protection (111-1A)  
P.O. Box 149091  
Austin, TX 78714-9091  
Fax No. (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

### UNA ESTE AVISO A SU POLIZA

Esta aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

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



## EXHIBIT 1

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/15/2015

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

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

PRODUCER Champion Commercial Insurance Agency LLC 3025 Commerce Street  Dallas TX 75226	CONTACT NAME: Denise Davis PHONE (A/C No. Ext): (214) 265-9020 FAX (A/C No.): (214) 265-1428 E-MAIL ADDRESS: ddavis@championins.com
INSURED MAG Construction Services, LLC 320 Little School Road  Kennedale TX 76060	INSURER(S) AFFORDING COVERAGE INSURER A: Scottsdale Ins. Co INSURER B: Mercury Insurance Company TX 29394 INSURER C: Texas Mutual Ins. Co. INSURER D: American Zurich Insurance Comp 40142 INSURER E: INSURER F:

## COVERAGES

CERTIFICATE NUMBER: 15/16 Master 14/15 IM

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			CPS2153159	1/28/2015	1/28/2016	MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO			BA420000004813	2/20/2015	2/20/2016	BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB						EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB						AGGREGATE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE			c208455	1/28/2015	1/28/2016	
	DED <input type="checkbox"/> RETENTION \$						
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH)			TSF0001247602	1/28/2015	1/28/2016	E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Inland Marine			EC05580479	4/30/2014	4/30/2015	Scheduled Limit 15,600
B	Auto Physical Damage			BA420000004813	02/20/14	02/20/2016	Comprehensive & Collision Ded 500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

Elton.brock@cityofdenton.c

City of Denton  
901B Texas Street  
Denton, TX 76209

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Bruce Sams/KATE

## INSURANCE REQUIREMENTS AND WORKER'S COMPENSATION REQUIREMENTS

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

### STANDARD PROVISIONS:

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

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

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
  - Name as additional insured the City of Denton, its Officials, Agents, Employees and volunteers.
  - That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
- *Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.*



## EXHIBIT 1

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

### **SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:**

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

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

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

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

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

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

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

## EXHIBIT 1

### ☒ **Automobile Liability Insurance:**

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

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

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

### ☒ **Workers Compensation Insurance**

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

### ☐ **Owner's and Contractor's Protective Liability Insurance**

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

### ☐ **Fire Damage Legal Liability Insurance**

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

### ☐ **Professional Liability Insurance**

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

## EXHIBIT 1

### ☒ **Builders' Risk Insurance**

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

### ☐ **Commercial Crime**

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

### ☐ **Additional Insurance**

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

### ☒ **Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities**

#### A. Definitions:

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

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

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

## EXHIBIT 1

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

## EXHIBIT 1

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

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

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

EXHIBIT 1

City of Denton  
RFP 5753

All of the following jobs were done under IAm Construction

ATTACHMENT D-REFERENCES

Please list three (3) Government 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:

LOCATION: City of Granbury, TX

CONTACT PERSON AND TITLE: Keith Calahan / Weldon Serriner

TELEPHONE NUMBER: 817-279-7347 325-690-3221

SCOPE OF WORK: Pouring of slab - 390 unit T Hanger Purchase

CONTRACT PERIOD: 4 unit T hangers and electrical work

REFERENCE TWO

GOVERNMENT/COMPANY NAME: City of Bowie

LOCATION: Bowie, TX

CONTACT PERSON AND TITLE: Don Bishop

TELEPHONE NUMBER: 940-872-1114

SCOPE OF WORK: Pour slab; erect 8 T hanger units; electrical

CONTRACT PERIOD:

REFERENCE THREE

GOVERNMENT/COMPANY NAME: City of Sutter Springs

LOCATION: Sutter Springs

CONTACT PERSON AND TITLE: Jody Baker

TELEPHONE NUMBER: 903-885-4911

SCOPE OF WORK: Rebuild 4000 ft Taxi way

CONTRACT PERIOD:

EXHIBIT 1

City of Denton  
RFP 5753

ATTACHMENT A-BUSINESS OVERVIEW QUESTIONNAIRE AND FORMS

1. Contractor Legal Name (for contracting purposes): *Mag Construction Services LLC*
2. Subsidiary of:
3. Organization Class (circle):  
Partnership      Corporation      Individual      Association
4. Tax Payer ID#:
5. Date Established: *11/2012*
6. Historically Underutilized Business: Yes or No
7. 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*
8. Please provide a detailed listing of all products and/or services that your company provides.  
*General Contracting      Structural Steel Erection*  
*Concrete Installation*  
*Metal Building Erection*
9. 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*
10. 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*
11. 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*
12. 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\\_toe\\_level=1&p\\_keyvalue=1926](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toe_level=1&p_keyvalue=1926)  
*YES*



# EXHIBIT 1

City of Denton  
RFP 5753

13. Resident/Non-Resident Bidder Determination:

Texas Government Code Section 2252.002: Non-resident bidders. Texas law prohibits cities and other governmental units from awarding contracts to a non-resident firm unless the amount of such a bid is lower than the lowest bid by a Texas resident by the amount the Texas resident would be required to underbid in the non-resident bidders' state. In order to make this determination, please provide the name, address and phone number of:

- a. Responding firms principle place of business: 320 Little School Rd  
Kennedale, TX 76060
- b. Company's majority owner principle place of business:  
N/A
- c. Ultimate Parent Company's principle place of business:  
N/A

# EXHIBIT 1

City of Dayton  
RFP 5753

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

We have erected over 150 hangars of various sizes in the last 10 years.

**15. 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.

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

J. R. Dwyer  
Signature

May Co. Inc.  
Company

2 2 15  
Date

**City of Denton**  
**RFP 5753**

Any exceptions taken to this solicitation (including terms and conditions in Exhibit 2, the General Provisions and Terms and Conditions) must be itemized on the lines below. Additional pages may be added as needed. If there are no exceptions, please sign where indicated at the bottom of the page.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or printed text on the paper.

**Signature:**

**Company**

Date \_\_\_\_\_

**No Exceptions are taken to this solicitation or the General Provisions and Terms and Conditions in Exhibit 2.**

Signature

Construction 3-2-15  
Company Date

Date \_\_\_\_\_

## EXHIBIT 1

City of Denton  
RFP 5753

### ATTACHMENT C-SAFETY RECORD QUESTIONNAIRE

The City of Denton desires to avail itself of the benefits of Section 252.0435 of the Local Government Code, and consider the safety records of potential contractors prior to award of City contracts. Pursuant to Section 252.0435 of the Local Government Code, the City of Denton has adopted the following written definition and criteria for accurately determining the safety record of a respondent prior to awarding City contracts.

The definition and criteria for determining the safety record of a respondent for this consideration shall be:

The City of Denton shall consider the safety record of the respondent in determining the responsibility thereof. The City may consider any incidence involving worker safety or safety of the citizens of the City of Denton, be it related or caused by environmental, mechanical, operational, supervision or any other cause or factor. Specifically, the City may consider, among other things:

- a. Complaints to, or final orders entered by, the Occupational Safety and Health Review Commission (OSHRC), against the respondent for violations of OSHA regulations within the past three (3) years.
- b. Citations (as defined below) from an Environmental Protection Agency (as defined below) for violations within the past five (5) years. Environmental Protection Agencies include, but are not necessarily limited to, the U.S. Army Corps of Engineers (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Natural Resource Conservation Commission (TNRCC) (predecessor to the TCEQ), the Texas Department of Health (TDH), the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection or worker safety related laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.
- c. Convictions of a criminal offense within the past ten (10) years, which resulted in bodily harm or death.
- d. Any other safety related matter deemed by the City Council to be material in determining the responsibility of the respondent and his or her ability to perform the services or goods required by the solicitation documents in a safe environment, both for the workers and other employees of respondent and the citizens of the City of Denton.

In order to obtain proper information from respondents so that City of Denton may consider the safety records of potential contractors prior to awarding bids on City contracts, City of Denton requires that respondents answer the following three (3) questions and submit them with their submissions:

## EXHIBIT 1

City of Denton  
RFP 5753

### QUESTION ONE

Has the respondent, or the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of OSHA within the past three (3) years?

YES \_\_\_\_\_ NO X

If the respondent has indicated YES for question number one above, the respondent must provide to City of Denton, with its submission, the following information with respect to each such citation:

Date of offense, location of establishment inspected, category of offense, final disposition of offense, if any, and penalty assessed.

### QUESTION TWO

Has the respondent, or the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of environmental protection laws or regulations, of any kind or type, within the past five years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.

YES \_\_\_\_\_ NO X

If the respondent has indicated YES for question number two above, the respondent must provide to City of Denton, with its submission, the following information with respect to each such conviction:

Date of offense or occurrence, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

### QUESTION THREE

Has the respondent, or the firm, corporation, partnership, or institution represented by respondent, or anyone acting for such firm, corporation, partnership, or institution, ever been convicted, within the past ten (10) years, of a criminal offense which resulted in serious bodily injury or death?

YES \_\_\_\_\_ NO X

If the respondent has indicated YES for question number three above, the respondent must provide to City of Denton, with its submission, the following information with respect to each such conviction:

Date of offense, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

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

# EXHIBIT 1

City of Denton  
RFP 5753

## ATTACHMENT E-CONFLICT OF INTEREST QUESTIONNAIRE

### CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

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

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

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

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

*None*

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

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

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

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

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

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

☐ Yes

☒ No

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

☐ Yes

☒ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes

☒ No

D. Describe each affiliation or business relationship.

4 ☒ I have no Conflict of Interest to disclose.

5 *Ron Davis*  
Signature of person doing business with the governmental entity

*4-10-15*  
Date

## EXHIBIT 1A

### ORDINANCE NO. 2015-120

AN ORDINANCE ACCEPTING COMPETITIVE PROPOSALS AND AWARDING A PUBLIC WORKS CONTRACT FOR THE CONSTRUCTION OF HANGARS AT DENTON ENTERPRISE AIRPORT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 5753-AWARDED TO MAG CONSTRUCTION SERVICES, LLC IN THE NOT-TO-EXCEED AMOUNT OF \$617,801.65.

WHEREAS, the City has solicited, received and tabulated competitive proposals for the construction of public works or improvements in accordance with the procedures of State law and City ordinances; and

WHEREAS, the City Manager or a designated employee has received and recommended that the herein described proposal is the highest scored proposal for the construction of the public works or improvements described in the Request for Proposal (RFP) document and plans and specifications therein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following competitive proposal for the construction of public works or improvements, as described in the "Request for Proposals" or plans and specifications on file in the Office of the City's Purchasing Agent filed according to the RFP number assigned hereto, are hereby accepted and approved:

<u>RFP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
5753	Mag Construction Services, LLC	\$617,801.65

SECTION 2. The acceptance and approval of the above competitive proposals shall not constitute a contract between the City and the person submitting the proposal for construction of such public works or improvements herein accepted and approved, until such person shall comply with all requirements specified in the Notice to Proposers including the timely execution of a written contract and furnishing of performance and payment bonds, and insurance certificate after notification of the award.

7 SECTION 3. The City Manager is hereby authorized to execute all necessary written contracts for the performance of the construction of the public works or improvements in accordance with the proposals accepted and approved herein, provided that such contracts are made in accordance with the Notice to Proposers and Request for Proposals, and documents relating thereto specifying the terms, conditions, plans and specifications, standards, quantities and specified sums contained therein.



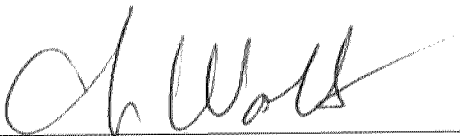
**EXHIBIT 1A**

SECTION 4. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under RFP 5753 to the City Manager of the City of Denton, Texas, or his designee.

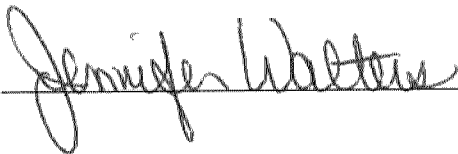
SECTION 5. Upon acceptance and approval of the above competitive proposals and the execution of contracts for the public works and improvements as authorized herein, the City Council hereby authorizes the expenditure of funds in the manner and in the amount as specified in such approved proposals and authorized contracts executed pursuant thereto.

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

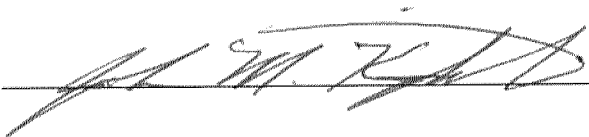
PASSED AND APPROVED this the 21 day of April, 2015.

  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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


## EXHIBIT 1B

### FUNDS DISBURSEMENTS SERVICES AGREEMENT

THIS AGREEMENT, made this 28 day of April, 2015, by and between **Mag Construction Services, LLC** (the "Contractor"), having its principal place of business at **320 Little School Road, Kennedale, TX 76060**, and **U.S. Specialty Insurance Company**, a California corporation (the "USSIC"), having its principal place of business at **601 S. Figueron Street, Suite 1600, Los Angeles, California 90017**.

#### RECITALS

A. Contractor has agreed to perform certain work or improvements pursuant to a contract or contracts (the "Contract") between Contractor and **City of Denton, Texas** (Obligee"), with respect to that construction project or projects known as **RFP #5753 Construction of Denton Enterprise Airport Hangars** (hereinafter referred to as the "Project"). Pursuant to the Contract, Contractor will be required to provide certain labor, material, equipment and services (the "Work") for the Project. The Work on the Project is estimated to require the processing of 7 monthly draw requests and the final draw request, for a total of 7 draws.

 B. Contractor, among others, has executed a General Indemnity Agreement dated **April 29, 2015** (the "Indemnity Agreement"), which, among other things, grants to USSIC in its capacity as surety ("Surety") certain rights and interests in the proceeds of Contractor's contracts which are bonded by Surety.

C. Surety has executed and issued or may execute and issue construction contract surety bonds, including a bond or bonds in connection with the Project (the "Bond"), naming Contractor as the Principal obligor.

D. Contractor and Surety desire to provide for performance of the Contract while minimizing the possibility of any disruption to such performance caused by the assertion of claims against Surety or against the contract funds which may be due to be paid pursuant to the Contract as well as claims against the Contractor or against the contract funds which either did not arise under a contract bonded by Surety or which are not due to be paid.

E. Contractor desires to use disbursement services available through USSIC acting as disbursing agent under this Agreement ("Disbursing Agent").

F. Disbursing Agent is willing to provide such disbursement services according to the terms of this agreement.

#### AGREEMENT

In consideration of their mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

## EXHIBIT 1B

### ARTICLE 1 DEFINITIONS AND PURPOSE OF AGREEMENT

1.1 **Definitions.** For the purpose of this Agreement, the following terms shall have the meanings set forth in this paragraph unless otherwise defined.

1.1.1 “Contract Funds” means funds that are paid or which are due to be paid as consideration for Contractor’s performance of or otherwise on the Project in relation to the Contract, and shall include all funds identified to the Contract and deposited into the Account as Contract Funds regardless of the source of such funds.

1.1.2 “Account” means the checking account into which any and all Contract Funds shall be deposited as paid to Surety by Obligee or from any other source in connection with the Contract, whether paid directly or indirectly by Obligee or through funding by a lender from a construction or improvement loan, or received from Contractor (whether traceable directly to funds originally paid by Obligee or not), or that portion of such Account which is identified as constituting Contract Funds.

1.1.3 “Owner” means the Obligee as well as the Project owner, general contractor, subcontractor or other entity at whose instance Contractor’s work is performed and who may be obligated or responsible to pay for work performed by Contractor and shall include, for purposes of this Agreement only, any entity or lending institution making payments to Contractor with respect to said work.

1.1.4 “Fee” means the amount paid or to be paid by Contractor to Disbursing Agent specifically for performance of Disbursing Agent’s undertakings under this Agreement, plus all expenses and bank charges, and any additional fees as otherwise provided for in this Agreement.

1.2 **Purpose of Agreement.** The purpose of this Agreement is to perfect the interests of Surety in funds paid by Owner pursuant to the Contract, and to create a trust for performance of Contractor’s obligations under the Indemnity Agreement for the benefit of Surety, so that funds generated by Contractor’s performance of the Contract will, to the extent practicable and as provided for under this Agreement be used to satisfy obligations and liabilities of Surety under any bond or bonds issued for Contractor and will be protected from the claims of any persons or entities who do not have rights under the bond or bonds issued by Surety for Contractor.

### ARTICLE 2 ACCOUNT

2.1 **Establishment of Account.** Contractor agrees that the Disbursing Agent will open a demand deposit account for use as a disbursement control account for the obligations of the Contractor and for the purposes set forth herein. The account shall be in a federally insured bank or savings and loan or banking institution (“Bank”). Contemporaneously with the Contractor’s execution of this Agreement, Contractor shall pay to Disbursement Agent \$[0.00] for deposit into the Account as an opening deposit to the Account. Such deposit shall remain on

## EXHIBIT 1B

deposit for the duration of this Agreement as a minimum account balance and may not be drawn against without the express consent of the Surety.

2.2 Checks drawn on the Account may be printed with the Project name and may include the name and address of the Contractor. By printing Contractor's name or address or the Project's description on checks, Disbursing Agent does not grant or convey to Contractor or any third-party any right or interest in the Account or the Contract Funds, nor any rights with respect to the Contract Funds other than as set forth herein. All check stock shall be maintained by Disbursing Agent. Contractor is not authorized to order or obtain blank checks drawn on the Account. Checks drawn on the Account, or wire or other transfers from the Account shall require only such signatures of Disbursing Agent personnel as Disbursing Agent and Bank may from time to time determine. In lieu of signatures, any transfer may be made, ordered, or cancelled online or by phone by Disbursing Agent using such personal identification numbers ("PINs") or password procedures as may be agreed upon by Bank and Disbursing Agent. Contractor shall not have signatory authority over the Account, nor any ability to withdraw funds from the Account. Contractor is not, with respect to the Account, a "customer" of the Bank nor a legal or equitable owner of the Account or any of the funds deposited therein.

2.3 Contractor understands and agrees that Disbursing Agent relationship with the Bank is that of a customer of the Bank and that Disbursing Agent have no responsibility to Contractor for any Bank error or omission in holding or administering Contract Funds and other credits deposited into the Account. Disbursing Agent shall not be liable for any loss of the Contract Funds or funds on deposit at the Bank occasioned by, arising out of, or in any way connected to the selection of Bank. Disbursing Agent assumes no responsibility in the event of any failure of the Bank to honor any item drawn on the Account or to re-credit the Account with any funds drawn improperly on said Account, whether by forged or missing endorsement or the failure of the Bank to exercise commercially reasonable practices in connection with debiting any amount against funds in the Account. Disbursing Agent assumes no liability, and shall not be responsible to Contractor, in connection with Bank's actions, or inactions, regarding the Account; provided, however, Disbursing Agent will assist Contractor in legal pursuits of Bank if necessary to protect the Contract Funds.

2.4 Disbursing Agent shall pay no interest on the Contract Funds, nor on any funds on deposit at the Bank, and assumes no responsibility for the earning of any income thereon. In the event that the Bank shall pay interest on the Account or on the Contract Funds, such interest shall accrue to the sole benefit of Disbursing Agent and shall be considered additional consideration paid to, and earned by, Disbursing Agent hereunder.

2.5 All disbursements from the Account shall be made directly to the applicable creditor and designated as a payment by Contractor, unless otherwise provided herein or agreed to by Contractor and Disbursing Agent.

2.6 Contractor agrees, represents, and warrants that Contractor will not pledge, grant a security interest in, assign or otherwise attempt to transfer or convey any Contract Funds to any person or entity without the express written consent of Surety. Creditors of Contractor, including but not limited to: general creditors, secured creditors, judgment creditors, receivers, trustees in

## EXHIBIT 1B

Bankruptcy, and any other representatives of Contractor shall have no legal or equitable right, claim, or interest in or to the Contract Funds, the Account or this Agreement. Disbursing Agent agrees, however, to remit to Contractor, or to its representatives or creditors, as their interests may appear, those Contract Funds, if any, which remain in the Account after all Contract obligations have been paid by Contractor, all of Contractor's obligations to Disbursing Agent have been fully paid or satisfied, and all of Contractor's obligations hereunder have been fully and finally performed. Unless and until such conditions have been satisfied, as evidenced by written confirmation thereof by Disbursing Agent and Disbursing Agent, Contractor shall have no legal or equitable interest in the funds in the Account, nor the right to any Contract Funds. The consent of Surety is an express condition precedent to the right of Contractor to obtain any sum of money from the Account. The rights of Disbursing Agent and Surety hereunder are in addition to and in aid of, and not in derogation of, nor substitution for, Surety's equitable, legal, statutory or contractual rights with respect to the Contract Funds.

2.7 The Account may, to the extent allowed by law, be established as a "zero balance" account, such that Contract Funds on deposit with the bank shall be separately accounted for, but may be transferred to a separate account administered by Disbursing Agent by means of account transfers to other accounts maintained by Disbursing Agent or by means of the Bank's "sweep account" or similar treasury management procedures.

### ARTICLE 3 CONTRACTOR'S RESPONSIBILITIES AND OBLIGATIONS

3.1 **Direction of Payments to Disbursing Agent.** Prior to commencement by Contractor of construction on the Project, Contractor shall take such steps as may be, appear or become appropriate to cause payments under the Contract to be made payable to Disbursing Agent and sent to Disbursing Agent, and otherwise to effectuate the purpose and operation of this Agreement, including, but not limited to, the following:

- (a) execution of additional agreements or financing statements under any applicable commercial code;
- (b) execution of forms of assignment or authorization, and delivery of such forms to Owner;
- (c) procurement of Owner's consent to disposition of Contract Funds as contemplated in this Agreement;
- (d) execution of any power of attorney or other documents which Disbursing Agent may deem appropriate to enable Disbursing Agent to receive, endorse and deposit payments as contemplated in this Agreement.

3.2 **Disbursement Documentation.** Prior to any request by Contractor for Disbursing Agent to make a disbursement from the Account, Contractor shall deliver, or shall have previously delivered as indicated, to Disbursing Agent or Disbursement Agent's third-party administrator as designated by Disbursing Agent each of the following.

## EXHIBIT 1B

3.2.1 true and correct copies of the Contract, the Contract Documents, the Bonds, and all subcontracts and purchase orders relative to the Work;

3.2.2 any change orders to the Contract or its subcontracts thereto as they are executed;

3.2.3 a Project Cost Breakdown in form satisfactory to Disbursing Agent and Surety, detailing all estimated costs, overhead and profit, completed accurately by an officer of Contractor;

3.2.4 a true and correct copy of Contractor's current schedule of values or unit prices that Contractor will use or has used as its basis for its request for payment from Oblige;

3.2.5 a list of all tradesmen, subcontractors and material suppliers who are to be employed or used for any purpose pursuant to the Contract or who may perform services and may be entitled to obtain liens or enforce claims pursuant to the Contract, or to whom Surety may have any liability under the provisions of its payment bond with respect to the Project (the "Creditor List"); said list shall be updated monthly by Contractor or more frequently as changes occur during the course of the Project;

3.2.6 a complete and accurate payroll statement listing Contractor's employees assigned to work at the Project and the compensation payable to each and itemizing, for each, the tax, benefit, and other payments to be made on account of their employment by Contractor for Project Work;

3.2.7 a true and correct copy of the written pay request to Oblige prepared by Contractor that complies with the requirements of the Contract, together with true and correct copies of all supporting documents required by either or both the Contract or Oblige (the "Pay Request");

3.2.8 all other written materials affecting the work of Contractor not otherwise mentioned herein along with any other document specifically requested by Surety in any way relating to the Contract; and

3.2.9 Contractor's Disbursement Request, in form acceptable to Disbursing Agent, signed by Contractor and accompanied by copies of invoices and such other documentation to support the proposed disbursement as Disbursing Agent may, in its sole discretion, require.

3.3 **Tax Returns.** Contractor shall be responsible for preparing and filing any tax returns or other documents required as a result of the account or in connection with the funds deposited into the account.

3.4 **Contractor's Responsibilities During Construction.** During performance of the Contract, Contractor shall be responsible for and cause the following to be performed or completed:

## EXHIBIT 1B

3.4.1 Prior to the disbursement of any periodic or final payment from the Account to any creditor then requesting or entitled to receive payment from Contractor in relation to performance of the Contract, Contractor shall submit to Disbursing Agent or Disbursing Agent's third-party administrator as designated by Disbursing Agent a comprehensive list (hereinafter referred to as the "Current Payment List") of all creditors who are then requesting or are entitled to receive payment from Contractor in relation to performance of the Contract. The Current Payment List shall show the status of Contractor's account with each such creditor and the amount requested for payment, including any retainage held by Owner relating to such payment, and any additional amounts which are held or are to be retained in the Account pertaining to that creditor. Contractor shall indicate on the Current Payment List its approval or disapproval of the amount requested for payment by each creditor. Contractor shall approve payment to a creditor only after inspecting the work performed or materials delivered by that creditor, or otherwise evaluating the consideration provided by that creditor.

3.4.2 Prior to the disbursement of any periodic or final payment from the Account to any party then requesting or entitled to receive payment from Contractor in relation to performance on the Contract, Contractor shall prepare and submit to Disbursing Agent or Disbursing Agent's third-party administrator such materials and documents as may be appropriate, in the sole discretion of Disbursing Agent, to determine that such payment is due and that it would be appropriate to make such payment from funds on deposit in the Account, along with such documents and instruments as may be appropriate to actually accomplish the payment. Disbursing Agent or Disbursing Agent's third-party administrator shall direct Contractor as to the nature, form, and organization of the materials, documents, and instruments to be prepared and submitted by Contractor, which may include, but are not limited to: relevant invoices, statements of account, statements of work completed, proof of delivery and of acceptance of the materials or work supplied, evidence of payment of related taxes, and unsigned but otherwise completed checks or drafts for payment from the Account.

3.4.3 Prior to disbursement by Disbursing Agent of any periodic or final payment to any party in relation to performance of the Contract, Contractor shall provide or cause to be provided to Disbursing Agent or Disbursing Agent's third-party administrator releases and affidavits executed by each and every creditor who is to receive payment. Such releases and affidavits shall be in a form specified by Disbursing Agent or Disbursing Agent's third-party administrator and shall indicate payment of the requested amount and that the payment was received in payment for work performed on, or consideration provided in relation to, performance of the Contract and for no other purpose, and that such payment renders the liability satisfied or account current as of the date of the release. Such releases and affidavits may be conditioned only upon actual receipt of the payment described in the release.

3.4.4 Contractor shall notify Disbursing Agent or Disbursing Agent's third-party administrator regarding, and deliver to Disbursing Agent copies of, any and all notices received by Contractor involving nonpayment or alleged nonpayment of labor or materials supplied to the Project, any and all claims, liens or other statutory notices, and any and all other allegations or implications of a failure by Contractor to perform any of its obligations under any bond issued by Disbursing Agent. Contractor shall give such notice and deliver such copies to

## EXHIBIT 1B

Disbursing Agent or Disbursing Agent's third-party administrator as soon as practicable, and in all events within three (3) days of Contractor's receipt of any such notice.

3.4.5 Contractor shall give prompt notice to Disbursing Agent or Disbursing Agent's third-party administrator of any anticipated, apparent, or existing disagreement or dispute between Contractor and the owner, Obligee, any of Contractor's subcontractors or materialmen, or any others who have provided labor or services for the performance of the Contract or who otherwise have a legal or equitable interest, direct or indirect, in the performance of the Contract, and of any other anticipated, apparent or existing discrepancy or dispute involving a claim against Contractor which constitutes or could constitute a claim against a bond issued by Disbursing Agent. In the event of such a discrepancy or dispute, Disbursing Agent may investigate the merits of such claim, and Contractor shall cooperate fully with Disbursing Agent in that process. During a reasonable investigation, Disbursing Agent may retain sufficient funds in the Account to ensure that funds are available for payment of the full amount of the claim. Following such reasonable investigation, Disbursing Agent shall exercise sole discretion for taking any actions related to the claim as to which there is a discrepancy or dispute, including making partial or full disbursements from the Account. The discretion of Disbursing Agent shall be limited only in that their discretion must be exercised in subjective good faith. Disbursing Agent may in all cases disburse the undisputed or unsuccessfully disputed portion of a claim. Disbursing Agent shall make the disbursement or disbursements pursuant to this paragraph within thirty (30) days after receiving all information necessary for it to make its determination.

3.4.6 Periodically, and always as early as practicable, Contractor shall provide to Disbursing Agent or Disbursing Agent's third-party administrator copies of certified payrolls, withholding statements, prepared tax returns, and any other documents appropriate to the determination of any tax liability or other obligation which might be owed by Contractor to any public agency, bureau, or governmental division relating to performance of the Contract or evidencing payment of such obligations.

3.4.7 Upon request by Disbursing Agent or Disbursing Agent's third-party administrator, Contractor shall provide any and all information and documentation or other evidence relating to Contractor's cost of doing business generally, and specifically of Contractor's internal costs associated with performance of the Contract.

3.4.8 Contractor shall promptly deliver to Disbursing Agent or Disbursing Agent's third-party administrator copies of any and all change orders or requests for alterations or extras on the Project affecting the scope of Contractor's work or amount of compensation.

3.5 **Contractor's Responsibilities During Final Phase of Construction.** Upon completion of performance of the Contract, Contractor shall provide Disbursing Agent or Disbursing Agent's third-party administrator with a final contractor's affidavit in a form specified by Disbursing Agent or Disbursing Agent's third-party administrator, together with an affidavit executed by each and every subcontractor, materialman, and other creditor having any relation to performance of the Contract, indicating that final payment is due and specifying the amount of such final payment. Contractor shall further provide Disbursing Agent or Disbursing



## EXHIBIT 1B

Agent's third-party administrator a release executed by each such subcontractor, materialman, and other creditor indicating that any and all lien rights or claims against the Project and the Bond have been discharged, which shall be conditioned only upon receipt of final payment as specified. Receipt of final payment shall be acknowledged by each such subcontractor, materialman, and other creditor.

**3.6 Contractor's Receipt of Final Account Balance.** Contractor shall receive the final balance from the Account only after all of the foregoing requirements have been met, final payment has been received from Owner, all claims and disputes have been resolved, all taxes or other public obligations relating in any way to any bonded contract have been satisfied, and Disbursing Agent or Disbursing Agent's third-party administrator has verified said balance through banking records, all and each of which shall constitute a condition precedent to such payment. Disbursement to Contractor shall be further contingent upon Contractor's discharge of all responsibilities contained herein, under any applicable loan agreement and under the Contract, and upon Contractor's delivery to Disbursing Agent or Disbursing Agent's third-party administrator of a sworn statement indicating the full payment of any and all subcontractors and materialmen claiming to be owed monies pursuant to the performance of services or delivery of materials pertaining to the Contract, as well as indicating any and all disputed claims or disagreements between Contractor and any such subcontractors or materialmen and establishing the amount of money involved in such dispute, if applicable.

## ARTICLE 4 DISBURSING AGENT RESPONSIBILITIES

**4.1 Responsibilities of Disbursing Agent.** Pursuant to this Agreement, and following Contractor's full and complete performance of any and all conditions contained in paragraph 3.1 above, Disbursing Agent shall perform the following:

4.1.1 Maintain the Account in accordance with paragraph 2.1.

4.1.2 Make deposits when received; review all requests for payment, affidavits and releases prepared and submitted by Contractor; and make disbursements to the extent funds are available in accordance with the terms of this Agreement. To the extent that Contractor's agreement with any subcontractor or supplier provides for withholding portions of any payment (whether designated as retainage or not) in excess of corresponding amounts withheld by Owner from payments to Contractor, then such additional withholdings shall be retained in the Account until paid to the subcontractor or supplier or otherwise properly applied.

4.1.3 Issue such checks and/or disbursement orders as are necessary to discharge its responsibilities hereunder, including the reconciliation and accounting record sheets and all other materials necessary to establish the appropriate records for receipts and disbursements.

4.1.4 Receive affidavits, final releases, and other documentation provided by Contractor prior to the disbursement of funds.

## EXHIBIT 1B

### 4.2 Order of Payment of Available Funds.

4.2.1 After review and approval of disbursement requests, and to the extent Contract Funds are available in the Account, Disbursing Agent will disburse the proceeds for the following purposes, subject to such priority and order or payments as Surety may from time to time establish in the event that there are insufficient funds to pay all requested disbursements:

(a) to pay Disbursing Agent's Fees and any charge or expense owed to Disbursing Agent under this Agreement;

(b) to pay for the cost of the Bonds;

(c) to pay Contractor's direct costs ("Direct Costs") of the Work owed or incurred by Contractor, but not previously paid, to third parties who come within the definition of a "claimant" under any payment bond issued by Surety on the Project or which are reasonable and necessary for the actual performance of the Work. Direct Costs include costs of materials, supplies, and materials incorporated in the Work, non-affiliated subcontractors, suppliers, and vendors; costs of temporary facilities and supplies; rental charges of necessary machinery and equipment owned by others, permit fees, and insurance related to the Project;

(d) to pay or reimburse Surety for any loss, cost, or expense relating to the Project or any other project bonded by Surety on which Contractor is a principal or indemnitor, or for any sums due Surety by Contractor under any agreement of indemnity;

(e) to establish reserves against or for asserted liens and claims of others that are disputed by Contractor, or for warranty, punch list, or maintenance obligations under the Contract;

(f) to reimburse Contractor for direct labor employed at the job site and, if approved by Surety, reasonable job site supervision of persons who are assigned to the Project. Labor for executives, principals and owners of the Contractor, and home office personnel will not be reimbursed, other than as part of home office overhead expense, as set forth below. Labor costs will be reimbursed at gross payroll cost, unless Disbursing Agent requires the separate disbursement of benefits and taxes related to the payroll. When reimbursed as gross payroll, Contractor shall hold all funds in excess of net payroll in trust and as a fiduciary with the responsibility to immediately transmit such benefits and taxes to the appropriate entity or taxing authority; Disbursing Agent may, but shall not be obligated to verify payment of appropriate taxes;

(g) to reimburse Contractor for Contractor's Direct Costs of the Work paid by Contractor to third parties;

(h) to reimburse Contractor for the use of Contractor owned equipment, only if agreed upon by Surety in advance, and at rates and subject to maximums and conditions as the Surety may require;

## EXHIBIT 1B

(i) to reimburse Contractor for the use of materials used from Contractor's inventory, only if agreed upon by Surety in advance, and only then at rates, and subject to maximums, conditions, and inventory documentation, as the Surety may require;

(j) to pay subcontractors or vendors of Contractor who are affiliated with, or commonly owned by or with, Contractor or any of the Indemnitors of Contractor in its agreement with Surety, only if agreed upon in advance by Surety, and only then on such terms and subject to possible disbursement requirements, as the Surety may required;

(k) to pay or reimburse Contractor's home office overhead expense as described in subparagraph 4.2.2., below;

(l) to pay contractor's profit as described in subparagraph 4.2.2, below; and

(m) for such other purposes and in such other priorities as Contractor, Surety, and Disbursing Agent may hereafter agree in writing.

4.2.2 Payments for Contractor's home office overhead and profit shall be based on a percentage of the costs incurred in performing Work on the Project. Unless Surety otherwise consents, "percentage of completion" shall be the percentage of total Contract funds received from the Obligee. Contractor recognizes and agrees that "billings in excess of costs" (Proceeds received on a project in excess of the Project costs and allocable overhead and profit) will remain on deposit in the Account until used to pay Project costs, overhead or profit, or until the Account is finally closed. Overhead and profit figures used to compute Contractor's reimbursement for overhead and profit will not be adjusted upwards for favorable buy-out, favorable productivity, or changes in the estimated costs, after work has begun without the express written consent of Surety. Overhead and profit figures used to compute Contractor's reimbursement for overhead and profit may be adjusted downwards if Project costs exceed, or are likely to exceed their initial estimate, estimated productivity is not achieved, claims are filed, or Disbursing Agent or Surety determine same to be in the best interest of Surety.

4.2.3 Contractor also agrees that Disbursing Agent, upon written request received from Surety, may, at any time, with or without notice to Contractor, transfer to itself as Surety, or to those whom Surety may designate in writing, any and all Contract Funds then on deposit in the Account.

4.2.4 Reimbursement and payment may be withheld or deferred in whole or in part when, in the opinion of the Surety or Disbursing Agent, insufficient funds remain in the account, or to be drawn under the Contract, to satisfy current and future obligations of Contractor to Surety or under the Bonds.

4.2.5 Contractor recognizes and agrees that "billings in excess of costs" (Contract Funds received on a project in excess of the project costs and allocable overhead and profit) will remain on deposit in the Account until used to pay costs, overhead or profit, or until the Account is finally closed. Overhead and profit figures used to compute Contractor's

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reimbursement for overhead and profit will not be adjusted upwards for favorable buy-out, favorable productivity, or changes in the estimated costs, after work has begun except under exceptional circumstances and then only with the express written consent of Surety.

4.2.6 In the event that Surety has required, as evidenced by a **Special Provisions Addendum** attached hereto, "hold back" or additional retainage withheld on profit, overhead or Contractor reimbursements, the deposit of collateral as additional working capital or collateral, special handling of payroll or payroll taxes, or other special treatment of the Contract Funds, disbursements shall be made as approved by Surety.

4.2.7 In the event that this Agreement is executed after work on a Project has begun and Contract sums have been heretofore been paid to Contractor, Contractor agrees to account to Disbursing Agent for all Contract Funds previously received by Contractor and all costs and disbursements previously made by Contractor in connection with the Project.

4.2.8 Disbursing Agent may relax or waive any of the disbursement requirements at any time for the benefit of Surety, but the waiver or relaxation of such requirements on one or more occasions shall not constitute a waiver of Surety's rights to require strict compliance with the disbursement procedures set forth herein.

4.3 **Investigation of Contract Status.** Disbursing Agent or Disbursing Agent's third-party administrator shall have the right to communicate, at Disbursing Agent's sole discretion, directly with Obligor, subcontractors, materialmen, and such other parties as may appear appropriate to confirm or determine the status of their accounts with Contractor and of the Project.

4.4 **Periodic or Interim Disbursements.** Disbursing Agent shall make periodic or interim disbursements from the Account as follows:

4.4.1 Disbursing Agent shall make periodic disbursements from the Account to those who have supplied labor or material to Contractor for incorporation into the Project, and to other parties who have provided valuable consideration to Contractor in furtherance of Contractor's performance of the Contract, in accordance with the Current Payment Lists prepared by Contractor, provided, however, that the obligation to make such payments is subject to limitations otherwise set out in this Agreement, including the exercise of discretion where provided for or implied in this Agreement or the Indemnity Agreement. Such payments shall generally be made following the receipt and deposit into the Account of each periodic payment made to Contractor pursuant to the Contract, except that Disbursing Agent shall not be required to make such disbursements more often than twice monthly.

4.4.2 The obligation of Disbursing Agent to make any payment from the Account is and shall be conditioned upon Contractor's having performed all covenants and obligations and satisfied all liabilities arising out of this Agreement, the Indemnity Agreement, and any related agreement which are due to have been performed or satisfied by Contractor as of that time, and is further conditioned upon there being sufficient funds in the Account attributable to payments received from Owner (including only funds which have been unconditionally and

## EXHIBIT 1B

irrevocably accepted and recognized by the Bank) from which to make such payment together with all other payments then contemplated. In no event shall Disbursing Agent be required to make any payment from any source other than funds deposited into the Account pursuant to this Agreement. Disbursing Agent shall make any payment which is due to be made from the Account within five (5) business days (excluding Saturdays, Sundays, and federal bank holidays) following the satisfaction of the conditions to the making of such payments.

**4.5 Delegation of Responsibilities.** Disbursing Agent may designate a distinct and separate entity to perform some or all of the functions contemplated by this Agreement other than ultimately receiving Contract Funds for deposit into the Account, maintaining the Account, and signing checks for payments from the Account (such designated entity sometimes being referred to herein as the "third party administrator"), and such right of delegation exists regardless of whether any particular provision of this Agreement expressly contemplates such a possibility. Without limiting the generality of the foregoing, Disbursing Agent may delegate to the third party administrator responsibility for determining whether, when and in what amount to make any or all disbursements from the Account, to perform all recordkeeping appropriate to maintenance and utilization of the Account, and to prepare all of the appropriate documents, including checks, involved in the maintenance and utilization of the Account. Contractor specifically agrees, stipulates and acknowledges that Disbursing Agent may delegate to the third party administrator any or all of the right or responsibility to exercise discretion which is expressly or implicitly required of Disbursing Agent or which Disbursing Agent is allowed to exercise pursuant to this Agreement, that such third party administrator may be an independent contractor, and that Disbursing Agent shall not monitor, supervise, direct or control the means and methods utilized by any such third party administrator in performing any such delegated act of discretion. Contractor shall cooperate in accommodating any and all such delegations of function by dealing directly with such third party administrator to whatever extent directed by Disbursing Agent.

**4.6 Discharge of Responsibilities.** After performance of the Contract has been completed and Disbursing Agent has received and disbursed all contract funds, Disbursing Agent and its third party administrator shall be relieved of any further obligation or responsibility hereunder. Thereafter, Disbursing Agent, its third party administrator and Surety shall be held harmless by Contractor for any other liability arising under or related to this Agreement.

**4.7 Title to Funds.** Pending complete performance of this Agreement, Contractor shall retain legal ownership of payments under the Contract subject to the rights and interests of Surety in such funds, which include, at a minimum, a security interest and equitable title. Disbursing Agent shall have such power to act with respect to such funds as is delegated by Surety, specifically including the powers indicated in this Agreement or the Indemnity Agreement.

## ARTICLE 5 FEES AND EXPENSES

**5.1** Contractor shall pay directly to Disbursing Agent as its Fee an amount equal to **one percent (1.0 %)(with a \$2,000.00 minimum)** of the adjusted Contract price, including

## EXHIBIT 1B

increases to the Contract price. Disbursing Agent is authorized to disburse to itself from the Account its Fee and any increase in its Fee at the earliest time when there are funds in the Account sufficient to pay such Fee or increase. Fees of Disbursing Agent shall be deemed to have been earned at the time they first accrue, and in no event shall Disbursing Agent be required to reduce the Fee or to refund any portion of the Fee that has been paid.

5.2 If Disbursing Agent is required to perform additional services or incur additional expenses other than those defined herein, Contractor shall pay Disbursing Agent for time spent and expenses reasonably incurred by Disbursing Agent personnel in connection with such services. Contractor shall pay all express/overnight delivery fees as they are incurred. Contractor may, however, provide Disbursing Agent with its third party (e.g., FedEx, UPS, and DHL) sender's billing information for any deliveries of checks that Contractor desires to be sent by overnight or expedited delivery. Contractor shall pay all special Bank fees, other than the monthly service fee, including stop payment, wire transfer, statement research, and similar fees.

5.3 If the actual Contract time period requires the processing of disbursement beyond that set forth in the Contract with Oblige above by more than two draw periods, the total Fee earned under this Agreement shall be increased by one tenth of one percent (0.1%) of the Contract Amount for each draw period, in excess of those two, necessary to pay remaining disbursements to close out the Work and disburse the final Contract Funds. By way of example, an initial Fee of 1% of the Contract Amount on a Contract with 10 draw periods would remain unchanged if 11 or 12 draws are processed. The 13th draw would increase the total Fee earned under this Agreement to 1.1% of the Contract Amount, the 14th draw to 1.2% of the Contract Amount, and so on. The additional fee shall be computed and paid from Contract Funds or by Contractor if insufficient Contract Funds remain in the Account.

## ARTICLE 6 INDEMNIFICATION

**To the fullest extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless Disbursing Agent, Disbursing Agent's third-party administrator, their subsidiaries and affiliates, and the officers, employees, agents, representatives, and insurers of each, from and against any claims, suits, obligations, demands, liabilities, penalties, causes of action, costs, expenses, judgments, and fines, arising from the alleged or actual wrongful or negligent acts or omissions of Contractor or Contractor's officers, employees, agents, or representatives or of any person or entity who make claim against Disbursing Agent or Disbursing Agent's third-party administrator arising out of or in any manner relating to this Agreement or the subject matter thereof. Such obligation of indemnity shall include the obligation to indemnify, defend, and hold harmless Disbursing Agent and Disbursing Agent's third-party administrator, their subsidiaries and affiliates, and the officers, employees, agents, representatives, and insurers of each, irrespective of whether the act or omission complained of is alleged to be the result of a negligent act or omission by one or more of such indemnified entities, or was contributed to by such entities, so long as the such act or omission by such indemnified party or parties is not the sole cause of the harm complained of. Without limiting the generality of the foregoing, Contractor further indemnifies and holds harmless Disbursing Agent and its third party administrator from**

## EXHIBIT 1B

**any and all liability which Disbursing Agent may incur as a result of Contractor's failure to maintain all necessary licenses, permits, and registrations for performing services as a contractor or for rendering improvements to the Project.**

### ARTICLE 7 TERM OF AGREEMENT

7.1 On the full completion of performance of the Contract and the satisfaction of every other condition set forth in this Agreement, Disbursing Agent shall disburse all then remaining funds in the Account to Contractor and this Agreement shall terminate, and no party shall have any further rights, duties, or obligations hereunder.

7.2 Disbursing Agent may, in its sole discretion and at any time, without any limitation upon the exercise of such discretion, terminate this Agreement. In the event of termination by Disbursing Agent, Disbursing Agent shall, if such termination is not in relation to a declaration by Surety that an event of default has occurred as contemplated in the Indemnity Agreement, disburse any funds remaining in the Account to Contractor within thirty (30) days of such termination. If such termination is in relation to a declaration by Surety that an event of default has occurred as contemplated in the Indemnity Agreement, then any funds in or which are thereafter received for deposit or actually deposited into the Account shall be deemed to be funds held by Surety as collateral security or otherwise as provided in the Indemnity Agreement, and the Indemnity Agreement alone shall govern the rights, liabilities and obligations of Surety and Contractor with respect to each other in relation to such funds, including without limitation with respect to the determination by Surety to declare that an event of default has occurred as contemplated in the Indemnity Agreement.

### ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 **Security Interest.** Contractor hereby conveys, assigns, and grants to Surety and Disbursing Agent a security interest in all accounts receivable relating to any and all contracts of Contractor for which Surety has or does issue a bond or bonds, and in any bills, notes, instruments, or cash given in payment pursuant to any such contract, and in any proceeds of such property, which now exist or are created hereafter. Such security interest shall secure all amounts owed to Disbursing Agent and Surety under this Agreement and the Indemnity Agreement. This grant of a security interest is in addition to, and not in derogation of, any other grant, conveyance, or assignment for security or otherwise which may be contained in the Indemnity Agreement or other agreement between or including Contractor and Surety.

8.2 **No Third-Party Beneficiary.** Neither this Agreement, nor any warranty, obligation, relationship, or transaction arising out of it, is intended to be for the benefit of or create any rights in any person or entity other than Contractor, Disbursing Agent, its third party administrator and Surety.

8.3 **Notices.** Unless otherwise specifically provided, all notices to be given hereunder shall be in writing, by registered or certified mail, return receipt requested, and addressed to each

## EXHIBIT 1B

of the parties at their last declared addresses. Notice shall be effective when actually received by the party being so notified, unless undeliverable by fault of the intended recipient, in which case the notice is effective when mailed. Information regarding amounts due vendors, copies of invoices, purchase orders, subcontracts, lien notices, stop notices, and similar information furnished to Disbursing Agent in connection with this Agreement is for the purpose of facilitating Disbursing Agent performance of this Agreement only, and shall not be considered notice of any such information to Surety for the purposes of any bond or lien laws. In the event that any of Contractor's vendors, suppliers, or subcontractors should elect to avail themselves of rights under applicable lien or bond laws requiring notices to sureties, such notices must be sent directly to Surety.

**8.4 Pronouns.** Whenever context may require, any pronouns used herein shall include the corresponding masculine, feminine, or neuter forms and the singular form of nouns and pronouns shall also include the plural, and vice versa.

**8.5 Article Headings.** The article headings contained in this Agreement are inserted only as a matter of convenience and shall in no way be construed to define, limit, extend, or prescribe the initial scope of this Agreement or the intent of any provision hereof.

**8.6 Completeness And Modification.** This Agreement is executed as a supplement to the Indemnity Agreement, which remains in full force and effect during the pendency and following any termination of this Agreement. This Agreement and the Indemnity Agreement shall be construed in pari materia to the extent possible, but to the extent of any irreconcilable conflict, contradiction, or inconsistency between the terms of this Agreement and of the Indemnity Agreement, the terms of the Indemnity Agreement shall govern. Other than with respect to the Indemnity Agreement, this Agreement constitutes the entire understanding between the parties and supersedes any prior or contemporaneous agreement or understanding. No waiver or modification of the terms of this Agreement shall be valid unless in writing and signed by all parties hereto. No covenant, representation, or condition not otherwise expressed in this Agreement shall replace, modify, interpret, change, or restrict the express provisions of this Agreement.

**8.7 Severability.** The invalidity in whole or in part of any covenant, promise, or undertaking, or any section, subsection, sentence, clause, phrase, word, or any of the provisions of this Agreement shall not affect the validity of the remaining portions hereof.

**8.8 Non-Waiver.** The forbearance of Disbursing Agent or Surety, the making of any payment, or the apparent relinquishment of any right whatsoever, including the right to insist on performance or satisfaction of any condition, shall not be or be construed as a waiver of any right, benefit, or claim, or of the right to insist on full and complete performance thereafter, unless clear and convincingly evidenced in writing executed by Disbursing Agent or Surety; and any waiver, if established, shall be strictly construed and limited, and narrowly applied.

**8.9 Forum Selection Provision and Choice of Law.** This Agreement shall be interpreted in accordance with the laws of the State of California. The venue, forum, and



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jurisdiction for litigation arising hereunder shall be within the County of Los Angeles, California.

**8.10 Disclosure of Terms and Contractor's Performance.** Contractor recognizes that Disbursing Agent and its third party administrator may be required to disclose the terms of this Agreement to Oblige, Bank, Lenders, Surety, Contractor's agent, vendors, subcontractors, and third parties in furtherance of the purposes of this Agreement. Disbursing Agent and its third party administrator will keep Surety generally advised of the progress on the Project, the status of the Account, and of any issues that Disbursing Agent and its third party administrator determine to be material to the performance of this Agreement. Contractor recognizes that such reports may contain impressions and subjective determinations of Contractor's performance on the Project and with respect to its performance of this Agreement. Absent a finding of intentional bad faith with intent to harm, Disbursing Agent and its third party administrator shall not be liable for any comments, statements, or reports so made.

IN WITNESS WHEREOF, the parties have signed and delivered this Agreement as of the date first above written.

U.S. SPECIALTY INSURANCE COMPANY

By

Its FRANK M. LANAK, VP

*Gregory Ching, Bond Claims Manager*

MAG CONSTRUCTION SERVICES, LLC

By:

Ron Dailey  
Ron Dailey

Its Owner

Phone Number

of Signatory: 817-929-1352

Email

of Signatory: rdailey@magconstructionservices.com

Fax Number

of Signatory: 817 563 1446