

**SPECIFICATIONS AND
CONTRACT DOCUMENTS
FOR**

***ASPHALT SHINGLE ROOF REPLACEMENT
BID NO. 02-17***



**Prepared By:
Conley Group
5800 E. Campus Circle
Suite 250
Irving, Texas 75063
972-444-9737**

**Prepared For:
City of Richardson
411 W. Arapaho Raod, Suite 204
Richardson, TX 75080**

SEPTEMBER 2016

**NOTICE TO CONTRACTORS
CITY OF RICHARDSON**

**ASPHALT SHINGLE ROOF REPLACEMENT
BID #02-17**

Sealed bids addressed to the Purchasing Manager, of the City of Richardson, Texas, will be received at the Office of the City Purchasing Department, Suite 101, City Hall, 411 West Arapaho Road, Richardson, Texas, until **Thursday, September 29, 2016 at 3:00 pm** and will be opened and read aloud in the **Capital Projects Conference Room 206**, 30 minutes later that same day, for furnishing all labor, materials, tools and equipment, and performing all work required including all appurtenances for:

The replacement of asphalt shingle roof and gutters systems at various City of Richardson Facilities. The scope will encompass, but not be limited to, the removal and replacement of the damaged roofing material, substrate, fascia, gutters etc. at various locations totaling approximately 25,000 square feet of building space.

Bids shall be accompanied by a certified or cashier's check on a state or national bank in an amount not less than five percent (5%) of the possible total of the bid submitted, payable without recourse to the City of Richardson, Texas, or an acceptable bid bond for the same amount from a reliable surety company as a guarantee that the bidder will enter into a contract and execute required Performance and Payment Bonds within ten (10) days after notice of award of contract. The City will attempt to award the Contract within 90 days after the opening of bids.

The successful bidder must furnish a Performance Bond upon the form provided in the amount of one hundred percent (100%) of the contract price and a material and labor Payment Bond upon the form provided in the amount of one hundred percent (100%) of the contract price, from a surety authorized under the laws of the State of Texas to act as a surety on bonds for principals.

The right is reserved, as the interest of the Owner may require, to reject any and all bids, to waive any informality in the bids received, and to select bid best suited to the Owner's best interest. The Contractor, to be successful in bidding this project, must have completed a minimum of three similar projects within the last five years.

A maximum of Sixty (60) calendar days will be allowed for construction.

A set of plans, specifications and bid documents will be available **beginning at 12:00 p.m. on Tuesday, September 13, 2016**, through BidSync.Com at no charge, or from the Office of the City Engineer, Capital Projects Department in Room 204, of the Richardson Civic Center/City Hall, 411 West Arapaho Road, Richardson, Texas, upon a **NON-REFUNDABLE FEE OF Dollars (\$50.00)** per hard set, payable to the City of Richardson, accompanied by the contractor's name, address, phone number, email address and FAX number. Maximum of two sets or CD per contractor.

No pre-bid conference will be held for this project.

By:/s/Paul Voelker, Mayor
City of Richardson
P. O. Box 830309
Richardson, Texas 75083

**PROPOSAL
TO
THE CITY OF RICHARDSON, TEXAS**

Performing All Work Required
for the Construction of the

**ASPHALT SHINGLE ROOF REPLACEMENT
BID #02-17**

The undersigned as bidder, declares that the only person or parties interested in this Proposal as principals are those named herein, that this Proposal is made without collusion with any other person, firm or corporation; that he has without collusion with any other person, firm or corporation; that he has carefully examined the form of contract, Notice to Contractors, specifications and the plans therein referred to and has carefully examined the locations, conditions, and classes of materials of the proposed work, and agrees that he will provide all the necessary labor, machinery, tools, apparatus, and other items incidental to construction, and will do all the work and furnish all the materials called for in the contract and specifications in the manner prescribed therein and according to the requirements of the Engineer as therein set forth.

It is understood that the following quantities of work to be done at unit prices are approximate only, and are intended principally to serve as a guide in evaluating bids.

It is further agreed that the quantities of work to be at unit prices and material to be furnished may be increased or diminished as may be considered necessary, in the opinion of the Engineer, to complete the work fully as planned and contemplated, and that all quantities of work whether increased or decreased are to be performed at the unit prices set forth below except as provided for in the specifications.

It is further agreed that the lump sum prices may be increased to cover additional work ordered by the Engineer, but not shown on the plans or required by the specifications in accordance with the provisions of the Special Conditions. Similarly, they may be decreased to cover deletion of work so ordered.

Accompanying this proposal is a (certified or cashier's check) or (Bid Bond) in the amount of _____ Dollars (\$_____).

The bid security accompanying this Proposal shall be returned to the bidder, unless in case of the acceptance of the proposal the bidder shall fail to execute a contract and a Performance Bond within ten (10) days after its acceptance, in which case the bid security shall become the property of the Owner, and shall be considered as payment for damages due to delay and other inconveniences suffered by the Owner on account of such failure of the bidder. It is understood that the Owner reserves the right to reject any and all bids, to waive any informality in the bids received.



CONTRACTOR QUESTIONNAIRE



1. _____
Company's Legal Name

2. Circle Appropriate

- | | | |
|---------------------------------|--|---------------|
| Individual | Registered Limited Liability Partnership | Corporation |
| General Partnership | Limited Partnership | S Corporation |
| Limited Liability Company (LLC) | | |

3. _____ () _____
Post Office Box Zip Code Area Code Telephone Number

_____ _____
Street Address City State Zip Code

_____ () _____
E-mail address (Optional) Area Code Fax Number

4. Provide your Texas Payee I.D. No. (if available) _____

Is your Company authorized to do business in the State of Texas? (Please check one) Yes No

5. Provide your Dun and Bradstreet No. (if available) _____

6. Provide date of incorporation (if corporation) or date business established _____

7. Complete the information which applies to your business entity in the space provided:
- a. The name of the owner of the individual business entity whether operating under an assumed name or own name.
 - b. The names of all the general partners of a partnership.
 - c. The names and titles of all corporate officers (or members/managers of LLC).

8. Give names and addresses of all affiliated and/or subsidiary companies

9. Give the name and the percentage owned of each individual or entity owning five percent or more of your business.

10. Have you ever failed to complete any work awarded to you? _____
If so, please explain where and why on a separate attachment

11. By separate attachment please furnish the following:

- a. List of six larger items of equipment which you own or which are available by renting, along with the source.
- b. Detailed resume of your experience showing similar projects to the project you have bid on, along with names, phone numbers, and addresses of a person familiar with the work described.
- c. Financial statements are being requested to determine the eligibility of a bidder to receive a contract. Financial statements shall be composed of a balance sheet, income statement, and appropriate supporting schedules, such as note disclosures or cash flows, as of the end of the company's most recent fiscal year. Financial statements are to be audited, reviewed, or compiled by an independent Certified Public Accountant. Pro-forma financial statements will not be accepted by the City. All financial statements are considered confidential information, are reviewed by a member of the City of Richardson Finance Division, and will be returned to the bidder/proposer upon request.
- d. The name, address, and contact persons of the bonding and insurance companies you propose to use.
- e. Provide name, address, and phone number of subcontractors, and work to be performed by each.

The Contractor shall return this completed form, along with all necessary attachments, within ten (10) calendar days.

The undersigned bidder certifies that the bidder's firm and all persons associated therewith in the capacity of owner, partner, stockholder, director, officer, manager, auditor, or any position involving the administration of any part of the firm's operations have not been indicted, convicted, or had a civil judgment rendered against it or any person indicated above by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years. (If so, explain on separate attachment)

The undersigned authorizes the City of Richardson to verify any and all information provided as determined necessary. In addition, the undersigned bidder understands that failure to provide the requested information, or false information on this form or related attachments may result in the bidder being disqualified.

Signature

Print Name

Title

ACKNOWLEDGMENT

Before me, the undersigned authority, a Notary Public, on this day personally appeared _____ who, being by me duly sworn, upon oath says that he/she is qualified and authorized to make affidavit for and on behalf of _____ and is fully cognizant of the facts herein set out and affirms to the truth and accuracy of the certifications made herein by signing above.

GIVEN UNDER MY HAND AND SEAL OF OFFICE,

This _____ day of _____, 20_____.

Notary Public, in and for the State of Texas.

Completed questionnaire, with original signatures and attachments shall be returned to:

Contract Administrator
City of Richardson – Capital Projects Department
411 W. Arapaho Road, Suite 204
Richardson, TX 75080-4551

CERTIFICATE OF INTERESTED PARTIES

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties form to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The form discloses any interested parties who have a controlling interest (10% or more ownership) in the business entity and those who actively participate in facilitating the contract or negotiate the terms of the contract (broker, intermediary, advisor, and/or attorney), if any. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

The Texas Ethics Commission was required to adopt rules necessary to implement that law, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's website. The commission adopted the Certificate of Interested Parties form (Form 1295) on October 5, 2015 and new rules (Chapter 46) on November 30, 2015.

A copy of the Certificate of Interested Parties form is provided as an attachment to this bid document on Bidsync.com for your information. The successful bidder will be required to submit a signed and notarized 1295 form to the City prior to the award of this bid and/or prior to signing a contract with the City. The successful bidder will be required to download the form via the Texas Ethics Commission's website at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

The "identification number" to be used on the 1295 form for this procurement is:

02-17

All prospective bidders shall familiarize themselves with this requirement and agree to provide the completed Form 1295 if selected as the successful bidder for this procurement.

PERFORMANCE BOND

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTIES OF DALLAS AND COLLIN

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THAT _____ of the City of _____, County, State of Texas, and _____ (as Principal), and _____ (as "Surety"), authorized under the laws of the State of Texas to act as a surety on bonds for principals, are held and firmly bound unto the City of Richardson, Texas (the "City") in the penal sum of \$ _____ (not less than 100% of the approximate total amount of the contract as evidenced in the proposal) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the City of Richardson, Texas, dated **the** _____ **day of** _____, **20**____, to which said contract is hereby referred to and made a part hereof and as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal fully and faithfully executes the work and performance of the contract in accordance with the plans, specifications, and contract documents, including any extensions, modifications and change orders thereof, and according to the true intent and meaning of said contract and the plans and specifications hereto annexed, then this obligation shall be void; otherwise, to remain in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Chapter 2253, Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Code and Chapter to the same extend as if it were fully copied at length herein.

Surety, for value received, stipulates and agrees that this Bond and the penal sum herein shall automatically be increased by the amount of any change order or supplemental agreement which increases the contract price with or without notice to the Surety and that no change, extension of time, alteration, or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same shall in any way 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.

Surety acknowledges and represents that it is duly authorized to do business in the State of Texas, that it is authorized and admitted to write surety bonds in the State of Texas, and that its obligations under this bond are intended to be in all respects in full and complete compliance with every law, charter, rule or regulation that this bond may be subject to. If the Surety's obligation under this bond is in an amount in excess of ten percent (10%) of Surety's capital and surplus, Surety shall immediately upon the effective date of this bond furnish written certification to City that the Surety has reinsured the portion of risk that exceeds ten percent (10%) of the Surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusteeed to do business in the State of Texas. In addition to the foregoing, If this bond is in an amount in excess of \$100,000, the Surety also warrants and represents that it holds a certificate from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law or that it has obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. In such event, the Surety shall also furnish to the City immediately upon the effective date of this bond a list of companies which includes the Surety or reinsurer holding such certificates of authority as acceptable sureties and reinsurers on federal bonds published in the Federal Register by the United States Department of the Treasury.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument on this the _____ day of _____, 20____.

PRINCIPAL:

By: _____
Title: _____
Company: _____
Address: _____

SURETY:

Title: _____ Attorney-In-Fact
Company: _____
Address: _____

The name, address, and phone number of the Resident Agent of Surety is:

PAYMENT BOND

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTIES OF DALLAS AND COLLIN

THAT _____ of the City of _____, _____ County, State of Texas, and _____ (as "Principal"), and _____ (as "Surety"), authorized under the laws of the State of Texas to act as a surety on bonds for principals, are held and firmly bound unto the City of Richardson, Texas (the "City") in the penal sum of \$_____ (not less than 100% of the approximate total amount of the contract as evidenced in the proposal) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the City of Richardson, Texas, dated **the** day of _____, **20** _____, to which said contract is hereby referred to and made a part hereof and as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the Principal and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for all labor and materials of any kind or nature furnished to and for the Project which constitutes the subject of the Contract made a part hereof by any and all persons, entities or companies who have a direct contractual relationship with Principal. The condition of this obligation is such that the Bond guarantees the full and proper protection of and payment to all claimants supplying labor, material and services in the prosecution of the work provided for in said Contract and is for the use and benefit of each claimant, and that should the Principal faithfully perform said Contract, promptly make payment for all sums due for said labor, materials and equipment, and indemnify, defend and hold harmless the City from and against any and all claims, demands, liens, causes of action and suits by any person, entity or company furnishing labor, materials or equipment to or for the Project, then this obligation shall be null and void; otherwise, to remain in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and all liabilities on this Bond shall be determined in accordance with the provisions of said Code and Chapter and each and every law, charter, rule or regulation that this Bond may be subject, to the same extend as if it were fully copied at length herein.

Surety, for value received, stipulates and agrees that this Bond and the penal sum herein shall automatically be increased by the amount of any change order or supplemental agreement which increases the contract price with or without notice to the Surety and that no change, extension of time, alteration, or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same shall in any way 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.

Surety acknowledges and represents that it is duly authorized to do business in the State of Texas, that it is authorized and admitted to write surety bonds in the State of Texas, and that its obligations under this Bond are intended to be in all respects in full and complete compliance with every law, charter, rule or regulation that this Bond may be subject to. If the Surety's obligation under this Bond is in an amount in excess of ten percent (10%) of Surety's capital and surplus, Surety shall immediately upon the effective date of this Bond furnish written certification to City that the Surety has reinsured the portion of risk that exceeds ten percent (10%) of the Surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusteeed to do business in the State of Texas. In addition to the foregoing, If this Bond is in an amount in excess of \$100,000, the Surety also warrants and represents that it holds a certificate from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law or that it has obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. In such event, the Surety shall also furnish to the City immediately upon the effective date of this Bond a list of companies which includes the Surety or reinsurer holding such certificates of authority as acceptable sureties and reinsurers on federal bonds published in the Federal Register by the United States Department of the Treasury.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument on this the _____ day of _____, 20____.

PRINCIPAL:

By: _____

Title: _____

Company: _____

Address _____

SURETY:

Title: _____ Attorney-In-Fact _____

Company: _____

Address: _____

The name, address, and phone number of the Resident Agent of Surety is:

STATE OF TEXAS}

{CONTRACTOR'S AFFIDAVIT OF
{FINAL PAYMENT AND RELEASE

COUNTIES OF DALLAS AND COLLIN }

BEFORE ME, the undersigned authority, on this day personally appeared _____ ("Affiant"), who, after being by me duly sworn, deposes and says that he is _____ of _____ a (corporation) (partnership) (trade name) of _____ County, Texas, ("the CONTRACTOR"), which said CONTRACTOR was awarded the contract by the City of Richardson, Texas (the "City"), dated the _____ day of _____ for the construction of _____ ("the Work"), for a total consideration of \$_____ to be paid to the said CONTRACTOR (the "Contract"), and that Affiant has full power and authority to make this Affidavit.

THAT the City has approved the final estimate on said Work, and that the said CONTRACTOR has fully satisfied and paid any and all claims that may be covered by Chapter 2253, Texas Government Code, as amended, and or any other applicable statutes or charter provisions, and that all just bills for labor and materials have been paid and discharged by said CONTRACTOR insofar as they pertain to the Work and Contract.

THAT in addition to any funds which may have been previously paid by the City, the CONTRACTOR hereby accepts the amount of \$_____ as FULL AND FINAL PAYMENT under the aforementioned Contract, and hereby waives and releases any right Affiant and/or the CONTRACTOR may have to pursue claims of any nature against the City arising out of or in any manner connected with the performance of the Work and/or the Contract, including but not limited to claims of third parties that supplied material and/or labor for the Work for or through the Contract ("Subcontractors"), as well as claims for delay, additional compensation, extra work beyond scope of the Contract, or for recovery of liquidated damages which may have been withheld by the City. The CONTRACTOR shall defend, hold harmless and indemnify the City from any and all such claims of such Subcontractors. The CONTRACTOR further releases the City from any claim or liability arising from any act or neglect of the City related to or connected with the Contract. This Affidavit is given pursuant to the final payment provisions of the Contract, and shall not be deemed to alter or modify the terms and provisions of said Contract.

CONTRACTOR:

BY: _____

(Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME, this _____ day of _____, _____.

BY: _____

Notary Public, _____ County, Texas

My Commission Expires: _____



AIA[®]

Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the _____ day of _____ in the year _____
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Richardson, Texas
Attn: _____
411 W. Arapaho Road
Richardson, Texas 75080-4551
Telephone: _____
Fax: _____
Email: _____

and the Contractor:
(Name, legal status, address and other information)

Name: _____
Attn: _____
Address: _____

Telephone: _____
Fax: _____
Email: _____

for the following Project:
(Name, location and detailed description)

Boiler Plate
City Hall
Projects for Facilities Maintenance

The Architect:
(Name, legal status, address and other information)

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than () days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Init.

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Paragraphs deleted)

§ 3.4 The Contractor shall pay Owner the sum of **Five Hundred Dollars (\$500.00)** per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at or before the time of executing this Contract. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. Architect shall have sole discretion to determine whether a delay is excused or unexcused and the Architect's determination thereof shall be final and binding on the parties.

ARTICLE 4 CONTRACT SUM

§ 4.1 Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, a total amount not to exceed **XXXX Dollars and XX Cents (\$xxxxx.00)**. The sum set forth in this Paragraph 4.1 shall constitute the Contract Sum which shall not be modified except by written Change Order as provided in the Contract Documents, or the assessment of liquidated damages.

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment including all supporting documentation as hereinafter provided, submitted to the Architect and Owner by the Contractor, and upon review and approval by the Owner and Architect and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the twenty-fifth (25th) day of a month, and said Application for Payment is approved, the Owner shall make payment of the certified amount to the Contractor not later than thirty (30) days after the day of approval.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

§ 5.1.8 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.9 In taking action on the Contractor's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 5.1.10 Owner shall have the right to withhold from payments due Contractor such sums as are necessary to protect Owner, in Owner's sole discretion, against any loss or damage which may result from negligence by Contractor or failure of Contractor to perform Contractor's obligations under this Agreement.

§ 5.2 FINAL PAYMENT

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 the Construction Manager has submitted a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Architect; and
- .4 a complete release of all claims arising out of, related to or connected with Contractor's performance of the Work under this Agreement, and any claims of Subcontractors, subject to any claims reserved in accordance with the terms of the General Conditions and an affidavit that so far as Contractor has knowledge or information, the release includes and covers all materials and services over which

Init.

Contractor has control for which a claim could be filed, subject to any claims reserved in accordance with the terms of the General Conditions.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for
(Paragraphs deleted)
Payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.
(Paragraphs deleted)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be litigation in a court of competent
(Paragraphs deleted)
jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Governing Law

This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. The exclusive venue for contract disputes and all other matters related to this Contract shall be in a court having jurisdiction in Dallas County, Texas. The Contractor understands that the Owner is a Texas home rule municipality and that the project is subject to applicable provisions of Texas law including bid requirements, bonding, and final settlement provisions.

§ 8.3 Assignment

The Owner and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Contractor shall assign this Agreement Agreement, or any rights or remedies created by this Agreement, without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

(Paragraphs deleted)

§ 8.4 The Contractor represents and warrants the following to the Owner (in addition to any other representation and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and final completion of the Work:

.1 The Contractor and its Subcontractors are financially solvent, capable of obtaining adequate insurance, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;

Init.

Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 N. Akard St
Dallas, Texas 75201
214-965-9900 Main
214-965-0010 Fax

If to Contractor: _____

§ 8.11 All Exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.

(Paragraphs deleted)

§ 8.12 The numbering and captions of the sections are set forth only for convenience and reference and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

§ 8.13 The parties agree that they will execute any further instrument or instruments, and that they will perform any act or acts, which are or may become necessary to effectuate any of the terms or provisions of this Agreement.

§ 8.14 Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Owner or Contractor.

(Paragraph deleted)

§ 8.15 This Agreement has been created jointly and ambiguity cannot be construed against either party.

§ 8.16 Contractor understands that certain information, including this Agreement, are public records available for public inspection and copying under the Texas Open Records Act., Texas Government Code Ch. 552, as amended, and other applicable laws.

§ 8.17 Financial obligations of the Owners payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

§ 8.18 No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the governmental or sovereign immunities, rights, benefits, or protections of the Owner.

§ 8.19 Contractor warrants that the products, processes, techniques and methodologies provided by Contractor shall not infringe upon the copyright, patent or other proprietary rights of others.

§ 8.20 Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement. Contractor warrants that to the best of Contractor's knowledge, there exists no actual or potential conflict of interest, and no financial or substantial interest as may be prohibited by Texas law, the Charter, or Code of Ethics of the City of Richardson between Contractor and Owner.

§ 8.21 Contractor shall comply with the disclosure and reporting requirements in Local Government Code Chapters 171 and 176, and Texas Government Code Sec. 2252.908. Under Sec. 2252.908, if City Council approval is required to award this Agreement or if this Agreement has a value of at least \$1,000,000, the City may not enter into the Agreement unless the Contractor submits a disclosure of interested parties to the City at the time the executed Agreement is presented to the City. The disclosure must be made on the form prescribed by the Texas Ethics Commission and the City is required to submit a copy of the disclosure statement to the Texas Ethics Commission not later than the 30th day after the disclosure is received by the City.

§ 8.22 In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

Init.

§ 8.23 Contractor understands and agrees that time is of the essence.

§ 8.24 This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

§ 8.25 Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Contractor.

§ 9.2 The following documents comprise the Agreement:

§ 9.1.1 This Agreement.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction, as amended.

§ 9.1.3 Addendum A, Insurance Requirements, attached hereto.
(Table deleted)

§ 9.1.4 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 9.1.6 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
--------	-------	------

§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
--------	-------	------

ARTICLE 10 INSURANCE

Contractor and the Owner shall purchase and maintain insurance coverage as set forth in Addendum A, attached hereto and incorporated herein as part of this Agreement.

ARTICLE 11 PERFORMANCE BOND AND PAYMENT BOND

§ 11.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the day and year first written above.

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

**ADDENDUM A
INSURANCE REQUIREMENTS**

A. Contractor's Insurance Requirements.

1. Before contractor performs any work or delivers any material to the project, contractor shall provide to the City of Richardson certificates of insurance and include, all endorsements as required to City of Richardson evidencing that the insurance is in full force and effect. Contractor shall at all times and at contractor's expense be covered by insurance for Contractor's work and the work of others for which it is legally liable, contractor's employees, including independent contractors, automobiles whether owned, non-owned, borrowed, or rented with the following limits:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability, written on an Insurance Services Office occurrence form including completed operations ISO CG 0001 (or equally as broad) including premises/operations coverage, broad form property damage coverage, products and completed operations	\$1 Million Per Occurrence, \$2 Million Gen Aggregate; \$2 Mil products/ completed

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User Notes:

(1481856112)

coverage and broad form contractual liability coverage	operations Aggregate
Auto Liability Owned, Non Owned, Hired If hazardous material is hauled, MCS 90 must be provided and include broadened pollution endorsement: Required <input type="checkbox"/> Not required <input type="checkbox"/>	\$1,000,000
Umbrella/Excess must be following form or as broad as all underlying liability policies.	\$5,000,000
Professional Liability: Required <input type="checkbox"/> Not required <input type="checkbox"/>	\$2,000,000
Contractor Pollution Liability: Required <input type="checkbox"/> Not required <input type="checkbox"/>	\$2,000,000

2. **Statutory workers' compensation insurance and employer's liability with limits \$1 million bodily injury each accident, \$1 million bodily injury by disease each employee, \$1 million bodily injury by disease policy limit with respect to its employees in connection with this contract. Policy shall include the following extensions: waiver of subrogation in favor of the City of Richardson.**
3. **Commercial general liability limits referenced above covering claims for death or bodily injury, or damage to property and loss of use thereof, arising from or in connection with the services provided under this agreement for both ongoing operations and completed operations. The policies shall contain xcu coverage, cross liability clause, independent contractor's liability, broad named insured wording, unintentional errors and omissions and notice and knowledge of occurrence, blanket broad contractual liability including the indemnification set out in this agreement.**
4. **Automobile liability insurance in limits as stated above covering all autos including owned, leased, non-owned, borrowed or hired by contractor or its agents, servants, or employees performing work OR services in connection with this agreement.**
5. **Commercial general liability, including completed operations, all business automobile liability insurance and excess or umbrella insurance, shall name the City of Richardson, its officers, agents and employees as additional insureds for on-going operations as well as completed operations.**
6. **Professional liability insurance (if applicable) covering liability for any professional acts, errors, and omissions for which contractor is legally liable in completion of this agreement, in an amount of U.S. \$2 million each loss/\$2 million policy aggregate.**

B. General requirements for all insurance policies to be maintained. The following additional specifications shall apply to each of the policies providing any of the insurance coverages required in this exhibit.

1. **No act or omission of any insurance agent or broker shall relieve contractor of any of their obligations under this exhibit.**
2. **All insurance maintained by contractor and any subcontractor shall be endorsed or otherwise include a waiver of subrogation in the favor of the City of Richardson.**

Init.

3. Contractor shall cause such coverages called for in the contract documents to be provided on a "primary" basis, regardless of any other insurance the City of Richardson may elect to purchase and maintain. Accordingly, no liability coverage maintained by the City of Richardson shall be subject to an "excess," "contributory," or "pro rata" type of other insurance clause.
4. All insurance provided by contractor shall be with authorized insurance companies that have an A M Best rating of at least A-VII.
5. The General Liability, Auto Liability, and Excess policies shall be endorsed to require the insurer to give the City of Richardson at least thirty (30) days advance written notice of the insurer's intention to cancel or otherwise terminate the policy, suspend or terminate any coverage under the policy. Contractor shall likewise give the City of Richardson at least thirty (30) days advance written notice of any insurer's intention to cancel or otherwise terminate any policy, suspend or terminate any coverage under any policy.
6. Upon receipt of any notice of cancellation or reduction in coverage, contractor shall within thirty (30) days procure other policies of insurance that are in accordance with terms of this contract, and deliver evidence of coverage that these are in full force and effect.

(Table deleted)(Paragraphs deleted)(Table deleted)(Paragraph deleted)(Paragraphs deleted)

Init.



AIA[®]

Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Boiler Plate

City Hall

THE OWNER:

(Name, legal status and address)

City of Richardson, Texas

Attn: _____

411 W. Arapaho Road

Richardson, Texas 75080-4551

Telephone: _____

Fax: _____

Email: _____

THE ARCHITECT:

(Name, legal status and address)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. The Contractor shall assist and cooperate in preparing the Agreement, and within five (5) days after notification of award of the Work, having met with the Owner to finalize the Agreement, execute and deliver four (4) copies to the Owner.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors. The Project is generally described as *[Include description of project]* to be located at *[Insert building and address of project]*.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 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

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

- .1 Any addenda and modifications to the Drawings and Specifications take precedence over any earlier Contract Documents.
- .2 Should there be a conflict within the Specifications, or within the Drawings, or between the Drawings and Specification, the Architect shall decide which stipulation will provide the best installation and his/her decision shall be final.
- .3 The Drawing and Specifications are intended to coordinate with each other. Anything shown on the Drawings but not mentioned in the Specification or vice-versa, or anything not expressly set forth in either, but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both without any extra charge.
- .4 The Drawings, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the Contractor, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. Each Contractor, Subcontractor, and Sub-subcontractor shall properly coordinate his/her work with that of all other Multiple Prime Contractors and the Owner's other contractors. It is not within the scope of the Drawings to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of each Contractor to plan, coordinate, and install his/her work in such a manner so as to conform to the structure. Any conflict within the Drawings shall be referred to the Architect for disposition prior to the installation of any affected work.
- .5 Figured dimensions contained in the Contract Documents shall be accurately followed, even though they differ from scaled measurements. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Architect as to the dimensions to be used. Larger scale Drawings shall have preference over smaller scale drawings, but discrepancies shall be referred to the Architect for interpretation.

§ 1.2.2 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.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents that are part of this Contract.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 Drawings, Specifications, and other Instruments of Service are the product of work made for hire. Upon payment of all amounts due Contractor hereunder, all deliverables, materials and reports prepared by the Contractor and Architect in connection with this Agreement shall become the property of the Owner. Owner shall have the right to publish, disclose, distribute and otherwise use such deliverables, materials and reports only for those purposes for which they were intended. Subject to the foregoing, Contractor shall, upon completion of the services, or earlier

termination, provide the Owner with the deliverables, drawings, reports, maps, and materials prepared by Contractor as set forth in the Contract Documents in electronic "PDF" format as requested by the Owner or as required in the Contract Documents. Disputes between the parties shall not impact this transfer of ownership, neither will a termination of this Agreement.

§ 1.5.2 The Project is the property of the Owner, and, without limitation, the Architect may not use the Drawings, Specifications, and other Instruments of Service for any purpose not related to the Project without the Owner's prior written consent.

§ 1.5.3 When requested by the Owner, the Architect shall furnish to the Owner the most current Instruments of Service, to include, without limitation all the most current drawings, design and engineering calculations, specifications, and any other information which the Architect or the Architect's consultant(s) have created in connection with or for the Project. At a minimum this information shall be provided in electronic format compatible with the most recent versions of the industry standard software for such information. Specifically, drawings shall be compatible with AutoCADD; design and engineering calculations compatible with MS Excel; and specifications with MS Word. All layers and information shall be fully accessible (not "PDF", "protected", or "plot" files).

§ 1.5.4 Submittal or distribution of the Instruments of Service or any portion thereof to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

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

§ 1.8 The representations and warranties contained in the Contract Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish the following information to a person, including the Architect or Contractor, who makes a request for information under Texas Government Code Chapter 2253, related to a payment or performance bond: (1) a certified copy of a payment bond and any attachment to the bond; (2) the public work contract for which the bond was given; and (3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.

§ 2.1.3 The Owner may obtain independent review(s) of the Architect's Design Documents, or of any document or other materials submitted by the Contractor, by a separate architect, engineer, contractor, cost estimator or any other

consultant they deem necessary and put under contract to or cause to be employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Architect and Contractor shall cooperate with such Owner's other consultants fully, and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the Owner to obtain an independent review or imply that the Owner is in any way assuming responsibility for the work of the Architect and Contractor.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, 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.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.2.6 The foregoing are, without limitation and in addition to, the other duties and responsibilities of the Owner specified in Article 6; Article 9; and Article 11.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seventy-two (72) hour period after receipt of verbal notification by the Architect to an officer of the Contractor, or within forty-eight (48) hours from receipt of written notice from the Owner or Architect to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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§ 2.5 EXTENT OF OWNER RIGHTS

§ 2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents; at law; or in equity.

§ 2.5.2 In no event shall the Owner or Architect have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Notwithstanding anything else herein, and without limitation, any review(s), independent or otherwise, or approval(s) by the Owner or Architect of the Design Documents, the Contract Documents, the Contractor's Construction Schedule, shop drawings, submittals, meeting minutes or other Contractor's services, deliverables or activities; nor the exercising of any of the rights and authority granted the Owner or Architect in the Contract Documents shall in any way reduce, diminish, or otherwise affect the Contractor's responsibilities, duties and accountability to the Owner for, without limitation, the construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Contract or Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located, Dallas or Collin County, Texas. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner and Architect assume no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner and Architect shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of and verify any existing conditions related to that portion of the Work, and shall observe and verify the impact of any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction per Section 12.2. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 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 under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall carefully check its own work and that of Subcontractors as the Work is being performed.

§ 3.3.5 During the finishing stages of the project, the Contractor shall make frequent inspections of the Work, with the applicable Subcontractor(s) involved, if any, with seven (7) days advance notice to the Architect, and the Contractor shall identify incorrect and faulty Work.

§ 3.3.6 The Contractor shall ensure that incorrect or faulty Work is corrected immediately.

§ 3.3.7 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.1.2.8 or 7.4, the Contractor may make substitutions only by a formal request for substitution of products in place of

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those specified with the consent of the Owner, after evaluation by the Architect in accordance the conditions set forth below and elsewhere in the Contract Documents, and a Change Order or Construction Change Directive. The Contractor must submit to the Architect and the Owner, for each proposed substitution:

- .1 A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog "cut sheets", warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;
- .2 A written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable;
- .3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable.
- .4 The adjustment, if any, in the time of completion of the Contract and the Contractor's Construction Schedule in the event the substitution is acceptable; and
- .5 An affidavit stating that (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect.
- .6 Proposals for substitutions shall be submitted in triplicate to the Architect and the Owner's other consultants (if any), in sufficient time to allow no less than ten (10) business days for their respective reviews.
- .7 No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.
- .8 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (1) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (2) specified products are unavailable through no fault of the Contractor; (3) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (4) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (5) when, in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations; and
- .9 Whether or not any proposed substitution is accepted by the Owner, the Owner's other consultants (if any), or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect, and the Owner's other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.

§ 3.4.5 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

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

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- .2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor shall defend and hold the Owner harmless against any claim, demand, loss, or damage by any breach of this warranty, and Contractor acknowledges it shall not limit such warranty by the provisions of Section 12.2.

§ 3.5.1 When written warranties are specified, the document shall include the following information:

- Name and address of Project and Owner;
- Article, materials, or systems covered;
- Name and address of Installer;
- Name and address of Contractor; and
- Signature of individual authorized to sign contracts for the company issuing the warranty.

§ 3.5.2 The following minimum warranty terms shall be incorporated:

- .1 Duration shall be one year or as otherwise specified, dated from the Date of Substantial Completion;
- .2 The article, material or system is free from defective materials and workmanship;
- .3 Costs of repair or replacement shall not accrue to the Owner, including without limitation repair or replacement of other work disturbed by, or because of, repair or replacement; and
- .4 The warranty period of one year, or as otherwise specified, shall recommence upon the identification and completion by Contractor and acceptance by Owner of any warranty claim during the initial one-year warranty period.

§ 3.5.3 Warranties which are provided by a manufacturer for his/her product shall be received by the Contractor, filled out and filed with the manufacturer or other appropriate entity for the Owner. Certificates or registration stubs shall be included with the record documents submitted for the Owner upon completion of the Work. The Owner shall administrate manufacturer's warranties/guarantees after expiration of the Contractor's warranty.

§ 3.5.4 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.5.5 If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one (1) year period following the date of Substantial Completion described in Section 12.2.2.

§ 3.6 TAXES

The Contractor shall, to the extent not exempted under Section 13.12.11 herein, pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. In no event shall the Owner pay the Contractor for taxes that were not properly due or for which the Owner is exempt from paying under Texas law.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit. The Owner shall pay for any applicable gas, water, sewer and electrical service application fees; assessments against the property, including property tax, developmental excise and similar taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with Contract Documents, and without notice to the Architect that the Contract Documents are at variance with applicable laws, ordinances, rules, or regulations, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the Drawings, Specifications, or other Contract Documents, except where the Contract Documents call for Work or materials of higher standards than those required by codes or ordinances, in which case, the Contract Documents shall govern. Nothing contained in the Contract Documents shall be construed as authority for the Contractor to violate any applicable codes or ordinances in effect at the site.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.4.1 In no event shall any adjustment in the Contract Sum or Contract Time be made for conditions which should have been known to the Contractor or would have been noticed by a Contractor of similar size and experience pursuant to his/her on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the site which have been made available to the Contractor or have been performed by the Contractor or its Subcontractors; are part of the Contract Documents; or are part of the materials provided by the Contractor to be used in constructing the improvements.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 The Contractor shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including but not limited to all immigration, environmental and safety laws, statutes, rules, codes, orders and regulations.

- .1 The Contractor shall also maintain at all times during the term of the this Agreement (and for the time otherwise required by law) all records required by the United States Citizenship and Immigration Services ("USCIS"), including without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees and shall respond at all times during the term of this Agreement in a timely fashion to any inspection request related to such I-9 forms by the Contractor, Owner or governmental agency or authority;
- .2 Furthermore, during the term of this Agreement (and for the time otherwise required by law), Contractor shall cause its officers, directors, managers, agents, and employees to cooperate fully in all respects with any audit, inquiry, inspection, or investigation that may be conducted by the USCIS of the Contractor or any of its employees or subcontractors;
- .3 The Contractor shall immediately, and in any event within two (2) hours of Contractor's first notice of an event described in this Section 3.7.6, notify the Owner in writing and by in-person voice communications (not voicemail) of any unscheduled inspections, raids, investigations, inquiries, visits, or audits conducted by the USCIS, OSHA, or any other governmental agency or authority related to environmental, immigration, or employee safety issues of the Contractor, its agents, employees, its Architect, Subcontractors, or Sub-subcontractors;
- .4 The Contractor shall, on a monthly basis during the term of this Agreement, conduct an audit of the I-9 forms for its employees and shall promptly correct any defects or deficiencies that are identified as a result of such audit;
- .5 The Owner may, at its sole discretion, terminate this Agreement immediately if, at any time during the term of this Agreement, the Contractor violates or is in breach of any provision of this Section 3.7.6, or the USCIS determines that Contractor has not complied with any of the immigration laws, statutes, rules, codes, or regulations of the United States or any applicable state laws or regulations, or any applicable local ordinances, including without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and any successor statutes thereto.
- .6 If an employee of the Contractor or if the Contractor is later determined to not have valid I-9 information then that employee shall be removed and barred from the Project site at the Contractor's expense; and
- .7 The Contractor shall require the Subcontractors, Sub-subcontractors and material suppliers to make the representations and warranties set forth in this Section 3.7.6 and to be bound by the same requirements set forth herein.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work, including, but not limited to, weekends, evenings and nights, or as otherwise reasonably and mutually agreed in writing with the Owner, until all punch list items have been completed to the satisfaction of the Architect. No subcontractor shall perform work on the site without the presence of the Superintendent or Assistant Superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 All of the Contractor's proposed on-site personnel must be approved by the Architect and Owner. The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made a reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the Contractor's on-site personnel must be preceded by written notification of the Architect and Owner no less than seven (7) business days before the anticipated event. Such proposed changes must be approved by the Architect and Owner. The Contractor shall designate a second person in charge in writing in the event the Superintendent is temporarily absent due to illness, vacation, or any other cause(s).

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor's Project Schedule shall include work activities required by each section of the specifications as listed in the Contract Documents to complete the Contract. The duration, sequence, cost for each work activity (separate amounts for labor and material), and dependency of the work activity on other work activities will be generated by the Contractor, and shall also conform to the standards set forth in the Contract Documents, if any.

§ 3.10.3.1 The Contractor's Project Schedule must include all of the following:

- .1 Use precedence format, critical path method scheduling without the use of artificial activity constraints or "negative float";
- .2 Use software, techniques and methods satisfactory to the Owner;
- .3 Provide an electronic and graphic representation of all activities and events that will occur during performance of the Work;

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- .4 Identify each subproject, to include, without limitation preconstruction, construction, commissioning, turnover of the Work, and Owner's occupancy;
- .5 Set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Contractual Milestone Dates");
- .6 Upon review by the Architect and written review and acceptance by the Owner of the Contractual Milestone Dates, the Contractor's Project Schedule shall be deemed part of the Contract Documents and attached to the Agreement as a new Exhibit, issuance of a Change Order for the purpose by the Architect; and signing of such Change Order by the Contractor, Architect, and Owner, in that order;
- .7 If not accepted, the Contractor's Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and resubmitted for acceptance;
- .8 Submission of an updated Contractor's Project Schedule with each Application for Payment shall be a mandatory condition precedent to the payment by the Owner to the Contractor pursuant to an Application for Payment, and the Owner shall not be obligated to make payment if the Contractor fails to include an updated Contractor's Project Schedule reflecting the then-current conditions on the Project and the anticipated progress of Work based on those conditions; and
- .9 All requests for change orders, modifications or additional compensation from the Contractor affecting the Contract Time or Contract Sum shall include a detailed schedule with both data and graphics showing the specific effect of the changed, modified or differing condition(s) on the critical path of the Contractor's Project Schedule.

§ 3.10.3.2 In the event the Contractor does not timely provide the Contractor's Project Schedule containing such elements, information, and processes in a form and with a level of detail acceptable to the Architect and the Owner, the Owner may, at the Owner's discretion, unilaterally generate the target Contractor's Project Schedule at the Contractor's expense, and impose such schedule, sequences, logic, and/or durations on the Contractor as it deems necessary to complete the Work, or the Owner may declare the Contractor in breach of contract. Whether or not the Owner decides to implement this option, all other contractual provisions relating to breach of contract will continue to be in full force and apply without modification. The Owner may deduct from the Contractor's Application(s) for Payment the amount paid by the Owner for generating the Contractor's Project Schedule.

§ 3.10.3.3 Upon completion of the Master Project Schedule, and signed acceptance by the Owner and all Multiple Prime Contractors, the Master Project Schedule shall supersede previously submitted schedules. Each updated Master Project Schedule shall supersede previous updates.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent Contractor's Project Schedule submitted to the Owner and Architect and incorporated into the approved Master Project Schedule.

§ 3.11. DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall make available to the Owner or Architect for inspection and copying the record copy of the drawings, specifications, addenda, Change

Orders and other Modifications, including all such documents maintained by the Contractor in electronic format, upon reasonable request of the Owner or Architect and, in any event, within twenty-four (24) hours of receipt by Contractor of a request from Owner or Architect for such review and/or copying. The Owner or Architect may request the record copy of the As-Built Documents, specifications, addenda, Change Orders and other modifications of the Work to be updated before Substantial Completion to reflect the most current condition of the Project, as additional Cost of the Work paid as a Change Order at the Owner's expense. The Owner or Architect may require

the Contractor to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the Owner's expense.

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 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.

§ 3.12.2 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.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents, after Contractor has verified the information contained within said submittals is in accordance with representations required by Section 3.12.6, and in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents; and (4) verified the new information provided by the Contractor within said submittals, and not provided in the Contract Documents, is in accordance with all applicable Federal, state and local codes or ordinances in effect at the site.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

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§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional who shall comply with reasonable requirements of the Owner regarding qualifications and insurance.. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 Copies of all approved Shop Drawings, Product Data, Samples and similar submittals shall be preserved in an orderly manner and delivered by the Contractor to the Owner upon Final Completion.

§ 3.13 USE OF SITE, DELIVERY AND STORAGE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.1 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner before using any portion of the site.

§ 3.13.2 The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto, which includes, but is not limited to, the all of the following duties and acknowledgements:

- .1 The Contractor acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract.
- .2 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions.
- .3 The Contractor shall be responsible for the mitigation and/or abatement of all noise, dust, fumes, traffic or other by-product of construction activity that, in the opinion of the Owner or the Architect, have an adverse effect on the quality of life or productivity for Project stakeholders, the Owner's current operations, or the Owner's employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the Owner and Architect.
- .4 The Contractor shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the Owner and Architect. Repeat offenses will cause the Owner or Architect to require, through the Contractor, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site.

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- .5 The Contractor shall, at a minimum, secure the site by erecting and maintaining a 6'-0" chain link fence around the perimeter of the construction site. This fence shall remain intact until such time the site becomes secure in the opinion of the Contractor, as a result of construction progress (by way of example, and without limitation, completion of site grading and backfill, installation of doors and windows, etc.).
- .6 The Contractor shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use.
- .7 The Contractor is advised that the project site area may be subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.

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

- .1 The access to the site shall be maintained in compliance with all local, state, and Federal code and life safety requirements for ingress by first responders and other similar emergency requirements.
- .2 The Contractor shall inform the Owner, Architect and any officials referenced in Section 3.13.4.1 in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to Owner's and Architect's approval, such approval not to be unreasonably withheld.
- .3 The Owner shall be responsible for snow removal to the limits of the construction site only so far that the Contractor will have access to the entrance to the construction area.
- .4 Snow removal within the limits of work and/or for the purpose of performing and protecting work by individual contractors is the duty of the Contractor.

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

- .1 Use such entrances to the construction site that may be designated by the Owner;
- .2 Perform the Work at such times of the day and days of the week as may be designated by the Owner; and
- .3 Accept that these entrances and times may be reviewed and changed from time to time by the Owner.

§ 3.13.5 The Contractor shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Owner to proceed has been given to the Contractor. If the utility service must be interrupted, the Contractor shall, at Contractor's sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the city manager, the mayor, the city or county clerk, etc. as applicable) and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give the most effective notice to such utility users.

§ 3.13.6 The Contractor shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed on the job, and shall properly store and protect same at the Contractor's expense.

§ 3.13.7 Notwithstanding any other provision herein, the Contractor shall take all necessary measures to store materials on site for which payment has been requested by the Contractor or been made by the Owner so that they shall not deteriorate, be damaged or be stolen, which includes, but is not limited to, all of the following:

.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor.

.2 Protection of construction materials and equipment stored at the Project site from fire, weather, burglary, pilferage, vandalism and mischief, damage, and all other adversity; and the care and protection of materials and Work installed in the building is solely the responsibility of the Contractor.

.3 The Contractor shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the Owner.

.4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.

§ 3.13.8 The Contractor shall not deliver any materials to the site which are not to be installed by same Contractor without fifteen (15) day's advance notice in writing to the Owner of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the Contractor and a representative of the Owner, who shall agree, and the Contractor shall document such agreement in writing:

- .1 the materials delivered are undamaged, or if damaged, such damage is documented by digital photo(s);
- .2 they are in the quantities shown on the purchase order, invoice or bill of lading accompanying the shipment or delivery or otherwise provided;
- .3 the storage conditions are adequate for the purposes; and
- .4 the Contractor has accepted responsibility for insurance and ongoing protection per Section 10.2.8 for such material until it is released to a third party authorized in writing by the Owner to receive it.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such 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.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall defend and hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND ATTORNEY'S FEES, CAUSED BY OR ARISING IN ANYWAY OUT OF THE PERFORMANCE OF THE WORK OR THE NEGLIGENCE, RECKLESSNESS, OR INTENTIONAL MISCONDUCT OF THE CONTRACTOR, ITS SUBCONTRACTORS, AND PERSONS EMPLOYED OR UTILIZED BY THEM IN PERFORMANCE OF THE AGREEMENT, PROVIDED THAT SUCH CLAIM, DAMAGES, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, ILLNESS, OR DEATH OR TO DAMAGE TO OR DESTRUCTION OF REAL OR TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), AND REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGES, LOSS OR EXPENSE IS CAUSED IN PART BY A PERSON OR ENTITY HEREUNDER.

§ 3.18.2 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, safety violations, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with any:

- .1 Violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor or any person or entity for whom either is responsible;
- .2 Means, procedures, techniques, safety precautions, or sequences of execution or performance of the Work; and
- .3 Failure to secure and pay for permits, fees, approvals, licenses, and inspection as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.3 THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS ALL OF THE INDEMNITEES SET OUT IN SECTION 3.18.1 FROM AND AGAINST ANY COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY ANY OF THE INDEMNITEES IN ENFORCING ANY OF THE CONTRACTOR'S DEFENSE, INDEMNITY, AND HOLD-HARMLESS OBLIGATIONS UNDER THIS CONTRACT.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

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§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, as the Work progresses and when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.3.1 NEITHER THE OWNER NOR THE ARCHITECT NOR THE OWNER'S OTHER CONSULTANTS SHALL BE RESPONSIBLE OR LIABLE FOR THE SAFETY PROGRAM(S) DEVELOPED BY THE CONTRACTOR OR ANY OF THE SEPARATE MULTIPLE PRIME CONTRACTORS, FOR THE SAFETY OF PERSONS AND PROPERTY, OR FOR COMPLIANCE WITH STATUTES, RULES, REGULATIONS, AND ORDERS APPLICABLE TO CONDUCT THE WORK. SHOULD ANY CONTRACTOR OR THEIR SUBCONTRACTOR(S), OR THE SUB-SUBCONTRACTOR(S) MAKE A CLAIM AGAINST THE INDEMNITEES, OR SHOULD THEY OR ANY GOVERNMENTAL ENTITY BRING ANY ACTION OR LEVY AND FINE OR PENALTY AGAINST THE INDEMNITEES ON ACCOUNT OF ANY SAFETY-RELATED DAMAGE OR VIOLATION OF LAW ALLEGED TO HAVE BEEN SUSTAINED, THE CONTRACTOR AGREES THAT IT WILL HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH VIOLATION, FINE, CLAIM OR SUIT, AND THAT IT WILL REIMBURSE THE INDEMNITEES THE COST OF DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THEREFROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.4.1 Failure of Contractor to give the Owner or Architect written notice of Contractor's objections, within three (3) business days, to directives, instructions, interpretations, or minutes from the Owner or Architect, shall constitute final and conclusive consent on the part of the Contractor to such directives, instructions, interpretations, or minutes of the Owner or Architect.

§ 4.2.4.2 All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given

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or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as set forth in the Contract Documents.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect 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's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 1.2, 3.2.1, 3.3, 3.5, 3.12, and 13.9. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's opinions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with

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reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

§5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, the Owner's other consultants and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, the Owner's other consultants, and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as an Exhibit, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. The Contractor's subcontractors, however,

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are not intended third-party beneficiaries of this Agreement by pass through, assignment, or otherwise, except as provided in the Contract Documents, and the Owner shall not be bound to Contractor's subcontract agreements.

§ 5.3.3 Whenever the Contractor receives payment pursuant to the Contract Documents, the Contractor shall make payments to each of its Subcontractors of any amounts actually received which were included in the Contractor's Application for Payment to the Owner for such subcontracts. The Contractor shall make such payments within ten (10) days of receipt of payment from the Owner in the same manner as the Owner is required to pay the Contractor under the Contract Documents if the Subcontractor is satisfactorily performing under its contract with the Contractor. Such payments from Owner to Contractor shall be imposed with an express trust to assure that payment is made to all Project Subcontractors, Sub-subcontractors, and suppliers. In addition to the express trust imposed upon such funds and the fiduciary duties incumbent upon the Contractor, Texas Property Code Chapter 162 shall apply when applicable.

§ 5.3.4 The Contractor shall monitor the Subcontractors, who shall pay all suppliers, Sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the Subcontractor any amounts actually received which were included in the Subcontractor's request for payment to the Contractor for such persons, in the same manner set forth in this Section 5.3 regarding payments by the Contractor to the Subcontractor. If the Subcontractor fails to make such payments in the required manner, the Subcontractor shall pay said suppliers, Sub-subcontractors, and laborers interest in the same manner set forth in Section 5.3.5 regarding payments by the Contractor to the Subcontractor.

§ 5.3.5 At the time the Subcontractor submits a request for payment to the Contractor, the Subcontractor shall also submit to the Contractor a list of the Subcontractor's suppliers, Sub-subcontractors, and laborers. The Contractor shall be relieved of the requirements of this Section regarding payment in ten (10) days and interest payments until the Subcontractor submits such list. If the Contractor fails to make timely payments to the Subcontractor as required by this Section, the Contractor shall pay the Subcontractor interest as calculated by Texas Government Code Sec. 2251.025, on the amount of the payment which was not made in a timely manner. The interest shall accrue for the period from the required payment date to the date on which payment is made. Nothing in this Section 5.3 shall be construed to affect the retention provisions of any contract.

§ 5.3.6 The provisions of this Section 5.3 shall be made a part of each contract between the Contractor and each Subcontractor, either expressly or by incorporation by reference to this Section of the Contract Documents.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work may be assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2, and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct verifiable costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity, including the performance bond Surety's takeover or completion contractor

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the assignment of the Subcontractor to the Owner after suspension and termination of the Contract, as provided in this Section 5.4. This Section 5.4 shall be construed to prohibit a pass through or assignment of rights, unless authorized by the Owner in writing.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 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 site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 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. The Contractor shall 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.

§ 6.1.4 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 that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends on proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.2.6 Should the Contractor wrongfully delay or cause damage to the work or property of any separate contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement or

otherwise to resolve the dispute. If such separate contractor sues or initiates a judicial proceeding against the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense. The Owner may fund the defense of such proceedings contemplated by this Section but, in any event, if any judgment or award against the Owner arises therefrom, the Contractor shall pay to satisfy it to the extent of Contractor's responsibility.

§ 6.2.7 SHOULD ANY SUCH SEPARATE CONTRACTOR WRONGFULLY DELAYED OR DAMAGED BY THE CONTRACTOR OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE PER SECTION 6.2.6 MAKE A CLAIM AGAINST THE INDEMNITEES, OR BRING ANY ACTION AGAINST THE INDEMNITEES, ON ACCOUNT OF THE DAMAGE ALLEGED TO HAVE BEEN SO SUSTAINED, THE CONTRACTOR SHALL HOLD THE INDEMNITEES HARMLESS AND DEFEND THEM AGAINST ANY SUCH CLAIM OR SUIT, AND SHALL REIMBURSE TO THE INDEMNITEES THE COST INCLUDING, WITHOUT LIMITATION, REASONABLE, ADDITIONAL ATTORNEY'S FEES INCURRED DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THERE FROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.

§ 6.2.8 Should the Contractor be caused damage by any separate contractor, by reason of such separate contractor's failure to perform properly under his/her contract with the Owner, no action will lie against the Owner, and the Owner shall have no liability therefore, but the Contractor may assert his/her claims for damages directly against such separate contractor and the Owner shall assign such rights to Contractor, as allowed under Texas law.

§ 6.2.9 Inasmuch as the completion of the building within the prescribed time is dependent very largely upon the close and active cooperation of all those engaged therein, it is, therefore expressly understood and agreed that each Contractor shall lay out and install his/her work at such time(s) and in such manner as to not delay or interfere with the carrying forward of the work of the other contractors.

§ 6.2.10 Where the work of one contractor directly affects the conditions of the work of another contractor including, as examples only, and not limited to, providing shoring for backfilling, providing protective covering for painting, providing adequate bracing of door jambs, etc., the Contractor performing the work which will adversely affect another contractor's work shall be responsible for providing adequate protection based upon methods used to perform his/her work.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, or the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible, which allocation shall be final.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and reasonably inferable from the intent of the Contract Documents may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 or as otherwise provided herein, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether

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or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Sections 7.3.3, 7.3.7 and 7.3.10.

§ 7.2.4 Agreement on any Change Order constitutes a final settlement of all past and future claims, at law or in equity, concerning all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, delays, all direct and indirect costs, any claim for damages associated with such change, and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.2.5 CHANGE ORDERS REQUIRING CITY COUNCIL APPROVAL

The Contract Sum may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Richardson City Council is required if a Change Order involves a decrease or an increase of \$50,000.01 or more. The original Contract Sum also may not be increased under this Section 7.2 by more than twenty-five percent (25.0%). The original Contract Sum may not be increased by more than twenty-five percent (25%) for any reason; nor may it be decreased by more than twenty-five percent (25%) without the consent of the Contractor, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the Contractor under this Section 7.2, the additional time required to obtain City Council approval shall not be factored into any past or future claim for delays or calculated as a part of the Change Order request.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit calculated using the sum of the actual costs allowed in Sections 7.3.7.1 through 7.3.7.5, and using the percentages as set forth in Section 7.3.12 below. In such case, and also under Section 7.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional verifiable payroll and subsistence costs incurred by the Contractor, Subcontractor, and Sub-subcontractor of field personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination. The Architect may consult with the Owner in connection with such determination either at the direction of the Owner or at the Architect's discretion.

§ 7.3.12 In Subparagraph 7.3.6, the allowance for the combined total of onsite and offsite overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, five percent (5%) of the cost;
- .2 For the Contractor, for Work performed by the Contractor's Subcontractor, two point seven-five percent (2.75%) of the amount due the Subcontractor;
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;

- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7;
- .6 Under no circumstance shall costs of the Contractor's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work under 7.3.7. Conversely, the Contractor shall be compensated for their labor within the overhead and profit percentage specified in Section 7.3.12 below.
- .7 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also.
- .8 When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.
- .9 Overtime, when specifically authorized by the Owner and not as a requirement for the Contractor to fulfill its obligations under this Agreement, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

§ 7.5 SUPPORTING INFORMATION

Notwithstanding the above, requests for an adjustment in the Contract Sum or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner and Architect. The Contractor shall also comply with all provisions of Articles 8 and 15 with respect to claims. The required information shall be provided by the Contractor in less than twenty-one (21) days from the Contractor's request for an adjustment in the Contract Sum or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the Owner or Architect.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be

furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.2.4 The Contractor shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in the Contract Documents, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the Owner in writing.

§ 8.2.5 The Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the Contractor as well as the respective Multiple Prime Contractors.

§ 8.2.6 The Contractor shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, 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 transportation, unavoidable casualties or other causes; or by delay authorized by the Owner pending mediation; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 Any claims for extension of time shall be made in writing to the Owner and Architect not more than ten (10) days after commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the Contractor should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.

§ 8.3.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at <http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm> or other data as mutually agreed by the Architect and Contractor for the Project area. In allowing delays for weather, the Architect will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis of one-and-four-tenths (1.4) calendar days credit for every working day lost, with each separate extension figured to the nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

§ 8.4 CONTRACTOR'S OBLIGATIONS AFTER DELAY

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§ 8.4.1 If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or Contractor's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the Architect that the Work will not be completed within the Contract Time or in accordance with the Contractor's Construction Schedule, the Contractor agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the Owner or Architect, as required to substantially eliminate, in the judgment of the Architect, the backlog of Contractor's Work on the Project;

§ 8.4.2 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;

§ 8.4.3 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;

§ 8.4.4 Reschedule activities to achieve maximum practical concurrence of accomplishment; and

§ 8.4.5 Do whatever else is reasonably required by the Owner or Architect.

§ 8.4.6 These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Contractor's Construction Schedule.

§ 8.4.8 Failure of the Contractor to substantially comply with the requirements of this Section 8.4 shall be considered grounds for a determination by the Owner, after consultation with the Architect, that the Contractor is in breach of this Agreement by failing to prosecute the Work and that of the Project so as to ensure its completion within both the Contract Time and the updated Contractor's Construction Schedule.

§ 8.4.9 Likewise, in the event the progress of the Project falls behind the predictions of the Master Project Schedule through no fault of the Contractor, the Owner or Architect may request, and the Contractor may agree to take one or more of the Extraordinary Measures, with the Owner bearing the cost for such measures by Change Order.

§ 8.4.10 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 8.4, except as specifically noted otherwise in Section 8.4.9.

§ 8.5 OWNER'S RIGHTS AFTER DELAY

§ 8.5.1 In the event that any Contractor fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved Contractor's Project Schedule, the Owner or the Architect shall have the right to impose any or all of the following options:

§ 8.5.2 Require the Contractor to substantiate the capability to get back on schedule within ten (10) business days;

§ 8.5.3 Require the Contractor to take some or all of the Extraordinary Measures, and do whatever else is required by the Owner or Architect until Contractor confirms, to the satisfaction of the Owner and Architect, the progress of the Work is in compliance and congruence with the most recently approved Contractor's Construction Schedule, such measures being at no extra cost to Owner and Architect;

§ 8.5.4 Withhold progress payment, or portions thereof, until such time as the Contractor is in compliance and congruence with the most recently approved Contractor's Project Schedule; and

§ 8.5.5 Contact or visit the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at Contractor's expense.

§ 8.6 LIQUIDATED DAMAGES

§ 8.6.1 Should the Contractor fail to substantially complete the Work on, or before, the original date set forth in the Contract, (or on or before the corrected date as granted by extensions to Contract Time), the Owner may at its sole discretion permit the Contractor to proceed, and in such case, there shall be deducted from any monies due or which may become due the Contractor, a sum as specified herein, for each and every calendar day that the Work shall

remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the Owner. Liquidated damages are intended to compensate the Owner for the Contractor's failure to meet the deadlines set forth herein, and shall not excuse the Contractor from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The Contractor agrees that the sums in Section 8.6.2 are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

§ 8.6.2 Contractor shall pay as liquidated damages to the Owner **Five Hundred Dollars (\$500.00)** for each **calendar** day that expires after the date set forth in the Contract for Final Completion of the Work.

§ 8.6.3 The parties acknowledge, covenant, and agree that the daily basis and the amount set forth above for liquidated damages are reasonable because of the unique nature of the Project as a benefit to the public; the fact that inconvenience to the public will be one of the significant impacts of any failure by the Contractor to timely complete the Work; and that it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to the Owner and the public.

§ 8.6.4 Permitting the Contractor to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract. The Contractor acknowledges the Owner receives no benefits from early completion of the Project or the Work, therefore all rights, if any, to an early completion bonus or other increases in the Contract Sum for such early completion are hereby waived by the Contractor.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the Contractor's Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to the Contractor's and Subcontractor's contract amount(s). The Schedule of Values shall allocate the entire Contract Sum to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the Owner and Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory

to the Owner and Architect and in compliance with all applicable statutes:

- .1 A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;
- .2 Duly executed unconditional waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment;
- .3 Duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors conditional upon and establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in the current Application for Payment;
- .4 An updated Contractor's Construction Schedule clearly showing the actual progress of the Work for each activity against the Work previously scheduled to be completed during the period, and against targeted activities' previously approved completion dates; and
- .5 If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.
- .6 Notwithstanding the above, Applications for Payment shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Architect, and shall include, at a minimum, an updated monthly Contractor's Construction Schedule clearly and graphically comparing the actual "work-in-place" completed to the Work previously projected to be complete for the period. Failure to provide this information in the proper form may be, in and of itself, grounds for rejection of the Application for Payment, at the discretion of the Architect.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the stored materials and equipment which must be properly tagged as to material and job identification; must be available for inspection by the Architect; and such requests for payment must be accompanied by documentary evidence as specified, without limitation, in Sections 3.13 and 11.3.1.4, which supports the request's validity; quantity and value of materials; proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of Insurance or otherwise protects the Owner's interests. Such request shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Such materials shall be:

- .1 Protected from diversion, destruction, theft, and damage to the satisfaction of the Owner;
- .2 Specifically marked for use on the Project; and
- .3 Segregated from other materials at the storage facility.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, 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.

- .1 THE CONTRACTOR FURTHER EXPRESSLY UNDERTAKES TO DEFEND THE INDEMNITEES, AT THE CONTRACTOR'S SOLE EXPENSE, AGAINST ANY ACTIONS, LAWSUITS, OR PROCEEDINGS BROUGHT AGAINST THE INDEMNITEES AS A RESULT OF LIENS OR VERIFIED CLAIMS FILED AGAINST THE WORK, THE SITE OF ANY OF THE WORK, THE PROJECT SITE AND ANY IMPROVEMENTS THEREON, PAYMENTS DUE THE CONTRACTOR, THE PROJECT BOND OR ANY PORTION OF THE PROPERTY OF ANY OF THE INDEMNITEES (REFERRED TO COLLECTIVELY AS "LIENS OR VERIFIED CLAIMS" IN THIS SECTION 9.3.3). THE CONTRACTOR HEREBY AGREES TO INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH LIENS OR VERIFIED CLAIMS AND AGREES TO PAY ANY JUDGMENT OR LIENS OR VERIFIED CLAIMS RESULTING FROM ANY SUCH ACTIONS, LAWSUITS, OR PROCEEDINGS.

- .2 The Owner shall release any payments withheld due to a lien or verified claim if the Contractor obtain security acceptable to the Owner or a lien bond that is (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than Two Hundred percent (200%) of such lien or verified claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

- .3 Notwithstanding the foregoing, the Owner reserves the right to settle any disputed lien or verified claim by payments to the claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made if the amount paid exceeds the amount remaining owed under the subcontract.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven (7) 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 determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the 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.

§ 9.4.3 Certification will be issued for ninety-five percent (95%) of the amount requested by the Contractor and approved by the Architect to be properly due until the Contractor is ninety-five percent (95%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that, should the Contractor at any time fail to keep current with the approved progress schedule, fail to assure payment to Subcontractors, Sub-subcontractors and suppliers as required hereunder; or fail to promptly and diligently correct Work that does not comply with the Contract Documents, certification of ninety-five percent (95%) shall

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automatically again become effective and shall apply as long as the Contractor lags behind such progress or fails to assure such payment.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of any of the following:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to assure payments properly to Subcontractors, Sub-subcontractors and suppliers or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 Contractor's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;
- .9 failure to fully execute the Contract with all associated documents as required;
- .10 liens filed for any portion of the Work; or
- .11 failure of the Contractor to comply with any provisions of the Contract Documents, including without limitation Section 8.4.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld less all associated damages, costs and expenses, suffered or accrued by the Owner or Architect. In the event the Architect nullifies a previously issued Project Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Contractor shall promptly reimburse to the Owner amounts the latter had paid pursuant to the nullified project Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until and unless the reasons for nullification of the previously issued project Certificate for Payment have been remedied and all associated damages, costs, and expenses of Owner and Architect have been paid by the Contractor..

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 The Contractor shall not stop work or terminate the Contract if the Architect or Owner's lender should refuse to issue any certificate because the Application for Payment does not conform with the requirements of Sections 9.3, 9.4, 9.5 or any other portion of these General Conditions, as supplemented herein.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect 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.

§ 9.6.2 The Contractor shall pay each Subcontractor, Sub-subcontractor, and supplier no later than ten (10) days after receipt of payment from the Owner the amount to which the Subcontractor, Sub-subcontractor and supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's,

Sub-subcontractor's and supplier's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, Sub-subcontractor and supplier require each to make payments to their Sub-subcontractors and suppliers in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect 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.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 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 in accordance with the Contract Documents.

§ 9.6.7 The Contractor shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner. Sums withheld by the Owner from the Contractor for deficiencies solely attributable to the Contractor shall not be grounds for the Contractor to withhold sums due to any Subcontractor. All sums paid to the Contractor for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the Contractor for payment to those persons to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 To the extent Contractor has received payment in accordance with the terms of this Agreement, the Contractor agrees to keep the Work and the site of the Project and all project bonds free and clear of all liens and verified claims related to labor and materials furnished in connection with the Work.

§ 9.6.9 Notwithstanding anything to the contrary contained in the Contract Documents, if any lien or verified claim is filed or there is evidence to believe that any lien or verified claim may be filed at any time during the progress of the Work or the duration of this Contract, the Owner may refuse to make any payment otherwise due the Contractor or may withhold from any payment due the Contractor a sum sufficient in the opinion of the Owner to pay all obligations and expenses necessary to satisfy such lien or verified claim. The Owner may withhold such payment unless or until the Contractor, within ten (10) calendar days after demand therefore by the Owner, shall furnish satisfactory evidence that the indebtedness and any lien or verified claim in respect thereof has been satisfied, discharged, and released of record, or that the Contractor has legally caused such lien or verified claim to be released of record pending the resolution of any dispute between the Contractor and the person or persons filing the lien or verified claim. If the Contractor fails to furnish satisfactory evidence within ten (10) calendar days of the demand thereof, the Contractor, the Architect, and the Owner shall meet within two (2) additional business days to review and agree in writing on the Contractor's action plan for disposing of the lien or verified claim in question. Failing an agreement satisfactory to the Owner and the Architect, the Owner may discharge such indebtedness in any manner and may deduct the amount thereof, together with any and all losses, costs, damages, and attorney's fees suffered or incurred by the Owner from any sum payable to the Contractor under the Contract Documents, including but not limited to final payment and retained amounts.

§ 9.6.10 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained

in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, at the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, all major systems are operational, and all safety features are completed and Owner's receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the Owner. In addition to the other requirements of the Contract Documents, and without limitation, the Contractor must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the Contractor shall be deemed to have achieved Substantial Completion.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor will also provide the Architect a comprehensive list of all claims previously and properly made in writing and identified by the Contractor as unsettled at the time of Substantial Completion.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and 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 list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 The Contractor's acceptance of payment per Section 9.8.5 shall constitute a waiver for all purposes of all claims or causes of action by the Contractor against the Owner and the Architect, except those previously and

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properly made in writing and identified in the list provided by the Contractor as unsettled at the time of Substantial Completion per Sections 9.8.2.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, as such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 provided it is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect 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.

§ 9.9.3 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.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits 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 the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under Section 3.5 or otherwise required pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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 canceled or allowed to expire until at least forty-five (45) 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) consent of surety, if any, 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. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, 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 prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, liquidated damages, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 gross negligence, willful misconduct, or fraudulent concealment in connection with the performance of the Contract.

§ 9.10.5 Application for and acceptance of final payment by the Contractor shall constitute a waiver of claims by that payee against the Owner or Architect except those previously made in writing and identified by that payee arising after the waiver given at Substantial Completion payment described in Sections 9.8.2 and 9.8.6.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor's and all Subcontractors' Safety Programs shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to all of the following:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor 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.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and the Contractor shall give the Owner and the Architect reasonable advance written notice of such planned activities.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or

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anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 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.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Contractor shall immediately report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately electronically, as well as by telephone or messenger to the Owner and the Architect.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 Hazardous materials include any material in such quantity, concentration, and physical or chemical characteristics including but not limited to ignitability or toxicity, so as to be capable of posing an unreasonable risk to health, safety and/or property if released into the atmosphere, transported, stored, or disposed of. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, duly processed and approved, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, both as specified in Article 7. The term "rendered harmless" shall be interpreted to mean, without limitation that levels of hazardous materials, including but not limited to asbestos and polychlorinated biphenyls, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.4 THE CONTRACTOR SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.1, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE OWNER'S FAULT OR NEGLIGENCE.

(Paragraphs deleted)

§ 10.4 EMERGENCIES

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

§ 10.5 Site Visits

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor shall purchase and maintain insurance as set forth in Article 10 and Addendum A of AIA Document A101-2007.

(Paragraphs deleted)

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect 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 at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense 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

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, specifically including, but not limited to, additional testing and inspections, the cost of uncovering and replacement, the cost of any additional supervision, material, labor, equipment, rental charges, home office overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work of both the Contractor and the Project, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions; and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

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

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§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, or within such longer period of time as may be prescribed by law, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the condition is reasonably Discoverable during the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4, and charge the reasonable costs to the Contractor.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

(Paragraphs deleted)

§ 12.2.2.4 The one-year period for correction of Work shall also be extended by the period of time between Substantial Completion and the actual completion of the corrective Work performed by the Contractor pursuant to this Section 12.2, but only with respect to those portions of the Work.

§ 12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. These costs specifically include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office overhead, and other expenditures necessitated to rectify the non-complying conditions, protect adjacent Work, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions.

(Paragraphs deleted)

§ 12.2.6 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 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.

§ 12.2.7 The Contractor's obligations under this Section 12.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract, or any rights under the contract, in whole or in part, without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 QUALITY MANAGEMENT TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect 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 of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses and all costs specified in Section 12.2 shall be at the Contractor's expense. The Contractor also agrees the cost of testing, inspection, and approval services required for the convenience of the Contractor in scheduling and performance of the Work, and the cost of such similar services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

§ 13.5.4 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.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work, and shall conform to the most recently approved Contractor's Construction Schedule.

§ 13.5.7 The Contractor shall be in charge of testing and inspections of the Work, including but not limited to, the services of a certified testing laboratory which shall be contracted to and paid for by the Owner; acceptable to the Architect; and which will perform the tests as called for in the Contract Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:

1. The frequency and type of Quality Control testing shall be established by the Contractor, and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Contract Documents. The type and amount of testing required by the Contract Documents shall be seen as the minimum required, and shall be increased, if in the opinion of the Contractor, more testing is needed to meet the above requirements of the Contractor.
2. The Contractor shall concurrently provide the Architect copies of all test results it receives within three (3) business days of receipt of same.
3. The Owner shall provide such Quality Assurance testing as it and the Architect mutually deem adequate for their own needs. The Owner shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the Owner, or lack thereof shall in no manner affect the responsibilities of the Contractor or Architect under this Agreement.

§ 13.5.8 The Contractor shall facilitate and conduct weekly (or more frequent if necessary) meetings on site for the coordination of all mechanical, electrical and special systems installation activities and possible interference(s) above ceilings, in mechanical rooms, etc. The mechanical trades shall typically have preference in the event of conflicts, and therefore the mechanical contractor's coordinator will usually lead each meeting, unless the Contractor decides another trade or the Contractor should take the lead. The Architect shall be informed of the meetings at least seven (7) days in advance, and the appropriate Architect's consultants should be invited to attend by the Contractor, as supplemented and coordinated by the Architect.

§ 13.5.9 Prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes, Contractor shall review, in detail, the steps for completing testing of all building systems with the Owner and Architect. Said review and testing shall be coordinated with and shall be made part of the Contractor's Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate Owner's and Architect's consultant(s), representatives of the Owner, and at its option, either or both the Architect.

§ 13.5.10 When heating, air conditioning, ventilating, exhaust, or other items of mechanical, electrical or other similar equipment, or other systems or equipment requiring testing are installed, it shall be the responsibility of the Contractor, Subcontractor or Sub-subcontractor installing such equipment to operate it for a period of time satisfactory to the Owner prior to acceptance and before the start of Warranty. The duration of such operation shall be as the Owner, Owner's consultant(s), Architect's consultant(s), Owner's employees and other Owner's representatives (the Turnover Team) shall reasonably require for proper testing of the respective system and thorough instruction of the Owner's operating personnel.

§ 13.5.11 All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the Owner's operating personnel on each system's operations and maintenance shall be provided by the Contractor, Subcontractor or Sub-subcontractor responsible for providing and installing the equipment. Such tests and instruction shall be in meetings held solely for this purpose (the Turnover Meetings), which shall be coordinated and managed by the Contractor, who shall show their dates in the Contractor's Construction Schedule at least sixty (60) days prior to occurrence. The Contractor shall schedule the Turnover Meetings at times reasonably convenient for the Owner's consultant(s), Architect's consultant(s), Owner's employees and other Owner's representatives that the Owner and Architect agree are necessary to attend for each system. The Architect may attend such Turnover Meetings at its discretion.

§ 13.5.12 The Contractor shall provide a digital video record to the Owner, with copies to the Architect of all meetings for the purpose of Owner operational staff instruction or training; as well as commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.

§ 13.5.13 The Contractor shall prepare a digital video record of the project for the Owner with copies to the Architect at such stages as shall be indicated by the Architect for the purpose of documenting the location of piping, conduit, equipment, or other construction to be concealed at a later date; recording key inspections and tests; providing evidence of unforeseeable conditions encountered by the Contractor on site; and other construction issues as the Architect may reasonably require from time to time.

§ 13.5.14 The Contractor shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Contractor shall notify the Architect in writing immediately upon completion of this marking, and the Architect will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the Owner. The Architect will then give permission for removal in writing to the Contractor. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest stops accruing on the date the party mails or electronically transmits the payment.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 RELEASE OF RETAINAGE AT SUBSTANTIAL COMPLETION

Notwithstanding any other provision in the Contract Documents to the contrary, upon Substantial Completion of the Work the Owner shall be entitled to retain from the Contract Sum due to the Contractor an amount equal to the greater of: (a) the product obtained by multiplying eight (8) times the total cost of completion of the Punch List items as estimated by the Architect; or (b) twenty-five thousand dollars (\$25,000), whichever is greater.

§ 13.9 MEASUREMENT

Before ordering any material or doing any Work, the Contractor shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Architect for consideration before proceeding with the Work. The Contractor shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the Owner and Architect of these prior to commencing any Work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

§ 13.10 EXPEDITING MATERIALS

The Contractor shall immediately, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work, and shall submit to the Architect evidence that such orders have been placed in accordance with the Contractor's Construction Schedule.

§ 13.11 ADDRESSING THE OWNER'S ADDITIONAL NEEDS AND CONCERNS

§ 13.11.1 Notwithstanding the above, the Owner has a unique set of stakeholders and organizational structure that creates special challenges the Contractor must completely and successfully address to the satisfaction of the Owner and Architect in the performance of the Work under this Agreement. The actions that shall be taken to address these special challenges include, but are not limited to, the following:

- .1 The Contractor shall provide the Superintendent once per month for a scheduled meeting with the Owner for a progress update on the project if requested by the Owner. A walk-through of the site may be held as a part of this meeting, which shall be scheduled for 4pm or shortly thereafter on a standard business day.
- .2 The Contractor may be required to provide the Superintendent for one meeting per month with the Architect for the purpose of assisting the Owner in preparing City Council agenda items and assisting City staff in preparing presentations to the City Council for the benefit of the public. The actual preparation and submission of the City Council of any agenda or work session item shall be performed by the Owner.
- .3 In addition to the meetings required to complete the Project, it is anticipated the Owner may request tours from time to time of the project and the site. The Contractor shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Owner.

§ 13.12 ADDITIONAL PROVISIONS

§ 13.12.1 In the event that any provision herein is held to be unlawful, against public policy, or a violation of the Charter or Ordinances of the City of Richardson, Texas, such provision shall be modified to make it valid, or if modification is not possible, such provision shall be deleted and the remainder of this Agreement shall remain in full force and effect.

§ 13.12.2 Each party hereto agrees to, without limitation, perform all acts; provide all services, material, equipment, labor and supervision; and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.12.3 All exhibits referred to in the Contract Documents are, by reference, incorporated herein for all purposes.

§ 13.12.4 The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of the Contract Documents.

§ 13.12.5 Any specific requirement in this Contract that require responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Contract Documents or the applicable subcontract.

§ 13.12.6 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written document signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific material restated in the written document signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes under any Agreement with the Owner shall be allowed.

§ 13.12.7 The Contractor shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state of Texas.

§ 13.12.8 The Contractor shall provide Owner with copies of all notices received by Contractor from Subcontractors, Sub-subcontractors, and/or suppliers to Contractor.

§ 13.12.9 The Owner is a Texas home-rule municipality and as such is generally exempt from taxation under Texas law, which may include the purchase of items, materials, or supplies purchased on behalf of the Owner for this public works project. Contractor shall confirm that the Owner is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the Owner.

Init.

§13.12.10 Owner affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by Owner to Contractor subject to the terms and conditions of the Contract Documents. In the event that Owner approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by Contractor, (other than that contemplated by the Contract Documents under any remedy-granting provision), Owner will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the Owner's governing body.

§ 13.12.11 In the event the Owner is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the Contractor shall notify the Owner and Architect of such requirement(s) in writing not less than thirty (30) days in advance, and attach a copy of the specific advertising and noticing required.

§13.12.12 The Contractor shall, in addition to compliance with the requirements of Section 3.7.6 and without limitation, not knowingly employ or contract with an illegal alien to perform any of the Work under this Agreement. The Contractor shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (ii) fails to certify to the Contractor that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.

§13.12.12.1 The Contractor has verified or attempted to verify through participation in the Federal basic pilot program ("Basic Pilot Program"), if applicable, that the Contractor does not employ any illegal aliens or the Contractor verifies that the Contractor has not been accepted into the Basic Pilot Program prior to entering into this Agreement. The Contractor further verifies that if the Contractor has not been accepted into the Basic Pilot Program, the Contractor will apply to participate in the Basic Pilot Program every three months until the Contractor is accepted or this Agreement is completed, whichever is earlier. If the Basic Pilot Program is discontinued or suspended by the federal government, this Section 13.12.12.1 shall not be required or be effective.

§13.12.12.2 The Contractor shall not use Basic Pilot Program procedures to undertake pre-employment screening of job applicants while performing under this Agreement.

§13.12.12.3 If Contractor obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall:

- .1 Notify the Subcontractor and the Owner within three (3) days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and,
- .2 Terminate the subcontract with the Subcontractor if, within three (3) days of receiving notice that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien, the Subcontractor does not stop employing or contracting with the illegal alien. The Contractor shall not terminate the contract with the Subcontractor if during the three (3) days, the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

§13.12.12.4 The Contractor shall comply with any reasonable request of the Texas Workforce Commission made in the course of an investigation pursuant to state law.

§13.12.12.5 In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Contract Document the Owner may be entitled to for a breach of the Agreement, if the Owner terminates this Agreement, in whole or in part, due to Contractor's breach of the obligations set forth above in this Section 13.12.12 Contractor shall be liable for actual and consequential damages to the Owner.

§ 13.12.13 It is the express intention of the parties that this Agreement is not to be construed as a waiver of any immunities or defenses of the Owner under Texas law.

§ 13.12.14 Notwithstanding any other provision in the Contract Documents to the contrary, public property is protected from forced sale and therefore may not be made the subject of a mechanic's lien. Nothing in the Contract Documents shall be construed to allow a mechanic's lien on public property owned by the Owner. The Owner does not waive its immunities or right to object to or contest such a lien.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including other costs permitted by law.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall be as specified in Article 7. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 Upon such termination for the Owner's convenience, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Contract Documents and Owner's further instructions. The Contractor waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, lost opportunity costs, and potential and actual unabsorbed overhead costs. The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims that the Owner has against the Contractor under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.2.1 CLAIMS MADE AFTER FINAL PAYMENT

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User Notes:

After Final Payment, Claims made by the Contractor that have not otherwise been waived pursuant to this Contract, must be initiated within 180 days from the date of Final Payment by written notice to the Owner as a condition precedent to the Contractor's right to sue on the Contract.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein 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 Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor shall provide written notice as required by Sections 8.3.4 and 8.3.5.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in accordance with Section 8.3.5.

(Paragraphs deleted)

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision, and will default to litigation.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to defaulting to the court having competent jurisdiction per the Contract Documents. If a statute of limitations is at issue, then suit may be filed by either party to toll the statute, but the suit shall then be stayed pending completion of the agreed mediation. If the parties cannot agree on a mediator, then the court may appoint one upon application of either party.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing and delivered to the other party to the Contract.

§ 15.3.3 The parties shall share the mediator's fee equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Written agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs deleted)

SCOPE OF WORK

REPLACE SHINGLE ROOFS, 7 BUILDINGS, RICHARDSON, TX

1. Description of Work: Provide all materials, labor, equipment to perform all operations required to remove and replace existing shingles, felt, flashing and metal drip edge on the roof of 7 buildings at various locations throughout the City of Richardson. Work shall include but not be limited to the following:

a. Demolition Work:

Remove existing shingles, felt, flashing around penetrations and drip edge around the perimeter of the building. Re-secure any substrate nails that have backed out prior to installation of new felt. Replace any deteriorated wood decking encountered with like material on an as needed and approved basis. Any deteriorated decking removed along the exposed perimeter of the roof (underside painted) shall be repainted with a prime and two coats of paint to match that which was removed and adjacent surfaces. Remove all existing unused roof vents, powered and non-powered.

2. Execution of Work: The contractor shall coordinate the performance of all work 5 working days in advance. The contractor shall be responsible for protection of adjacent surfaces and areas not to receive work. The contractor may only work on a maximum of three buildings concurrently. All work under this project shall be complete within 60 calendar days after the proceed notification. The contractor will be responsible for providing and furnishing all lifts, scaffolding, elevated platforms, ladders, etc., needed to perform the work and access all areas of the project. New exposed felt shall be covered with new shingles the same day and shall in no case be allowed to be re-nailed or be exposed for more than two days. The contractor shall thoroughly sweep and/or clean the wood substrate of any dust and debris prior to installation of new felt and roofing. The roof areas of said buildings are of varying roof pitches. Said buildings are currently utilized and work on the building is subject to concurrence of the building tenant and schedule. The contractor shall employ one person on the ground (safety monitor) when working around building entrances

and exits. This individual will serve as safety monitor of the work activities at entrances and exits to each building, to ensure work above these entrance and exits ceases when customers enter or leave the building. The contractor shall submit for approval and color selection of the shingles to be used to re-roof said buildings. At no time will the contractor remove any portions of the existing shingles when rain or inclement weather is imminent. The contractor shall be responsible for the protection of the building contents from water damage (due to rainfall) during the performance of this work. Any damage to City of Richardson property (as a result of this project) shall be repaired or items replaced by the contractor, at no cost to the city.

3. Disposal of Materials: The contractor shall be responsible for disposal of all materials (shingles, felt, waste and/or trash) off of the property. Contractor shall sweep the ground area around the building several times a day and again at the conclusion of the work with a magnetic roller to remove any nails.

4. Coordination of On-Site Work: The contractor will coordinate the replacement of the shingles with the City representative at least five days in advance of any work being accomplished on the buildings. The contractor shall provide to the City representative a progress schedule for approval. Said progress schedule shall show the various work trades (demo, installation of felt, and installation of shingles) for each building and shall reflect the start and completion of each building in this project.

5. Clean-up: The contractor shall keep worksite clear of debris and/or material during the work and shall accomplish clean-up of the worksite at the end of each day. Materials removed or demolished shall not be allowed to accumulate on the job-site. During periods of high wind, the contractor shall keep a worker on the ground around the building to police up any paper debris and keep it from blowing to other areas of the grounds. Any items damaged (by the contractor) during performance of the work shall be restored to original condition by the contractor and at no cost to the City.

6. Standard of Workmanship: The contractor shall perform all work in accordance with roofing industry standards and manufacturers recommendations. Workmanship shall be of the highest grade throughout this project. All wires, signs, lights, radio antenna and other such antennas attached to the roof at the time of reroofing shall

be removed by the contractor. These items shall be re-attached by the contractor in a manner satisfactory to the Contracting Officer on completion of the re-roofing work. All felts shall be installed with a minimum of 2" laps and a minimum overlap of 6" at the end of rolls. Edges of shingles at vertical projections shall be set in plastic cement in addition to placing a heavy bead of plastic cement at the intersection after all shingles are in place. Shingles installed in valleys shall be installed utilizing the "weaving method" with no open valley cuts. An additional layer of #30 felt shall be installed in valleys (centered in valley) and extending from the start to the end of the valley prior to installation of shingles. Fiberglass shingles shall be kept in closed and covered buildings until shortly before installation on roof. Space for storage of shingles will be provided by the contractor. Shingles exposed to rain during transportation will not be used. Only the quantity of shingles to be installed during the work day will be placed on roof decks at the beginning of the work day and any shingles not installed by the end of the day will be returned to storage. Shingles shall never be stacked in contact with ground. The contractor will exercise care in the placement of shingles on the roof and shall not overload any structural members of the buildings by stacking bundles on shingles excessively on a structural member. The contractor shall take precaution to protect the interior of the buildings being work on from damage during periods of inclement weather. Any buildings contents that is damaged from weather, due to the contractors operations and failure to adequate protect the building, shall be corrected to original condition y the contractor at no cost to the government. All noted construction deficiencies shall be corrected within 1 day and before proceeding to the next building. —

7. Safety: All work shall be accomplished in strict compliance with OSHA Safety Standards. The contractor shall incorporate the use of safety in the use of all ladders, scaffolds and lifts to include workers using lifts being tied-off with full body harnesses during work execution.

8. Work Hours: The contractor shall execute subject project between the hours of 7:30 a.m. and 4:00 p.m. each weekly work day (Monday thru Friday) excluding state recognized holidays.

9. Warranty: The contractor shall provide to the customer a 25 year warranty from the shingle manufacturer on the shingles installed. The contractor shall also warrant all

workmanship to be free from any defects within one year from the date of installation and acceptance.

10. Point of Contact:

Jerry Tuggle
City of Richardson
Superintendent Facilities Maintenance
972-744-4274

11. Deteriorated Roof Decking Replacement: The contractor shall replace any deteriorated roof decking materials and/or associated structural members with like materials. The contractor shall notify. The City representative upon encountering any deteriorated materials at which time the representative and contractor shall field verify and agree upon the quantity of materials to be replaced. The contractor shall incorporate a deteriorated decking replacement sheet weekly, along with the weekly progress report and shall reflect what building received what quantity of deteriorated decking materials. Subject sheet shall also include a "running total" of deteriorated materials replaced. A separate bid item is established within the Bid Price Schedule for any deteriorated materials encountered on this project. The contractor shall likewise protect the substrate area until the deteriorated area can be replaced (should materials not be readily available and on-site). The contractor shall bid a per board foot cost (including labor) for replacement of deteriorated materials encountered, as part of the total contract package. If the contractor does not replace the entire quantity of deteriorated materials during the duration of the project, the remainder of the material shall be turned over and accepted by the City from the contractor at the conclusion of the project. The contractor shall receive no payment for deteriorated materials that have not been confirmed and verified by the City. The final payment shall incorporate the board footage of materials actually replaced times the board footage price. The contractor shall not exceed the estimated quantity without approval of the Contracting Officer and a change order for any increase. All materials shall be #2 grade, unless otherwise specified.

12. Measurements: It shall be the responsibility of the contractor to field-verify measurements prior to bid of this project. The following is the approximate roof area for each associated building under this project:

PART I GENERAL

1.01

1.02 SECTION INCLUDES

- A Asphalt roofing shingles.
- B Leak barrier and roof deck protection.
- C Metal flashing associated with shingle roofing.
- D Attic ventilation.

1.03 REFERENCES American Society for Testing and Materials (ASTM) - Annual Book of ASTM Standards

1. ASTM A 653/A 653M - Standard Specification for Steel Sheet, Zinc Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process.
2. ASTM B 209 - Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate.
3. ASTM B 370 - Standard Specification for Copper Sheet and Strip for Building Construction.
4. ASTM D 3018 - Standard Specification for Class A Asphalt Shingles Surfaced with Mineral Granules.
5. ASTM D 3161 - Standard Test Method for Wind-Resistance of Asphalt Shingles (Fan-Induced Method).
6. ASTM D 3462 - Standard Specification for Asphalt Shingles Made From Glass Felt and Surfaced with Mineral Granules.
7. ASTM D 4586 - Standard Specification for Asphalt Roof Cement, Asbestos-Free.
8. ASTM D 7158 - Standard Test Method for Wind-Resistance of Sealed Asphalt Shingles (Uplift Force/Uplift Resistance Method).
9. AC438-1011-R1 - New Acceptance Criteria for Alternative Asphalt Roofing Shingles
10. UL 790 - Tests for Fire Resistance of Roof Covering Materials.
11. UL 997 - Wind Resistance of Prepared Roof Covering Materials.
12. UL 2218 - Impact Resistance of Prepared Roof Covering Materials.

B Asphalt Roofing Manufacturers Association (ARMA)

C Sheet Metal and Air Conditioning Contractors National Association, Inc. (SMACNA) - Architectural Sheet Metal Manual.

- D National Roofing Contractors Association (NRCA)
- E American Society of Civil Engineers (ASCE).
 - 1. ASCE 7 - Minimum Design Loads for Buildings and Other Structures.
- F U.S. Green Building Council (USGBC)
- G Leadership in Energy and Environmental Design (LEED)
- H ENERGY STAR
- I Cool Roof Rating Council (CRRC)
- J Miami Dade County

1.04 DEFINITIONS

- A Roofing Terminology: Refer to ASTM D1079 and the glossary of the National Roofing Contractors Association (NRCA) Roofing and Waterproofing Manual for definitions of roofing terms related to this section.

1.05 LEED CERTIFICATION

- A Provide a roofing system that will achieve or aid in the qualification of points satisfying
 - 1. Sustainable Site credit 7.2 - Heat Island Effect - Roof.
 - 2. Materials & Resource credit 5 - Local and Regional Materials.

1.06 SUBMITTALS

- A Submit copies of GAF® product data sheets, detail drawings and samples for each type of roofing product.
- B L.E.E.D. submittal: Coordinate with Section 01115 - Green Building Requirements, for LEED certification submittal forms and certification templates.

1.07 QUALITY ASSURANCE

- A Manufacturer Qualifications: Provide all primary roofing products, including shingles, underlayment, leak barrier, and ventilation, by a single manufacturer.
- B Installer Qualifications: Installer must be approved for installation of all roofing products to be installed under this section.

1.08 REGULATORY REQUIREMENTS

- A Provide a roofing system achieving an Underwriters Laboratories (UL) Class A fire classification.
- B . Install all roofing products in accordance with all federal, state and local building codes.
- D All work shall be performed in a manner consistent with current OSHA guidelines.

1.09 PREINSTALLATION MEETING

- A General: For all projects in excess of 250 squares of roofing, a pre-installation meeting is strongly recommended.

- B Timing: The meeting shall take place at the start of the roofing installation, no more than 2 weeks into the roofing project.
- C Attendees: Meeting to be called for by manufacturer's certified contractor. Meeting's mandatory attendees shall include the certified contractor and the manufacturer's representative. Non-mandatory attendees shall include the owner's representative, architect or engineer's representative, and the general contractor's representative.
- D Topics: Certified contractor and manufacturer's representative shall review all pertinent requirements for the project, including but not limited to, scheduling, weather considerations, project duration, and requirements for the specified warranty.

1.10 DELIVERY, STORAGE, AND HANDLING

- A Store all products in manufacturer's unopened, labeled packaging until they are ready for installation.
- B Store products in a covered, ventilated area, at temperature not more than 110 degrees F (43 degrees C); do not store near steam pipes, radiators, or in direct sunlight.
- C Store bundles on a flat, properly drained surface. Maximum stacking height shall not exceed GAF®'s recommendations. Store all rolls on end.
- D Store and dispose of solvent-based materials in accordance with all federal, state and local regulations.

1.11 WEATHER CONDITIONS

- A Proceed with work only when existing and forecasted weather conditions will permit work to be performed in accordance with GAF®'s recommendations

1.12 WARRANTY Provide to the owner a **GAF® Shingle & Accessory Ltd. Warranty** for:

- A. Provide to the owner a **GAF® WeatherStopper® Golden Pledge® Ltd Warranty** covering:
 - 1. Roofs installed by a Certified GAF® Master Elite™ Contractor only.
 - a 40 years with the first 20 years non- prorated. (excludes Marquis WeatherMax and Royal Sovereign)
 - 2. Workmanship errors: 100% coverage for workmanship errors for:
 - a Single family detached homes owned by individuals - the first 25 years for after installation. (20 years for Marquis WeatherMax and Royal Sovereign)
 - b Any other type of owner or building - 20 years.
 - 3. Roof system NOT installed over an existing roof, all existing roof materials must be removed to the deck.
 - 4. Warranted against algae discoloration for 10 years

5. Full roof installations (Roofs installed on portions of buildings do not qualify) using the following GAF® products.
 - a You must use GAF® Roof Deck Protection.
 - b You must use eligible GAF® Leak Barrier in valleys and around dormers, sidewalls, firewalls, chimneys, plumbing vents, and skylights. In the North, leak barriers must be used at all eaves at least 24 inch inside warm wall.
 - c You must use GAF® pre-cut starter strip products (only those with factory applied adhesive) at the eaves. Note: To obtain bonus wind coverage, you must use GAF® pre cut starter strip products (with factory applied adhesive) at the eaves and rakes and you must install each shingle using 6 nails.
 - d You must use eligible COBRA® ventilation with adequate intake ventilation. Master Flow® exhaust ventilation products can be substituted only if COBRA® ridge ventilation cannot be installed due to a structure's architecture. In any event, adequate ventilation should meet the following requirements:
 - i. Minimum net free ventilation area of 1 sq ft per 150 sq ft of ceiling area is required. When intake vents are located at the eaves and exhaust vents are located near the roof's peak (in a properly balanced system) for maximum air flow, ventilation may be reduced to 1 sq ft per 300 sq ft. If these standards are not met, GAF® cannot be responsible for damage caused by inadequate ventilation.
 - e You must use GAF® Ridge Cap Shingles or shingles that correspond to the shingle product you are installing.
 - f You must use eligible GAF® Roofing Shingles.
 - g New metal flashings must be installed. Metal drip edge must be used at eaves and is recommended at rake edges.
6. In addition to the requirements listed above, you installer must register and pay for this warranty. On projects that total more than 250 squares, the permanent Golden Pledge® Ltd Warranty will be issued only if the project passes GAF®'s final inspection. GAF® reserves the right to withhold the warranty if the roof has not been installed according to GAF®'s written application instructions. GAF® also strongly recommends that your Master Elite® Contractor schedule a start-up and at least one interim inspection on projects of 250 squares or more by contacting GAF® at least

PART II PRODUCTS

1.01 MANUFACTURER

A Acceptable Manufacturer: GAF®, 1 Campus Drive, Parsippany, NJ 07054. Tel: 1-973-628-3000.

1.02 SHINGLES

A Granule surfaced, self-sealing asphalt shingle with a strong fiberglass reinforced Micro Weave® core and StainGuard® protection, which prevents pronounced discoloration from blue-green algae through formulation/unique blends of granules. Architectural laminate styling provides a wood shake appearance with a 5 5/8 inch exposure. Features GAF®'s patented High Definition® color blends and enhanced shadow effect. . UL 790 Class A rated with UL 997 Wind Resistance Label; ASTM D 7158, Class H; ASTM D 3161, Type 1; ASTM D 3018, Type 1; ASTM D 3462; CSA-A123.5; AC438; Dade County Approved, Florida Building Code Approved, Texas Dept of Insurance Approved, ICC Report Approval. **Timberline Ultra HD®** Lifetime High Definition Shingles, by GAF®.

1. Color: As selected from manufacturers' full range.

1.03 HIP AND RIDGE SHINGLES

A High profile self sealing hip and ridge cap shingle matching the color of selected roof shingle. Each bundle covers approx. 20 lineal feet (6.10m). **Timbertex®** Premium Ridge Cap Shingles, by GAF®.

B (169mm) exposure. **Seal-A-Ridge® ArmorShield™ II** Ridge Cap Shingles by GAF®.

1.04 STARTER STRIP

A Self sealing starter shingle designed for premium roof shingles. Each bundle covers approx. 100 lineal feet (30.48m) for English and metric shingles or 50 lineal feet (15.24m) for oversized shingles. **WeatherBlocker™** Eave/Rake Starter Strip by GAF®.

B Pre-cut, color coordinated starter strip shingle designed as a second starter course for shingles with large cut-outs. Each bundle covers approx.. 60 lineal feet (18.29 m) **StarterMatch™** Starter Strip by GAF®.

1.05 LEAK BARRIER

A Self-adhering, self-sealing, bituminous leak barrier surfaced with fine, skid-resistant granules. Approved by UL, Dade County, ICC, State of Florida and Texas Department of Insurance. Each roll contains approx. 150 sq ft (13.9 sq.m.), 36" X 50' (0.9m x 20.3m) or 200 sq ft (18.6 sq.m.), 36" X 66.7' (0.9m x 20.3m). **WeatherWatch®** Leak Barrier, by GAF®.

1.06 SHINGLE UNDERLAYMENT

A Premium, water repellant, breather type non-asphaltic underlayment. UV stabilized polypropylene construction. Meets or exceeds ASTM D226 and D4869. Approved by Dade Country, Florida Building Code, and ICC. Each roll contains approximately 10 squares (1003 sq. ft.) of material and is 54 in. x 223 ft. **Deck-Armor™** Premium Breathable Roof

1.07 ROOFING CEMENT

A Asphalt Plastic Roofing Cement meeting the requirements of ASTM D 4586, Type I or II.

1.08 ROOF ACCESSORIES

- A Exterior acrylic rust resistant aerosol roof accessory paint. Each 6 oz can is available in boxes of 6 and in a wide variety of colors to compliment the roof. **Shingle-Match™** Roof Accessory Paint by GAF®.

1.09 ATTIC VENTILATION

A Ridge Vents

1. Flexible rigid plastic ridge ventilator designed to allow the passage of hot air from attics, while resisting snow infiltration. For use in conjunction with eave/soffit ventilation products. Provides 12.5 sq inches Net Free Ventilation Area per lineal foot (26460 sq.mm/m). Each package contains 20 lineal feet (6.10m) of vent. **Cobra® Ridge Runner™** Ridge Vent by GAF®.

B Hip Vents

1. Flexible low profile rigid plastic ridge ventilator designed to allow the passage of hot air from attics, while resisting rain and snow infiltration. For use in conjunction with eave/soffit ventilation products. Provides 9 sq inches Net Free Ventilation Area per lineal foot (19,046 sq.m/m). Each package contains 40 lineal feet (12.19m) of vent. **Cobra® Hip Vent** Exhaust Vent by GAF®.

C Roof Louvers

1. Rooftop mounted, square-top designed, high-impact resin exhaust ventilator designed to evacuate hot air from attics. Each vent provides 60 sq in NFVA. **MasterFlow™ RT-65** Passive Roof Louver, by GAF®.
2. Rooftop mounted, slant-back designed, metal exhaust ventilator designed to evacuate hot air from attics. Each vent provides 60 sq in NFVA. **MasterFlow™ SSB 960A** Passive Roof Louver, by GAF®.
3. Rooftop mounted, low-profile square-top designed, high-impact resin exhaust ventilator designed to evacuate hot air from attics. Each vent provides 37 sq in NFVA. **MasterFlow™ IR-61** Passive Roof Louver, by GAF®.

D Gable Louvers

1. Surfaced mounted, flush or recessed one piece integral construction in thermoformed plastic or aluminum. **Masterflow™ DA** Series or **SL** Series Gable Louver by GAF®.
2. Circular surfaced mounted, one piece integral construction high-impact white plastic mini vent. **Masterflow™ RLSC** Series Circular Louver by GAF®.

E Roof Turbines

1. Rooftop mounted, stainless dual bearing, high performance, aluminum rotary turbine exhaust vents. **MasterFlow™ AIC12 & AIC14** Rotary Turbine Vents by GAF®.

1.10 VENTILATION ACCESSORIES

A Chimney Cap

1. Stainless steel vented chimney cap. **MasterFlow™ CC1313SS** Safety Cap by GAF®.

1.11 NAILS

- A Standard round wire, zinc-coated steel or aluminum; 10 to 12 gauge, smooth, barbed or deformed shank, with heads 3/8 inch (9mm) to 7/16 inch (11mm) in diameter. Length must be sufficient to penetrate into solid wood at least 3/4 inch (19mm) or through plywood or oriented strand board by at least 1/8 inch (3.18mm).

1.12 METAL FLASHING 24 gauge hot-dip galvanized steel sheet, complying with ASTM A 653/A 653M, G90/Z275.

- B 16-oz/sq ft (0.56mm) copper sheet, complying with ASTM B 370.
- C 0.032-inch (0.8mm) aluminum sheet, complying with ASTM B 209.

PART II EXECUTION

2.01 EXAMINATION

- A Do not begin installation until the roof deck has been properly prepared.
- B If roof deck preparation is the responsibility of another installer, notify the architect or building owner of unsatisfactory preparation before proceeding.

2.02 PREPARATION Remove all existing roofing down to the roof deck.

- B Verify that the deck is dry, sound, clean and smooth. It shall be free of any depressions, waves, and projections.
- C Cover with sheet metal, all holes over 1 inch (25mm) in diameter, cracks over 1/2 inch (12mm) in width, loose knots and excessively resinous areas.
- D Replace damaged deck with new materials.
- E Clean deck surfaces thoroughly prior to installation of eaves protection membrane and underlayment.

2.03 PREPARATION OF SUBSTRATE Clean deck surfaces thoroughly prior to installation of eaves protection membrane and underlayment.

- B At areas that receive eaves protection membrane, fill knotholes and cracks with latex filler.
- C Install crickets on the upslope side of all chimneys in the north, any chimney wider than 24" (610mm), and on all roofs steeper than 6/12.

2.04 PREPARATION Verify that the deck is structurally sound and free of deteriorated decking. All deteriorated decking shall be removed and replaced with new materials.

- B Verify that the existing shingles are dry, sound, clean and smooth. All curled, buckled or loose tabs shall be nailed down or removed.

- C Clean shingle surfaces thoroughly prior to installation of eaves protection membrane and underlayment.

2.05 SUBSTRATE INSTALLATION

- A The structural roof deck shown in the plans shall be smooth and level and free of water or debris before the nail base insulation is installed. Apply vapor retarder if required.

NOTE: GAF recommends that the designer carefully considers the need for a vapor/air retarder.

- B Installation shall follow the GAF written installation instructions.
- C Fasten with ThermaCal® Fasteners to the supporting roof deck shown in the plans.
- D Protect nail base insulation work from exposure to moisture damage and deterioration, primarily by prompt installation of the roofing, sheet metal and waterproofing work.

2.06 INSTALLATION OF UNDERLAYMENTS General:

- 1. Install using methods recommended by GAF®, in accordance with local building codes. When local codes and application instructions are in conflict, the more stringent requirements shall take precedence.

B Eaves:

- 1. Install eaves edge metal flashing tight with fascia boards; lap joints 2 inches (51mm) and seal with plastic cement or high quality urethane sealant; nail at the top of the flange.
- 2. In the north, and on all roofs between 2/12 and 4/12 (low slopes) install GAF® leak barrier up the slope from eaves edge a full 36 inches (914mm) or to at least 24 inches (610 mm) beyond the interior "warm wall". Lap ends 6 inches (152mm) and bond.

C Valleys:

- 1. Install eaves protection membrane at least 36 (914mm) inches wide and centered on the valley. Lap ends 6 inches (152mm) and seal.
- 2. Where valleys are indicated to be "open valleys", install metal flashing over GAF® leak barrier before GAF® roof deck protection is installed; DO NOT nail through the flashing. Secure the flashing by nailing at 18 inches (457 mm) on center just beyond edge of flashing so that nail heads hold down the edge.

D Hips and Ridges:

- 1. Install GAF® leak barrier along entire lengths. If ridge vents are to be installed, position the GAF® leak barrier so that the ridge slots will not be covered.

E Roof Deck Protection:

1. Install one layer of GAF® roof deck protection over the entire area not protected by GAF® leak barrier at the eaves or valley. Install sheets horizontally so water sheds and nail in place.
2. On roofs sloped at more than 4:12, lap horizontal edges at least 2 inches (51mm) and at least 2 inches (51mm) over eaves protection membrane.
3. On roofs sloped between 2:12 and 4:12, lap horizontal edges at least 19 inches (482 mm) and at least 19 inches (482mm) over eaves protection membrane.
4. Lap ends at least 4 inches (102 mm). Stagger end laps of each layer at least 36 inches (914 mm).
5. Lap GAF® roof deck protection over GAF® leak barrier in valley at least 6 inches (152mm).

F Deck-Armor™ Application

1. Deck-Armor shall be installed over a clean, dry deck.
2. Install Weather Watch® or StormGuard® Leak Barrier at eaves, valleys, rakes, skylights, dormers and other vulnerable leak areas.
3. Lay Deck-Armor™ over deck and overlap 3” (76mm) at side laps and 6” (152mm) at end laps.
4. For exposure to rain or snow, overlap 12” (305mm) at end laps.
5. For side and end laps: fasten Deck-Armor 12” (305mm) o.c. (6” (152mm)o.c. for high wind areas).
6. For middle of the roll: fasten Deck-Armor 24” (610mm) o.c. (12” (305mm) o.c. for high wind areas).
7. For exposure to rail or snow, completely cover all side laps, end laps and fasteners with tape.
8. For long term exposure see complete Deck-Armor installation instructions for side lap detail.
9. If roof may be exposed to high winds, apply tape over all fasteners at the center of the roll to prevent rain or snow from entering at the fasteners.
10. For slopes less than 2:12, a double application of Deck-Armor™ is required. See complete Deck-Armor installation instructions for more information.

G Penetrations:

1. Vent pipes: Install a 24 inch (610 mm) square piece of eaves protection membrane lapping over roof deck underlayment; seal tightly to pipe.
2. Vertical walls: Install eaves protection membrane extending at least 6 inches (152mm) up the wall and 12 inches (305mm) on to the roof surface. Lap the membrane over the roof deck underlayment.

3. Skylights and roof hatches: Install eaves protection membrane from under the built-in counterflashing and 12 inches (305mm) on to the roof surface lapping over roof deck underlayment.
4. Chimneys: Install eaves protection membrane around entire chimney extending at least 6 inches (152mm) up the wall and 12 inches (305mm) on to the roof surface. Lap the membrane over the roof deck underlayment.
5. Rake Edges: Install metal edge flashing over eaves protection membrane and roof deck underlayment; set tight to rake boards; lap joints at least 2 inches (51mm) and seal with plastic cement; secure with nails.

2.07 INSTALLATION OF STARTER SHINGLES

A General:

1. Install in accordance with GAF®'s instructions and local building codes. When local codes and application instructions are in conflict, the more stringent requirements shall take precedence.
2. Refer to application instructions for the selected starter strip shingles.

B Placement and Nailing:

1. For maximum wind resistance along rakes & eaves, install any GAF® starter strip containing sealant or cement shingles to underlayment and each other in a 4" (102mm) width of asphalt plastic roof cement.
2. Place starter strip shingles 1/4" – 3/4" (6 – 19mm) over eave and rake edges to provide drip edge.
3. Nail approximately 1-1/2" – 3" (38 – 76mm) above the butt edge of the shingle.
4. Rake starter course should overlap eave edge starter strip at least 3" (76mm).

2.08 INSTALLATION OF SHINGLES

A General:

1. Install in accordance with GAF®'s instructions and local building codes. When local codes and application instructions are in conflict, the more stringent requirements shall take precedence.
2. Minimize breakage of shingles by avoiding dropping bundles on edge, by separating shingles carefully (not by "breaking" over ridge or bundles), and by taking extra precautions in temperatures below 40 degrees F (4 degrees C).
3. Handle carefully in hot weather to avoid scuffing the surfacing, or damaging the shingle edges.

B Placement and Nailing: Secure with 4, 5, or 6 nails per shingle per GAF®'s application instructions or local codes.

2. Placement of nails varies based on the type of shingle specified. Consult the application instructions for the specified shingle for details.

3. Nails must be driven flush with the shingle surface. Do not overdrive or under drive the nails.
 4. Shingle offset varies based on the type of shingle specified. Consult the application instructions for the specified shingle for details.
- C Placement and Nailing: Beginning with the starter strip, trim shingles so that they “nest” within the shingle located beneath it. This procedure will yield a first course that is typically 3 inch (76mm) to 4 inch (102mm) rather than a fully exposed shingle.
2. Laterally, offset the new shingles from the existing keyways, to avoid waves or depressions caused by excessive dips in the roofing materials.
 3. Using the bottom of the tab on existing shingles, align subsequent courses.
 4. *Note: DO NOT install standard sized shingles (5inch exposure) over metric (5 5/8 inch exposure) shingles, as it will overexpose the shingles and reveal the nails. Use standard alignment methods to assure proper shingle placement.
 5. Secure with 4, 5, or 6 nails per shingle per GAF®’s instructions or local codes.
 6. Placement of nails varies based on the type of shingle specified. Consult the application instructions for the specified shingle for details.
 7. Nails must be driven flush with the shingle surface. Do not overdrive or under drive the nails.
 8. Shingle offset varies based on the type of shingle specified. Consult the application instructions for the specified shingle for details.
- D Valleys Install valleys using the "open valley" method:
- a Snap diverging chalk lines on the metal flashing, starting at 3 inches (76mm) each side of top of valley, spreading at 1/8 inch per foot (9mm per meter) to the eaves.
 - b Run shingles to chalk line.
 - c Trim last shingle in each course to match the chalk line; do not trim shingles to less than 12 inches (305mm) wide.
 - d Apply a 2 inch (51mm) wide strip of plastic cement under ends of shingles, sealing them to the metal flashing.
2. Install valleys using the "closed cut valley" method:
- a Run the first course of shingles from the higher roof slope across the valley at least 12 inches (305mm).
 - b Run succeeding courses of shingles from the lower roof slope across the valley at least 12 inches (305mm) and nail not closer than 6 inches (152mm) to center of valley.
 - c Run shingles from the upper roof slope into the valley and trim 2 inches (51mm) from the center line.

3. Install valleys using "woven valley" method: Run shingles from both roof slopes at least 12 inches (305mm) across center of valley, lapping alternate sides in a woven pattern.
 - b DO NOT nail less than 6 inches (152mm) from the valley center line.

E Penetrations

1. All Penetrations are to be flashed according to GAF®, ARMA and NRCA application instructions and construction details.

F Skylights and Roof Hatches

1. Consult the manufacturer of the skylight or roof hatch for specific installation recommendations.
2. Skylights and roof hatches shall be installed with pre-fabricated metal flashings specifically designed for the application of the unit.

2.09 INSTALLATION OF ATTIC VENTILATION

A General

1. Ventilation must meet or exceed current F.H.A., H.U.D. and local code requirements.

B Ridge / Soffit ventilation

1. Install ridge vent along the entire length of ridges:
2. Cut continuous vent slots through the sheathing, stopping 6 inches (152mm) from each end of the ridge.
3. On roofs without ridge board, make a slot 1 inch (25mm) wide, on either side of the peak (2 inch (51mm) overall).
4. On roofs with ridge board, make two slots 1-3/4 inches (44.5mm) wide, one on each side of the peak (3 1/2 inch (89mm) overall).
5. Install ridge vent material along the full length of the ridge, including uncut areas.
6. Butt ends of ridge vent material and join using roofing cement.
7. Install eaves vents in sufficient quantity to equal or exceed the ridge vent area.

C Roof and Gable Louvers:

1. Cut vent hole through sheathing as specified by the manufacturer for the type of vent to be installed.
2. Install a 24 inches (610mm) square of leak barrier, centered around the hole for roof louvers
3. Install according to manufacturers instructions for flashing vent penetrations
4. Install eave vents in sufficient quantity to equal or exceed the exhaust vent area,

D Hip Vents and Rooftop Vents

1. Install according to manufacturer's instructions.
2. Install vents in sufficient quantity to equal or exceed the exhaust vent area, calculated as specified by manufacturer.

2.10 INSTALLATION OF VENTILATION ACCESSORIES

A Chimney Caps

1. Install chimney caps to manufacturer recommendations

2.11 PROTECTION

- A Protect installed products from foot traffic until completion of the project.
- B Any roof areas that are not completed by the end of the workday are to be protected from moisture and contaminants.

END OF SECTION

