



CONTRACT FOR CONSTRUCTION MANAGER AT-RISK PROJECT DELIVERY

PROJECT: [Project Title] ("Project")

**CONSTRUCTION
MANAGER AT-RISK:** [CMAR Legal Business Name] ("CMAR")
[CMAR Point of Contact Name/ Title/ Position]
[Address]
[City, State, ZIP Code]

**ARCHITECT
& ENGINEER:** [A/E Legal Business Name] ("A/E")
[A/E Point of Contact Name/ Title/ Position]
[Address]
[City, State, ZIP Code]

**COUNTY'S DESIGNATED
REPRESENTATIVE:** Williamson County Facilities Department
Attn: Director of Facilities
3101 SE Inner Loop
Georgetown, Texas 78626

THIS CONTRACT FOR CONSTRUCTION MANAGEMENT AT-RISK PROJECT DELIVERY ("Contract") is made and entered into effective as of the latest date of the signatories indicated at the conclusion of this document (the "Effective Date"), by and between **Williamson County**, a political subdivision of the State of Texas ("County") and CMAR.

RECITALS

WHEREAS, County desires to retain a CMAR for the [brief project description] (hereinafter called the "Project");

WHEREAS, County desires a CMAR who will render, diligently and competently in accordance with the highest standards used in the profession, all CMAR services which shall be necessary or advisable for the expeditious, economical, and satisfactory completion of the Project; and

NOW, THEREFORE, County and CMAR, in consideration of the mutual undertakings herein contained, do mutually agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 CONTRACT DOCUMENTS

The Contract Documents consist of this Contract, the Williamson County Uniform General Conditions ("UGCs"), Supplementary or other Conditions, if any, the Drawings, Specifications, Addenda issued prior to the Effective Date of this Contract, other documents listed in this Contract, and Modifications issued after the execution of this Contract, all of which form this Contract and are as fully a part of this Contract as if attached to this Contract. Upon County's acceptance of CMAR's Guaranteed Maximum Price ("GMP") proposal, the Contract Documents will also include the documents described in **Paragraph 2.2.3** and identified in the GMP Amendment and revisions prepared by A/E and furnished by County as described in **Section 2.2**. This Contract represents the entire and integrated agreement between the Parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Contract, this Contract shall govern. To the extent of any direct conflict or inconsistency between any of the Contract Documents, CMAR shall immediately notify County and seek clarification from A/E and County.

1.2 RELATIONSHIP OF THE PARTIES

CMAR accepts the relationship of trust and confidence established by this Contract and shall cooperate with A/E and County and exercise CMAR's skill and judgment in furthering the interests of County; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with County's interests.

1.3 GENERAL CONDITIONS

1.3.1

The term "Contractor" as used herein or in the UGCs shall mean CMAR.

1.3.2

The term "Owner" as used herein or in the UGCs shall mean County.

1.3.3

The term "Architect" as used herein or in the UGCs shall mean A/E.

ARTICLE 2 CMAR'S RESPONSIBILITIES

CMAR's Preconstruction Phase responsibilities are set forth in **Sections 2.1 through 2.2**. CMAR's Construction Phase responsibilities are set forth in **Section 2.3**. County and CMAR may agree, in consultation with A/E, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. CMAR shall designate a representative authorized to act on behalf of CMAR with respect to the Project.

2.1 PRECONSTRUCTION PHASE

2.1.1 CMAR

CMAR shall provide a preliminary evaluation of County's program, design criteria, schedule, and construction budget requirements, each in terms of the other.

2.1.2 Consultation

CMAR shall schedule and conduct meetings with A/E and County to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Frequent meetings are anticipated prior to County's acceptance of the GMP and during the completion of the Contract Documents. CMAR shall advise A/E and County on proposed site use and improvements, selection of materials, and building systems and equipment. CMAR shall also provide recommendations in writing consistent with the Project requirements to A/E and County on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

2.1.3 Preliminary Project Schedule

- .1** When Project requirements described in **Paragraph 3.1.1** have been sufficiently identified, CMAR shall prepare, and periodically update, a preliminary Project schedule for review and approval by A/E and County. CMAR shall coordinate and integrate the preliminary Project schedule with the services and activities of County, A/E, and CMAR. As the design proceeds, the preliminary Project schedule shall be updated by CMAR to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, County's occupancy requirements, showing portions of the Project having occupancy priority, and the proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules

may not be met, CMAR shall make recommendations to A/E and County in writing.

- .2 CMAR shall, at County's request, attend public meetings and hearings concerning the development and schedule of the Project.
- .3 When Project requirements described in **Paragraph 3.1.3** have been sufficiently identified, CMAR shall prepare, and periodically update, a Project schedule for A/E's review and County's acceptance. CMAR shall obtain A/E's approval for the portion of the Project schedule relating to the performance of A/E's services. The Project schedule shall coordinate and integrate CMAR's services, A/E's services, other County consultants' services, and County's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the GMP proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of County.

2.1.4 Phased Construction

CMAR shall provide recommendations in writing with regard to accelerated or fast-track scheduling, procurement, or phased construction. CMAR shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

2.1.5 Preliminary Cost Estimates

- .1 Based on the preliminary design and other design criteria prepared by A/E, CMAR shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for A/E's review and County's approval. If A/E or CMAR suggest alternative materials and systems, CMAR shall provide cost evaluations of those alternative materials and systems in writing.
- .2 As the Drawings, Specifications, and other Contract Documents are developed, CMAR shall prepare and update, at appropriate intervals agreed to by County, CMAR and A/E, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as County and CMAR agree on a GMP for the Work. Such estimates shall be provided for A/E's review and County's approval. CMAR shall inform A/E and County when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action in writing.

2.1.6 Subcontractors and Suppliers

CMAR shall develop bidders' interest in the Project.

2.1.7

CMAR shall prepare, for A/E's review and County's acceptance, a procurement schedule for items that must be ordered well in advance of construction. CMAR shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction as required to meet the Project schedule. If County agrees to procure any items prior to the establishment of the GMP, County shall procure the items on terms and conditions acceptable to CMAR. Upon the establishment of the GMP, County shall assign all contracts for these items, if any, to CMAR and CMAR shall thereafter accept responsibility for them.

2.1.8 Extent of Responsibility

CMAR shall exercise reasonable care in preparing schedules and estimates. CMAR, however, does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. CMAR is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but CMAR shall promptly report to A/E and County any questions or suspected nonconformity discovered by CMAR as a request for information in such form as County or A/E may require.

2.1.9 Notices and Compliance with Laws

CMAR shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

2.1.10 Preconstruction Phase Compensation

CMAR shall be paid for preconstruction services as described in **Article 4**. Payment will be a percentage complete with 100% of lump sum paid prior to moving to GMP.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1

At a time to be mutually agreed upon by County and CMAR and in consultation with A/E, CMAR shall prepare a GMP proposal for County's review and acceptance. The GMP in the proposal shall be the sum of CMAR's estimate of the Cost of the Work, CMAR's Fee, and Owner's Contingency.

2.2.2

To the extent that the Drawings and Specifications are anticipated to require further development by A/E, CMAR shall provide in the GMP for such further development

consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3

CMAR shall include with the GMP proposal a written statement of its basis, which shall include the following:

- .1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of this Contract;
- .2** A list of the clarifications and assumptions made by CMAR in the preparation of the GMP proposal, including assumptions under **Paragraph 2.2.2**, to supplement the information provided by County and contained in the Drawings and Specifications;
- .3** A statement of the proposed GMP, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and CMAR's Fee;
- .4** The anticipated date of Substantial Completion upon which the proposed GMP is based.

2.2.4

In preparing the GMP proposal, CMAR shall include an Owner's Contingency to cover costs considered to be reimbursable as Cost of Work but not included in Change Orders.

2.2.5

CMAR shall meet with A/E and County to review the GMP proposal. In the event that A/E and County discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify CMAR, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

2.2.6

If County notifies CMAR that County has accepted the GMP proposal in writing before the date specified in the GMP proposal, the GMP proposal shall be deemed effective without further acceptance from CMAR. Following acceptance of a GMP, County and CMAR shall execute the GMP Proposal amending this Contract. The GMP Proposal shall set forth the agreed upon GMP with the information and assumptions upon which it is based.

2.2.7

CMAR shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase unless County provides prior written authorization for such costs.

2.2.8

County shall authorize A/E to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the GMP Proposal. County shall cause A/E to promptly furnish those revised Drawings and Specifications to CMAR as they are revised. CMAR shall notify A/E and County of any inconsistencies between the GMP Proposal and the revised Drawings and Specifications.

2.3 CONSTRUCTION PHASE

2.3.1 General

- .1** For purposes of UGC 8.1.2, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.
- .2** Following County's acceptance of CMAR's GMP proposal, the Construction Phase shall commence upon County's issuance of a Notice to Proceed for the Construction Phase.
- .3** CMAR shall fully execute the Work described in the Contract Documents and reasonably inferable to provide the results intended by the Contract Documents except to the extent specifically indicated in the Contract Documents to be the responsibility of others. CMAR shall render, diligently and competently in accordance with the highest standards used in the profession, all of CMAR's services which shall be necessary or advisable for the expeditious, economical, and satisfactory completion of the Project.
- .4** CMAR shall furnish only skilled and properly trained staff for the performance of the Work. Key members of CMAR's staff shall not be changed without the written consent of County, unless such person becomes unable to perform any required duties due to death, disability, or termination of employment with CMAR. During the performance of the Work, CMAR shall keep a competent superintendent at the Project site while active construction is underway, fully authorized to act on behalf of CMAR, unless such requirement is expressly waived by County. Similarly, CMAR shall keep a competent Project Manager on-call and readily available to while active construction is underway, fully authorized to act on behalf of CMAR, unless such requirement is expressly waived by County.

2.3.2. Administration

- .1 Those portions of the Work that CMAR does not customarily perform with CMAR's own personnel shall be performed under subcontracts or by other appropriate contracts with CMAR in accordance with the Contract Documents including, without limitation, the requirements of **Texas Government Code, §2269.255-256**. County may designate specific persons from whom, or entities from which, CMAR shall obtain bids. CMAR shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to County as required by the Contract Documents.
- .2 If the GMP has been established and when a specific bidder (1) is recommended to County by CMAR, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to established criteria and the requirements of the Contract Documents without reservations or exceptions, but County requires that another bid be accepted, then CMAR may request a Change Order in accordance with **UGC 5.2.1.1**.
- .3 Subcontracts or other contracts shall conform to the applicable payment provisions of this Contract, the UGCs, the laws of the State of Texas including, without limitation, the Texas Local Government Code, and shall not be awarded on the basis of cost plus a fee without the prior consent of County.
- .4 If CMAR recommends a specific bidder that may be considered a "related party" according to **Section 6.8**, then CMAR shall promptly notify County in writing of such relationship and notify County of the specific nature of the contemplated transaction, according to **Paragraph 6.8.2**.
- .5 CMAR shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. CMAR shall prepare and promptly distribute minutes to A/E and County.
- .6 Upon the execution of the GMP Proposal, CMAR shall prepare and submit to A/E and County a construction schedule for the Work and submittal schedule in accordance with the Contract Documents.
- .7 CMAR shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by County, CMAR shall submit written progress reports to A/E and County, showing percentages of completion and other information requested or required by County. CMAR shall also keep, and make available to A/E and County, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by County.

- .8 CMAR shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. CMAR shall identify variances between actual and estimated costs and report the variances to A/E and County and shall provide this information in its monthly reports to A/E and County, in accordance with Paragraph 2.3.2.7.

ARTICLE 3 COUNTY'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES REQUIRED OF COUNTY

3.1.1

County shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth County's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

3.1.2

County shall establish and periodically update County's budget for the Project, including (1) the budget for the Cost of the Work, (2) County's other costs, and (3) reasonable contingencies related to all of these costs. If County significantly increases or decreases County's budget for the Cost of the Work, County shall notify CMAR and A/E.

3.1.3

County will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys, or other special consultants to develop such additional information as may be necessary for the design or construction of the Project. County shall arrange and pay for materials, structural, mechanical, chemical, and other laboratory tests as required by the Contract Documents.

3.1.4

During the Construction Phase, County shall furnish information or services required of County by the Contract Documents with reasonable promptness. County shall also furnish any other information or services under County's control and relevant to CMAR's performance of the Work with reasonable promptness after receiving CMAR's written request for such information or services.

3.2 COUNTY'S DESIGNATED REPRESENTATIVE

County shall identify a representative authorized to act on behalf of County with respect to the Project. County's representative shall render decisions promptly and furnish information

expeditiously, so as to avoid unreasonable delay in the services or Work of CMAR. The term "Owner" means County or County's Designated Representative.

3.2.1 Legal Requirements

County shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet County's needs and interests.

3.3 A/E

County shall retain an A/E to provide services, duties and responsibilities as described in the Professional Services Agreement between A/E and County.

ARTICLE 4 COMPENSATION FOR PRECONSTRUCTION PHASE SERVICES

4.1 COMPENSATION

4.1.1

County shall pay CMAR the lump sum amount of _____
_____ dollars (\$)) for preconstruction services.

4.2 PAYMENTS

4.2.1

Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

4.2.2

County shall make payments in the manner and within the time provided in the Contract Documents and in accordance with **Texas Government Code, Chapter 2252**.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

5.1

For CMAR's performance of the Work as described in **Section 2.3**, County shall pay CMAR the Contract Sum in current funds for CMAR's performance of this Contract. The Contract Sum is the Cost of the Work as defined in **Paragraph 6.1.1** plus CMAR's Fee.

5.1.1 CMAR's Fee:

CMAR's Fee shall be a fixed sum of _____ dollars
_____ (\$ _____), based on the initial proposed construction budget stated in the Request for Proposals (RFP) and include the following

.1 CMAR's fees for construction phase services other than for self-performed construction work;

.2 CMAR Overhead and Profit;

.3 Rental charges and repair assessments for temporary facilities and equipment, and costs of transportation, installation, minor repairs, dismantling, and removal;

.4 Office Expenses

Courier service, postage and expressage.

.5 Temporary Utilities

Mobilization and demobilization, electric service (including field office trailers), water service (including field office trailers), sanitary holding tank and portable toilets, gas, heat and ventilation, construction facilities and services, construction fencing, storage trailers, dewatering (not including subsurface water intrusion), weatherization, winterization, fire protection, IT, site lighting, construction roads, temporary construction parking, clean-up, dumpsters, signage, safety, audit, and record storage.

.6 Taxes, Insurance, and Fees

Worker's compensation insurance, builder's risk insurance, insurance deductibles, public owner's protective insurance, liability and property insurance for the project, automobile insurance, performance and payment bonds, legal fees, preconstruction phase services fee, construction phase services fee, overhead and profit.

.7 Construction Management Labor

Payroll tax fringes, construction management labor (except self-performed work), badging, drug testing, safety officer, QA/QC manager, senior project manager, project manager, project engineer, senior superintendent, superintendent, vehicles and fuel for supervisory personnel.

.8 General Construction Debris Removal

Costs of removal of general construction debris from the site of the Work and its proper and legal disposal.

.9 Construction Survey Layout

Layout crew and licensed survey layout.

.10 Project Close-out

Close-out documents, as-built drawings, product warranties, commissioning assistance, and turnover management.

5.1.2 Methods of adjustment of CMAR's Fee for changes in the Work:

.1 CMAR Fee with No Change in Contract Time

For changes in the Work that do not require a change in Contract Time, CMAR's Fee shall be equal to _____ percent (_____ %) of the Cost of the Work directly attributable to any such change that is incurred or paid by CMAR during performance of the Work. This shall be in addition to the fee stated in Paragraph 5.1.1.

OR

.2 CMAR Fee with Changes in Contract Time

For changes in the Work that also require a change in Contract Time, CMAR's Fee, including extended General Conditions, shall be equal to _____ dollars (\$) _____ per day, directly attributable to any such change that is incurred or paid by CMAR during performance of the Work. This shall be in addition to the fee stated in Paragraph 5.1.1.

.2 CMAR Fee with Changes in Contract Time

Weather days are considered changes in Contract Time without change in Work; therefore, neither condition applies.

5.1.3

A Subcontractor's overhead and profit for increases in the cost of its portion of the Work shall not exceed **ten percent (10%)**.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1

CMAR guarantees that the Contract Sum shall not exceed the GMP set forth in the GMP Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the GMP, CMAR shall bear such costs in excess of the GMP without reimbursement or additional compensation from County. The GMP is subject to adjustment for (1) scope changes, as described in **Section 5.3**, and (2) Change Orders, authorized in accordance with the requirements of the Contract Documents. The difference, as of the date of final completion, between (1) the total aggregate sum of the Cost of the Work plus CMAR's Fee and (2) the GMP upon final completion of the Work (such difference referred to as the "Savings") shall inure to the benefit of County. Except for CMAR's Fee stated above, CMAR shall not be entitled to any compensation from the Savings, unused Owner's Contingency, or otherwise.

5.2.2

The GMP is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

5.2.3

Although the Contract Sum is based upon the Cost of the Work plus the CMAR's Fee subject to a GMP, as may be adjusted, County agrees to make progress payments to CMAR on a percentage of completion according to a Schedule of Values provided in Article 7.

5.3 CHANGES IN THE WORK

5.3.1

County may, without invalidating this Contract, order changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions. County shall issue such changes in writing. A/E may make minor changes in the Work as provided in UGC 7.4. CMAR shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

5.3.2

Adjustments to the GMP on account of changes in the Work subsequent to the execution of the GMP Amendment may be determined by any of the methods listed in UGC 7.3.3.

5.3.3

In calculating adjustments to subcontracts (except those awarded with County's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in UGC 7.3.3.3 and the term "costs" as used in UGC 7.3.7 shall have the meanings assigned to them in the UGCs and shall not be modified by Sections 5.1 through 5.2 and Sections 6.1 through 6.5. Adjustments to subcontracts awarded with County's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of this Contract, unless County has furnished CMAR with prior written approval of the form and substance of a subcontract, in which case such adjustment shall be calculated in accordance with the terms and conditions of that subcontract.

5.3.4

In calculating adjustments to the GMP, the terms "cost" and "costs" as used in the above-referenced provisions of UGCs shall mean the Cost of the Work as defined in Sections 6.1 through 6.5 and the term "fee" shall mean the CMAR's Fee as defined in Section 5.1.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

6.1.1

The term Cost of the Work shall mean costs necessarily incurred by CMAR in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of County. The Cost of the Work shall include only the items set forth in **Sections 6.1 through 6.5**.

6.1.2

IT IS THE LEGAL DUTY OF COUNTY'S AUDITOR (THE WILLIAMSON COUNTY AUDITOR) TO EXAMINE AND EITHER APPROVE OR NOT APPROVE THE LAWFULNESS OF ALL CLAIMS, BILLS, AND ACCOUNTS AGAINST COUNTY BEFORE SUCH CLAIM, BILL, OR ACCOUNT MAY BE SUBMITTED TO COUNTY'S GOVERNING BODY (THE WILLIAMSON COUNTY COMMISSIONERS COURT) FOR APPROVAL OF PAYMENT. WHERE ANY COST IS SUBJECT TO COUNTY'S PRIOR APPROVAL, CMAR SHALL FIRST OBTAIN THIS APPROVAL FROM COUNTY'S AUDITOR PRIOR TO INCURRING THE COST. THE PARTIES SHALL ENDEAVOR TO IDENTIFY ANY SUCH COSTS PRIOR TO EXECUTING GMP AMENDMENT.

6.2 SUBCONTRACT COSTS

Amounts properly billed by Subcontractors for Work which has been approved by CMAR and County and which otherwise satisfies all requirements of the subcontracts and the Contract Documents. Except for preservation of CMAR's right to make receipt of payment from County a condition precedent to CMAR's obligation to pay subcontractors, vendors, and other contractees of CMAR, subcontractors, and other contracts otherwise shall conform to all applicable payment provisions of Texas law and this Agreement, and shall not be awarded on the basis of cost plus fee without County's written consent.

6.3 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

6.3.1

Costs of transportation, onsite storage, installation, maintenance, dismantling and removal of materials, supplies, machinery, and equipment incorporated or to be incorporated in the completed construction.

6.3.2

Costs of materials, described in the preceding **Paragraph 6.3.1**, in excess of those actually installed to all for reasonable waste and spoilage. Unused excess materials, if any, shall become County's property at the completion of the Work or, at County's option, shall be sold by CMAR. Any amounts realized from such sales shall be credited to County as a deduction from the Cost of the Work.

6.4 COSTS OF OTHER MATERIALS AND RELATED ITEMS

6.4.1

Costs of large-scale removal of debris from the site of the Work and its proper and legal disposal for site work or demolition that exceeds general construction debris removal as

stated in the General Conditions.

6.5 MISCELLANEOUS COSTS

6.5.1

Self-insurance for amounts of the coverages required by the Contract Documents, with County's prior approval.

6.5.2

Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents; the costs of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgements against CMAR resulting from such suits or claims and payments; and payments of settlements made with County's consent. However, such costs of legal defenses, judgements, and settlements shall not be included in the calculation of CMAR's Fee or subject to the GMP. If such royalties, fees, and costs are excluded by the last sentence in **UGC 3.17** or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

6.5.3

Deposits lost for causes other than CMAR's negligence or failure to fulfill a specific responsibility in the Contract Documents.

6.6 OTHER COSTS AND EMERGENCIES

6.6.1

Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by County.

6.6.2

Costs incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property, as provided in **UGC 10.4**.

6.6.3

Costs of repairing or correcting damaged or nonconforming Work executed by CMAR, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of CMAR and only to the extent that the cost of repair or correction is not recovered by CMAR from insurance, sureties, Subcontractors, suppliers, or others.

6.7 COSTS NOT TO BE REIMBURSED

The Cost of the Work shall not include the items listed below:

6.7.1

Salaries and other compensation of CMAR's personnel stationed at CMAR's principal office or offices other than the site office, except as may be provided in **Article 11**;

6.7.2

Expenses of CMAR's principal office and offices other than the site office;

6.7.3

Overhead and general expenses, except as may be expressly included in **Sections 6.1 through 6.5**;

6.7.4

CMAR's capital expenses, including interest on CMAR's capital employed for the Work;

6.7.5

Costs due to the negligence or failure of CMAR, Subcontractors and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of this Contract;

6.7.6

Any cost not specifically and expressly described in **Sections 6.1 through 6.5**;

6.7.7

Costs, other than costs included in Change Orders approved by County, that would cause the GMP to be exceeded;

6.7.8

Costs for services incurred during the Preconstruction Phase;

6.7.9

Any expenses or costs that are not allowed or incurred pursuant to the Williamson County Vendor Reimbursement Policy, which is incorporated herein by reference and of which CMAR acknowledges prior receipt of said policy; and

6.7.10

Any expenses or costs that are included as a part of the CMAR's Fee, as defined under **Paragraph 5.1.1**.

6.8 DISCOUNTS, REBATES, AND REFUNDS

6.8.1

Cash discounts obtained on payments made by CMAR shall accrue to County if (1) before making the payment, CMAR included them in an Application for Payment and received

payment from County, or (2) County has deposited funds with CMAR with which to make payments; otherwise, cash discounts shall accrue to CMAR. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to County, and CMAR shall make provisions so that they can be obtained.

6.8.2

Amounts that accrue to County in accordance with the provisions of **Paragraph 6.6.1** shall be credited to County as a deduction from the Cost of the Work.

6.9 RELATED PARTY TRANSACTIONS

6.9.1

For purposes of this **Section 6.7**, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with CMAR; any entity in which any stockholder in, or management employee of, CMAR owns any interest in excess of **ten percent (10%)** in the aggregate; or any person or entity which has the right to control the business or affairs of CMAR. The term "related party" includes any member of the immediate family of any person identified above.

6.9.2

If any of the costs to be reimbursed arise from a transaction between CMAR and a related party, CMAR shall notify County of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If County, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and CMAR shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of **Paragraphs 2.3.2.1 through 2.3.2.3**. If County fails to authorize the transaction, CMAR shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of **Paragraphs 2.3.2.1 through 2.3.2.3**.

6.10 ACCOUNTING RECORDS

CMAR shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to County. County and County's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, CMAR's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. CMAR shall preserve these records for a period of **three (3) years** after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

7.1 PROGRESS PAYMENTS

7.1.1

Based upon Applications for Payment submitted to A/E by CMAR and Certificates for Payment issued by A/E, County shall make progress payments on account of the Contract Sum to CMAR as provided below and elsewhere in the Contract Documents.

7.1.2

The period covered by each Application for Payment shall be **one (1) calendar month** ending on the last day of the month.

7.1.3 Prompt Payment Policy

In accordance with **Chapter 2251, V.T.C.A., Texas Government Code**, payment to CMAR will be made within **thirty (30) days** of the day on which the performance of services was complete, or within **thirty (30) days** of the day on which the County Auditor receives a correct invoice for services, whichever is later. CMAR may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

- .1** There is a bona fide dispute between County and CMAR concerning the supplies, materials, or equipment delivered or the services performed that causes the payment to be late; or
- .2** There is a bona fide dispute between CMAR and a subcontractor/ subconsultant or between a subcontractor/ subconsultant and its supplier concerning supplies, materials, or equipment delivered or the Basic Services performed which causes the payment to be late; or
- .3** The invoice is not submitted to Williamson County in strict accordance with instructions, if any, on the purchase order, or this Agreement or other such contractual agreement.

The County Auditor shall document to CMAR the issues related to disputed invoices within **ten (10) days** of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of **Texas Government Code, Chapter 2251, V.T.C.A.**

7.1.4

With each Application for Payment, CMAR shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by County or A/E to demonstrate that cash disbursements already made by CMAR on account of the Cost of the Work equal or exceed progress payments already received by CMAR, less that portion of those payments attributable to CMAR's Fee, plus payrolls for the period covered by the present Application for Payment. In addition to other required items, if requested by County, each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to County and in compliance with applicable statutes of the State of Texas:

- .1 With each Application for Payment: a current Sworn Statement from CMAR setting forth all Subcontractors and all material suppliers with whom CMAR has subcontracted, the amount of each such subcontract, the amount requested for any Subcontractor or material supplier in the Application for Payment, and the amount to be paid to CMAR from such progress payment as required by **Texas Property Code, §53.085 (Bills-Paid Affidavit)**;
- .2 With each Application for Payment: a duly executed **Conditional Waiver and Release on Progress Payment** from CMAR and Subcontractors establishing receipt of payment or satisfaction of the payment requested by CMAR in the current Application for Payment as required by **Texas Property Code, §53.284**.
- .3 Commencing with the second Application for Payment submitted by CMAR, a duly executed **Unconditional Waiver and Release on Progress Payment** from CMAR and all Subcontractors, material suppliers and, where appropriate, lower tier subcontractors that have billed more than **five thousand dollars (\$5,000)** on a single application of payment, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by CMAR of the current Application for Payment;
- .4 With the Final Application for Payment: CMAR shall submit a **Conditional Waiver and Release on Final Payment** as required by **Texas Property Code, §53.284**. Upon receipt of final payment, CMAR shall submit an **Unconditional Waiver and Release on Final Payment** as required by **Texas Property Code, §53.284**; and
- .5 Such other information, documentation, and materials as County, or the title insurer may require in order to ensure that County's property is free of lien claims. Such other documents may include, without limitation, original copies of lien releases suitable for filing with the Williamson County Clerk in the county where the Project is located.

7.1.5

Each Application for Payment shall be based on the most recent schedule of values submitted by CMAR in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that CMAR's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as County or A/E may require. This schedule, unless objected to by County or A/E, shall be used as a basis for reviewing CMAR's Applications for Payment.

7.1.6

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. The percentage of completion shall be the percentage of that portion of the Work which CMAR has actually been completed.

7.1.7

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 GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values. Pending final determination of cost to County of changes in the Work, amounts not in dispute shall be included as provided in **UGC 7.3.9**;
- .2** Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by County, suitably stored off the site at a location agreed upon in writing;
- .3** Add CMAR's Fee, less retainage of **five percent (5%)**. CMAR's Fee shall be computed upon the Cost of the Work at the rate stated in **Section 5.1** or, if CMAR's Fee is stated as a fixed sum in **that Section**, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4** Subtract retainage of **five percent (5%)** from that portion of the Work that CMAR self-performs;
- .5** Subtract the aggregate of previous payments made by County;

- .6 Subtract the shortfall, if any, indicated by CMAR in the documentation required by **Paragraph 7.1.4** to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by County's auditors in such documentation; and
- .7 Subtract amounts, if any, for which County or A/E has withheld or nullified a Certificate for Payment as provided in **UGC 9.5**.

7.1.8

Except with County's prior approval, payments to Subcontractors shall be subject to retention of not less than **five percent (5%)**. County and CMAR shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

7.1.9

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

7.1.10

In taking action on CMAR's Applications for Payment, A/E and County shall be entitled to rely on the accuracy and completeness of the information furnished by CMAR. Review or approval of CMAR's Applications for Payment by County or A/E shall not constitute a representation that either County or A/E has made a detailed examination, audit or arithmetic verification of the documentation submitted by CMAR; made exhaustive or continuous inspections of the Work; or whether CMAR has properly paid its Subcontractors, suppliers, laborers, equipment providers or others how provided labor or materials to the Project. Such examinations, audits and verifications, if required by County, the Contract Documents, or applicable law, will be performed by County's auditors acting in the sole interest of County.

7.2 FINAL PAYMENT

7.2.1

Final payment shall be made by County to CMAR when

- .1 CMAR has fully performed this Contract except for CMAR's responsibility to correct Work as provided in **UGC 12.2.2**, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 CMAR has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by A/E; and

.4 the requirements of **UGC 9.10** have been satisfied.

7.2.2

County's final payment to CMAR shall be made no later than **thirty (30) business days** after the issuance of A/E's final Certificate for Payment, or as otherwise provided in the Contract Documents or by applicable law.

7.2.3

County's auditors will review and report in writing on CMAR's final accounting within **thirty (30) business days** after delivery of the final accounting to County by CMAR. Based upon such Cost of the Work as County's auditors report to be substantiated by CMAR's final accounting, and provided the other conditions of **Paragraph 7.2.1** have been met, A/E will, within **seven (7) business days** after receipt of the written report of County's auditors, either issue to County a final Certificate for Payment with a copy to CMAR, or notify CMAR and County in writing of A/E's reasons for withholding a certificate as provided in **UGC 9.5.1**. The time periods stated in this **Section 7.2** supersede those stated in **UGC 9.4.1**. A/E is not responsible for verifying the accuracy of CMAR's final accounting.

7.2.4

If County's auditors report the Cost of the Work as substantiated by CMAR's final accounting to be less than claimed by CMAR, CMAR shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to **UGC 15.2**. A request for mediation shall be made by CMAR within **thirty (30) business days** after CMAR's receipt of a copy of A/E's final Certificate for Payment. Failure to request mediation within this **thirty (30)-business day** period shall result in the substantiated amount reported by County's auditors becoming binding on CMAR. Pending a final resolution of the disputed amount, County shall pay CMAR the amount certified in A/E's final Certificate for Payment.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, CMAR and County shall purchase and maintain insurance, and bonds as set forth below, in the Contract Documents, or as required by law.

8.1

Upon execution of this Contract, CMAR shall provide a security bond in the amount of **five percent (5%)** of County's budget, as specified in the Request for Qualifications/Request for Proposals. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds.

8.2

Upon acceptance by County of the GMP Proposal, CMAR shall provide performance and payment bonds on forms acceptable to County. The penal sum of the payment and performance bonds shall be equal to the GMP. If construction is phased or staged with different GMPs established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all GMPs in effect.

8.3

Prior to final payment, CMAR shall provide County with a Warranty Bond in the sum of **ten percent (10%)** of the GMP for Construction Manager At-Risk Contracts for **twelve (12) months** from Substantial Completion of the Work. The form of bond shall be approved by County.

8.4

CMAR shall not commence Work under this Contract until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by County. County's review of the insurance shall not relieve nor decrease the liability of CMAR. Prior to commencing any Work under this Contract, CMAR shall provide evidence of the following insurance coverages:

8.4.1 Pre-Construction Phase:

Employer's Liability, Workers' Compensation, Comprehensive General Liability and Comprehensive Automobile Liability in the amounts as set forth in the Request for Qualifications/Request for Proposal, attached as an Exhibit, in the UGCs, or as otherwise specified or required by the County;

8.4.2 Construction Phase:

In addition to the coverages required during the Pre-Construction Phase, Builder's Risk in the amounts as set forth in the Request for Qualifications/Request for Proposal, attached as an Exhibit, in the UGCs, or as otherwise specified or required by the County;

8.4.3

Prior to commencing any construction work, CMAR shall provide evidence of Builder's Risk coverage as set forth in the Request for Qualifications/Request for Proposal, attached as an Exhibit, in the UGCs, or as otherwise specified or required by the County, which coverage shall remain in full force and effect throughout the term of the Project and shall be increased as necessary for each separate bid package, phase, change order, or Stage of construction prior to the commencement of construction for that package, phase, or Stage; and

8.4.4

CMAR shall include required insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their base bids/proposals.

8.5

CMAR shall not cause or allow any of its required insurance to be canceled, nor permit any insurance to lapse during the term of this Contract or as required in this Contract. If CMAR fails to obtain, maintain, or renew any insurance required by this Contract, County may obtain insurance coverage directly and recover the cost of that insurance from CMAR.

8.6

County reserves the right to review the insurance requirements set forth in this **Article 8** during the effective period of this Contract and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by County based upon changes in statutory law, court decisions, or the claims history of the industry as well as CMAR.

8.7

County shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by CMAR failing to purchase and maintain the insurance required by this Contract Documents shall be paid by CMAR.

8.8

The cost of premiums for any additional insurance coverage desired by CMAR in excess of that required by this Contract or the Contract Documents shall be borne solely by CMAR out of its fees and not included in the GMP Proposal as a Direct Construction Cost.

ARTICLE 9 PROJECT TEAM

County's Designated Representative for purposes of this Contract is as follows:

**Williamson County Facilities Department
Attn: Director of Facilities
3101 SE Inner Loop
Georgetown, Texas 78626**

County shall have the right, from time to time, to change the County's Designated Representative by giving CMAR written notice thereof. With respect to any action, decision, or determination which is to be taken or made by County under this Contract, the County's Designated Representative may take such action or make such decision or determination or shall notify CMAR in writing of an individual responsible for, and capable of, taking such action, decision, or determination, and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by County's Designated Representative on behalf of County shall be done in his or her reasonable business judgment

unless express standards or parameters therefor are included in this Contract, in which case, actions taken by County's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision, or determination hereunder by County's Designated Representative shall be binding on County; *provided, however*, County's Designated Representative shall not have any right to modify, amend, or terminate this Contract or executed Contract Amendment. County's Designated Representative shall not have any authority to execute a Contract Amendment unless otherwise granted such authority by the Williamson County Commissioners Court.

CMAR's Designated Representative for purposes of this Contract is as follows:

[CMAR Legal Business Name]
[CMAR Point of Contact Name/ Title/ Position]
[Address]
[City, State, ZIP Code]

CMAR shall have the right, from time to time, to change CMAR's Designated Representative by giving County written notice thereof. With respect to any action, decision, or determination which is to be taken or made by CMAR under this Contract, CMAR's Designated Representative may take such action or make such decision or determination, or shall notify County in writing of an individual responsible for and capable of taking such action, decision, or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions, or determinations by CMAR's Designated Representative on behalf of CMAR shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by CMAR's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision, or determination hereunder by CMAR's Designated Representative shall be binding on CMAR. CMAR's Designated Representative shall have the right to modify, amend, and execute Contract Amendments on behalf of CMAR.

ARTICLE 10 NOTICE

Any notice required to be given under the provisions of this Contract shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or CMAR at the following addresses. If mailed, any notice or communication shall be deemed to be received **three (3) days** after the date of deposit in the United States Mail. Unless otherwise provided in this Contract, all notices shall be delivered to the following addresses:

County: Williamson County Judge
710 Main Street, Suite 101
Georgetown, Texas 78626

With copy to: Williamson County Facilities Department
Attn: Director of Facilities
3101 SE Inner Loop
Georgetown, Texas 78626

and to: Office of General Counsel
Williamson County
710 Main Street, Suite 102
Georgetown, Texas 78626

CMAR: [CMAR Legal Business Name]
[Address]
[City, State, ZIP Code]

Attention: [CMAR Point of Contact Name]
[Title / Position]

Either party may designate a different address by giving the other party **ten (10) days** written notice.

ARTICLE 11 DISPUTE RESOLUTION

11.1

Any Claim or Dispute between County and CMAR shall be resolved in accordance with the provisions set forth in this **Article 11 and the UGCs**.

11.2

Except as otherwise specifically set forth herein, County and CMAR shall work together in good faith to resolve any controversy, dispute, or claim between them which arises out of, or relates to, this Contract.

ARTICLE 12 TERMINATION OR SUSPENSION

12.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

12.1.1

Prior to the execution of the GMP Proposal, County may terminate this Contract upon not less than **seven (7) calendar days** written notice to CMAR for County's convenience and without cause, and CMAR may terminate this Contract, upon not less than **seven (7) calendar days** written notice to County, for the reasons set forth in the UGCs.

12.1.2

In the event of termination of this Contract pursuant to **Paragraph 12.1.1**, CMAR shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall CMAR's compensation under this **Article 12** exceed the compensation set forth in **Section 4.1**.

12.1.3

If County terminates this Contract pursuant to **Paragraph 12.1.1** after the commencement of the Construction Phase but prior to the execution of the GMP Proposal, County shall pay to CMAR an amount calculated as follows, which amount shall be in addition to any compensation paid to CMAR under **Paragraph 12.1.2**:

- .1** Take the Cost of the Work incurred by CMAR to the date of termination;
- .2** Add CMAR's Fee computed upon the Cost of the Work to the date of termination at the rate stated in **Section 5.1** or, if CMAR's Fee is stated as a fixed sum in **that Section**, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3** Subtract the aggregate of previous payments made by County for Construction Phase services.

12.1.4

County shall pay CMAR fair compensation, either by purchase or rental at the election of County, for any equipment owned by CMAR which County elects to retain and which is not otherwise included in the Cost of the Work under **Paragraph 12.1.3.1**. To the extent that County elects to take legal assignment of subcontracts and purchase orders (including rental agreements), CMAR shall, as a condition of receiving the payments referred to in this **Section 12.1**, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of CMAR, as County may require for the purpose of fully vesting in County the rights and benefits of CMAR under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by CMAR will contain provisions allowing for assignment to County as described above.

12.1.5

If County accepts assignment of subcontracts, purchase orders or rental agreements as

described above, County will reimburse or indemnify CMAR for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if this Contract had not been terminated. If County chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this Contract not been terminated, CMAR will terminate the subcontract, purchase order or rental agreement and County will pay CMAR the costs necessarily incurred by CMAR because of such termination.

12.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Following execution of the GMP Amendment and subject to the provisions of this **Section 10.2**, this Contract may be terminated as provided in the UGCs.

12.2.1

If County terminates this Contract after execution of the Guaranteed Price Amendment, the amount payable to CMAR pursuant to **UGC 14.2 and 14.4** shall not exceed the amount CMAR would otherwise have received pursuant to **Paragraphs 12.1.2 through 12.1.3**.

12.2.2

If CMAR terminates this Contract after execution of the GMP Amendment, the amount payable to CMAR under **UGC 14.1.3** shall not exceed the amount CMAR would otherwise have received under **Paragraphs 12.1.2 through 12.1.3**, except that CMAR's Fee shall be calculated as if the Work had been fully completed by CMAR, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

12.3 SUSPENSION

The Work may be suspended by County as provided in **UGC 14.3**. In such case, the GMP and Contract Time shall be increased as provided in **UGC 14.3.2**, except that the term "profit" shall be understood to mean CMAR's Fee as described in **Section 5.1**.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 MEANING OF TERMS

Terms in this Contract shall have the same meaning as those in the UGCs.

13.2 NO WAIVER OF IMMUNITY

Nothing herein shall be construed as a waiver of sovereign immunity by Williamson County.

13.3 GOVERNING LAW

This Contract and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions.

Williamson County shall be the sole place of venue for any legal action arising from or related to this Contract or the Project in which County is a party.

13.4 ASSIGNMENT

County and CMAR, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Contract. CMAR shall not assign this Contract without the written consent of County. If CMAR attempts to make an assignment without County's consent, CMAR shall nevertheless remain legally responsible for all obligations under this Contract.

13.5 OTHER PROVISIONS

13.5.1

CMAR represents and warrants the following to County (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to County to execute this Contract, which representations and warranties shall survive the execution and delivery of this Contract, any termination of this Contract, and the final completion of the Work:

- .1 that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 that it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- .3 that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the project;
- .4 that its execution of this Contract and its performance thereof is within its duly authorized powers;
- .5 that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents; and
- .6 that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor.

13.5.2 LIQUIDATED DAMAGES

CMAR acknowledges and recognizes that County is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time and that County has entered into, or will enter into, binding agreements upon CMAR's achieving Substantial Completion of the Work within the Contract Time. CMAR further acknowledges and agrees that if CMAR fails to complete substantially or cause the Substantial Completion of any Phase of the Work within the Contract Time, County will sustain extensive damages and serious loss as a result of such failure. In the cases of missed scheduled events, which incur exact losses of revenue and exact expenses for fees and other cancellation costs, CMAR shall be responsible for the exact amount of damages sustained by County. In other cases, the exact amount of such damages will be extremely difficult to ascertain. Therefore, County and CMAR agree as set forth below:

- .1 Subject to the other terms and conditions herein, if Substantial Completion is not achieved by the date specified above or by such date to which the Contract Time may be extended, the Contract Sum shall be reduced by Dollars (\$ 500,750, 1,000) per calendar day as liquidated damages and not as a penalty, until the date of Substantial Completion. Force majeure shall apply relative to both rain/snow delays (acts of nature) and/or supply delays over which CMAR has no control, and such force majeure delays shall not be subject to such reduction of the Contract Sum.
- .2 County may deduct liquidated damages described herein from any unpaid amounts then or thereafter due CMAR under this Contract. Any liquidated damages not so deducted from any unpaid amounts due CMAR shall be payable by CMAR to County at the demand of County, together with the interest from the date of the demand at a rate equal to the prime interest rate as published by the Wall Street Journal on the **first (1st) business day** after such amounts are demanded.
- .3 Notwithstanding anything to the contrary in this Contract, if County is unable to recover any portion of liquidated damages in accordance with the terms and conditions herein because it is found to be unenforceable or invalid as a penalty or otherwise, then, County shall be entitled to recover from CMAR all of County's actual damages in connection with the failure by CMAR to achieve Substantial Completion of the Work within the Contract Time, including, without limitation, direct, indirect, or consequential damages.

ARTICLE 14

SCOPE OF CONTRACT AND CONTRACT DOCUMENTS

14.1

This Contract represents the entire and integrated agreement between County and CMAR and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by both County and CMAR.

14.2

The following documents comprise the Contract Documents:

1. This Contract between County and CMAR;
2. Exhibit A – Guaranteed Maximum Price Proposal, if executed by County
3. Exhibit B – Minimum Insurance Coverages and Minimum Coverage Amounts
4. Exhibit C – Williamson County Vendor Reimbursement Policy
5. Exhibit D – Williamson County Uniform General Conditions

14.3

In the event of a dispute or conflict relating to the terms and conditions of the Contract Documents, applicable documents will be referred to for the purpose of clarification, conflict resolution or for additional detail in the following order of precedence:

1. Contract between County and CMAR;
2. Guaranteed Maximum Price Proposal, if executed by County;
3. Special Conditions or Supplementary Conditions (if any);
4. Williamson County Uniform General Conditions; and
5. all Addenda issued prior to the Effective Date of the Contract between County and CMAR.

ARTICLE 15

SIGNATORY WARRANTY

The undersigned signatory for CMAR hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of the Company. The above-stated representations and warranties are made for the purpose of inducing County to enter into this Contract.

IN WITNESS WHEREOF, County has caused this Contract to be signed in its name by its duly authorized County Judge, thereby binding the parties hereto, their successors, assigns, and representatives for the faithful and full performance of the terms and provisions hereof. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, TERMINATE, OR MODIFY THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

CMAR:
[CMAR Legal Business Name]

By: _____
Signature

Printed Name

Title

Date Signed: _____

WILLIAMSON COUNTY:

By: _____

Bill Gravell Jr.
Williamson County Judge

Date Signed: _____

EXHIBIT A

GUARANTEED MAXIMUM PRICE PROPSAL

[CMAR Legal Business Name] ("CMAR") hereby submits to Williamson County, Texas ("County") for the use and benefit County pursuant to the provisions of the Contract for Construction Manager at-Risk Project Delivery dated [Contract Date] ("Contract"), a Guaranteed Maximum Price ("GMP") proposal for the construction of [Project Title], ("Project"), based on the Contract Documents (as defined by the Contract) developed for the Project, as follows:

1. Cost of the Work

A not-to-exceed amount for the Cost of the Work pursuant to the Contract:

Dollars (\$))

2. CMAR's Fee

A fixed sum fee for CMAR's Fee pursuant to the Contract:

Dollars (\$))

3. Total GMP

The total sum of the above **Items 1 through 2**, as set forth below, is the GMP which the CMAR hereby guarantees to County for constructing the Project complete, in place, and operational in accordance with the Contract Documents. All attached breakdowns shall total this GMP amount.

Dollars (\$))

CMAR hereby guarantees to County not to exceed the GMP amount, subject to additions or deductions as provided in the Contract Documents. Except for additions or deductions as provided in the Contract Documents, costs which would cause the GMP to be exceeded shall be paid by CMAR without reimbursement by County.

4. Contract Time

The date for achieving Substantial Completion of the Project shall be)
() calendar days from the Notice to Proceed with Construction.

5. Withdrawal of GMP Proposal

This GMP Proposal may not be withdrawn for a period of **ninety (90) calendar days** from the date of receipt by County.

6. Liquidated Damages

CMAR further agrees to pay, as Liquidated Damages, to County the sum of **One Thousand Dollars (\$ 1,000) per calendar day** for failure to complete the work within the Contract Time in accordance with the Contract.

7. Owner's Contingency

A not-to-exceed amount for the Owner's Contingency stated herein for reference:

Dollars (\$)

All terms and conditions of the Contract are hereby adopted and incorporated into this GMP Proposal. Any exceptions to, or modifications of, the terms and conditions of the Contract shall not be effective unless they are expressly stated and conspicuously identified in this GMP Proposal and are specifically accepted and approved by County. Otherwise, proposed revisions or modifications to the language, terms, or conditions of the Contract will not be accepted.

BY SIGNING BELOW, CMAR and County have executed and bound themselves to this Guaranteed Maximum Price (GMP) Proposal.

CMAR:

[Legal Business Name]

By: _____
Signature

Printed Name

Title

Date Signed: _____

COUNTY:

Williamson County, Texas

By: _____

Bill Gravell Jr.
Williamson County Judge

Date Signed: _____

GUIDELINES FOR GMP PROPOSAL PREPARATION

1. CONTRACT REQUIREMENTS:

Provisions of the GMP are defined in **Section 2.2** of the Contract and other related requirements are included throughout the Contract. In the event of irreconcilable conflict between the GMP Proposal and the Contract, the interpretation that provides for the higher quality of material and/or workmanship, in County's sole opinion, shall prevail.

The GMP Proposal shall adopt and incorporate all of the terms and conditions of the Contract. Any exceptions to or modifications of such terms and conditions proposed shall not be effective unless they are expressly stated and conspicuously identified in the GMP Proposal and are specifically accepted and approved by County. In general, proposed revisions or modifications to the language, terms or conditions of the Contract will not be accepted.

2. PRE-SUBMITTAL REQUIREMENTS:

A. Scope Definition: Prior to GMP submittal, CMAR shall thoroughly review the GMP construction document package with County to determine if the Scope is sufficiently defined and identify those areas requiring additional scope definition. As a minimum, the following shall be defined:

1. Program
2. Building size
3. Site limits and access
4. Utility systems (existing and new)
5. Complete building systems descriptions
6. Materials outline by division
7. MEP systems descriptions including materials
8. MEP system options.

B. Estimated Construction Cost: Cost estimates shall be updated concurrently with the construction document development.

C. Schedule: The anticipated Notice to Proceed with Construction and Substantial Completion dates for Construction shall be coordinated and approved by County.

D. Value Engineering (VE): Proposed value engineering items included in the GMP shall be updated from previously submitted value engineering and shall reflect the "final acceptance" of VE items, which are part of the scope of work. The VE schedule shall identify current acceptance and the date of acceptance in an adjacent column. VE items must be resolved and accepted by County prior to GMP submittal.

E. Pre-submittal Conference: The CMAR shall schedule a conference with the Project Manager no later than **one (1) week** prior to submitting the GMP to County. Issues

regarding the required materials to be included in the GMP shall be reviewed so that there is a clear understanding of the format and contents of each division of work to be submitted. The CMAR shall obtain a copy of the "Standard Schedule of Values Format" from County.

3. CONSOLIDATION OF REVIEW COMMENTS:

County, A/E, and Project Manager shall provide review comments. The CMAR shall consolidate all responses to those groups into TAB 8 of the document. Each County comment shall have a corresponding answer directly below the original comment. A reply to each County comment is required even if only a clarification is required. Each reply shall state where in the GMP Proposal the corresponding information may be located.

4. GENERAL REQUIREMENTS:

The GMP Proposal shall be submitted at the phase specified by County. The GMP Proposal shall be submitted in the format described below. Proposals substantially deviating from the organization's format will be returned to the CMAR for re-submittal. Proposals not in compliance with the format, which result in substantial delay, will be the responsibility of the CMAR and may not extend the construction duration or substantial completion date.

5. GMP PROPOSAL PACKAGE:

The GMP Proposal shall be bound in 3-ring notebook or spiral notebook and entitled "Guaranteed Maximum Price Proposal". Below it the following items shall be shown:

Submittal number (i.e. Submittal #1)
Date of Submittal
Project Name
Project Number

Since several submittal revisions may be submitted, always state which submittal number is currently being submitted.

All pages within each tab shall be numbered.

The proposal shall be organized in the order described below:

TABLE OF CONTENTS

List all the following items. Provide a brief summary of the major components within each Tab.

TAB 1 – Guaranteed Maximum Price Proposal

- Refer to the GMP Proposal document herein above. Type in the cost amounts and sign, date and seal the form.
- In addition to the bound notebooks, provide two (2) loose original executed copies. (Do not bind into spiral notebooks.)
- Do not alter any language from the original document without prior approval from County.
- Do not electronically alter the document.
- Each line item cost must exactly match the corresponding cost summary shown on the TAB 6 GMP Proposal Cost Breakdown.
- Provide a Corporate Resolution or Articles of Organization, stating individual's authorization to execute contracts on behalf of the corporation, for any individual signing the GMP, who is not the President or CEO of the firm.

TAB 2 - Executive Project Summary

- State any amended services or scope changes included in the Proposal.
- Provide a brief project summary defining the scope of work associated with the construction phase of work included in this GMP Proposal.
- Include the description of building type, size, character and general materials.
- Summarize any relationship with existing structures, unusual site conditions, utility issues, or conditions effected by other governmental agencies (i.e. right-of-way issues)
- State the anticipated Notice to Proceed with Construction date and Substantial Completion date.

TAB 3 - Project Team

- List the various teams and the team members, in graphic and written form, for including names, titles, job responsibilities, and contact information.
- Identify all consultants.

TAB 4 - List of Documents

- Drawings Index – provide detailed listing of each sheet number, sheet title, original date of drawing, revised date of drawing
- Specification Index:
- Provide a detailed listing of each specification section required by County as identified in the Contract.
- Provide a detailed listing of all other spec sections describing the project.
- Specifications shall be organized by CSI Division format. State the name, original date of issue, and a column for revision date.

TAB 5 - Qualifications and Value Engineering

- Qualifications – A summary of all qualifications and assumptions organized by drawing sheet number or by specification sections to match those in TAB 4.

- Exclusions – A summary of exclusions organized by drawing sheet number or by specification section.
- Substitutions – A summary of substitutions to materials or systems described by drawing sheet number or by the specifications listed in TAB 4. Organize by specification section.
- Value Engineering Recommendations - List all items proposed to date and for each item identify if the item is accepted by County and included in the GMP. State the date of acceptance. In addition, identify those VE items not currently accepted. State if the price is good for a limited time period.

TAB 6 - GMP Proposal Cost Breakdown

- Provide an Estimated Construction Cost breakdown on the Standard Schedule of Values Format for Cost of the Work based on anticipated subcontracts, organized by CSI Division format, Cost of the Work and CMAR's Fee.
- The CMAR shall provide a detailed initial Total Project Construction Cost Estimate using standard estimating industry practices, utilizing the CSI Division format, with any additional cost breakdown as required by the Project Manager.

TAB 7 - Master Project Schedule (Summary Level)

- The Summary Level schedule shall be submitted electronically with the GMP Proposal.
- Summary Schedule Requirements
- The schedule shall comply with the requirements of and shall form the basis for the "Detail" schedule, which shall be submitted within **sixty (60) calendar days** following Notice to Proceed with Construction for Construction Services.
- The schedule shall be a computer-generated CPM schedule.
- The schedule shall be presented in "bar chart" form and contain detailed activities for all events and milestones included in Pre-construction (Part I) Services
- The schedule shall include detailed, logic driven activities for all Construction Service activities scheduled to commence during the first **ninety (90) calendar days** following the Notice to Proceed with Construction. The remaining construction activities (those commencing after the first **ninety (90) calendar days**) may be summarized by trades and may have longer durations than the "detailed" activities mentioned above.

EXHIBIT B

MINIMUM INSURANCE COVERAGES AND MINIMUM COVERAGE AMOUNTS

1. All policies of insurance provided by Contractor must comply with the requirements of this Exhibit, the Contract Documents, and the laws of the State of Texas.
2. Contractor shall provide and maintain, until the Work covered in the Contract is completed and accepted by County, the minimum insurance coverages in the minimum amounts as described below. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A. M. Best Company, or otherwise acceptable to County.

TYPE OF COVERAGE

LIMITS OF LIABILITY

Worker's Compensation

Statutory

Employer's Liability

Bodily Injury by Accident

\$ 1,000,000 per Accident

Bodily Injury by Disease

\$ 1,000,000 per Employee

\$ 1,000,000 aggregate Policy Limit

Comprehensive General Liability

(including completed operations and contractual liability insurance for bodily injury, death, or property damages)

Comprehensive General Liability

\$ 1,000,000 per Occurrence

\$ 2,000,000 aggregate Policy Limit

Comprehensive Automobile and Auto Liability Insurance

(covering owned, hired, leased, and non-owned vehicles)

Bodily injury (including death)

\$ 1,000,000 per Person

\$ 1,000,000 per Occurrence

Property Damage

\$ 1,000,000 per Person

\$ 1,000,000 per Occurrence

No aggregate Policy Limit

Builder's Risk Insurance (all risks)

An all risk policy, in the amount equal at all times to **100% of the Contract Sum**. The policy shall include coverage for loss or damage caused by certified acts of terrorism as defined in the Terrorism Risk Insurance Act. The policy shall be issued in the name of Contractor and shall name its Subcontractors as additional insureds. County shall be named as a loss payee on the policy. The builders risk policy shall have endorsements as follow:

- A.** This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises. If off-site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored.

Flood insurance

(when specified in Supplementary General Conditions or Special Conditions.

Umbrella Coverage

\$ 5,000,000

Workers' Compensation Insurance

A. Definitions:

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

Duration of the Project - includes the time from the beginning of the work on the Project until the Contractor's/person's work on the Project has been completed and accepted by County.

Coverage - Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).

Persons providing services on the Project ("Subcontractor") - includes all persons or entities performing all or part of the services Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to

provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B.** Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all employees of Contractor providing services on the Project, for the duration of the Project.
- C.** Contractor must provide a certificate of coverage prior to execution of the Contract, and in no event later than **ten (10) calendar days** from Notice of Award. Failure to provide the insurance in a timely fashion may result in loss of Contractor's bid bond.
- D.** If the coverage period shown on Contractor's current certificate of coverage ends during the duration of the Project, Contractor must, prior to the end of the coverage period, file a new certificate of coverage with County showing that coverage has been extended.
- E.** Contractor shall obtain from each person providing services on a project, and provide to County:

 - (1)** a certificate of coverage, prior to that person beginning work on the Project, so County will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - (2)** no later than **seven (7) calendar days** after receipt by Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- F.** Contractor shall retain all required certificates of coverage for the duration of the Project and for **one (1) year** thereafter.
- G.** Contractor shall notify County in writing by certified mail or personal delivery, within **ten (10) calendar days** after Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- H.** Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all

persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

- I. Contractor shall contractually require each person with who it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
 - (2) provide to Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - (3) provide Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - (4) obtain from each other person with whom it contracts, and provide to Contractor:
 - a. a certificate of coverage, prior to the other person beginning work on the Project; and
 - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - (5) retain all required certificate of coverage on file for the duration of the Project and for **one (1) year** thereafter;
 - (6) notify County in writing by certified mail or personal delivery, within **ten (10) calendar days** after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
 - (7) contractually require each person with whom it contracts, to perform as required by **Paragraphs (1)-(7)**, with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing the Contract or providing or causing to be provided a certificate of coverage, Contractor is representing to County that all employees of Contractor who will provide services on the Project will be covered by workers' compensation

coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- K.** Contractor's failure to comply with any of these provisions is a breach of contract by Contractor which entitles County to declare the Contract void if Contractor does not remedy the breach within **ten (10) calendar days** after receipt of notice of breach from County.
- 3.** If insurance policies are not written for the amounts specified in this section, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of primary coverage.
 - 4.** The furnishing of the above listed insurance coverage, as may be modified by the Contract Documents, must be tendered prior to execution of the Contract, and in no event later than **ten (10) calendar days** from Notice of Award. Failure to provide the insurance in a timely fashion may result in loss of Contractor's bid bond.
 - 5.** County shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements as they apply to the limits set out in this section.
 - 6.** Contractor shall be responsible for payment of premiums for all of the insurance coverages required under this section. Contractor further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Contractor is responsible hereunder, Contractor shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over **seventy-five thousand dollars (\$ 75,000)** in Contractor's insurance must be declared and approved in writing by County in advance.

EXHIBIT C

WILLIAMSON COUNTY VENDOR REIMBURSEMENT POLICY

The purpose of this Williamson County Vendor Reimbursement Policy ("Policy") is to provide clear guidelines to vendors on Williamson County's expectations and requirements regarding allowable reimbursable expenditures and required backup. The Policy will also minimize conflicts related to invoice payments and define non-reimbursable items. This Policy is considered a guideline and is not a contract.

This Policy may be altered, deleted, or amended at any time and without prior notice to vendors, by action of the Williamson County Commissioners Court. Unenforceable provisions of this Policy, as imposed by applicable law, regulations, or judicial decisions, shall be deemed to be deleted. Any revisions to this Policy will be distributed to all current vendors doing business with County.

1. Invoices and Affidavits

- 1.1 Invoices must adequately describe the goods or services provided to County and include all required backup (i.e. reimbursable expenses, mileage log, timesheets, receipts detailing expenses incurred etc.) that is in a form acceptable to the Williamson County Auditor. Invoices that do not adequately describe the goods or services provided to County or contain backup that is not satisfactory to the Williamson County Auditor will be returned to vendor for revisions and the provision above relating to invoice errors resolved in favor of County shall control as to the required actions of vendor and when such invoice must be paid by County.
- 1.2 In the event an invoice includes charges based upon hourly billing rates for services or any other rates based upon the amount of time worked by an individual or individuals in performing services, whether the charges are being billed directly to County or whether they are the basis of invoices from subcontractors for which the vendor seeks reimbursement from County, the charges shall be accompanied by an affidavit signed by an officer or principal of the vendor certifying that the work was performed, it was authorized by County and that all information contained in the invoice that is being submitted is true and correct.
- 1.3 Upon County's request, vendor must submit all bills paid affidavits wherein vendor must swear and affirm that vendor has paid each of its subcontractors, laborers, suppliers and material in full for all labor and materials provided to vendor for or in connection with services and work performed for County and, further, vendor must swear and affirm that vendor is not aware of any unpaid bills, claims, demands, or causes of action by any of its subcontractors, laborers, suppliers, or material for or in connection with the furnishing of labor or materials, or both, for services and work performed for County.

2. Travel Reimbursement

- 2.1 County will only cover costs associated with travel on vendors outside a **fifty (50)-mile radius** from Williamson County, Texas.
- 2.2 County will only cover costs associated with travel as documented work for County. If a vendor is also doing business for another client, the travel costs must be split in proportion to the amount of work actually performed for County and the other client. The only allowable travel expense will be for the specific days worked for Williamson County.
- 2.3 No advance payments will be made to vendor for travel expenditures. The travel expenditure may only be reimbursed after the expenditure/trip has already occurred and vendor has provided the Williamson County Auditor with all necessary and required backup.
- 2.4 Vendors must submit all travel reimbursement requests on each employee in full. Specifically, a travel reimbursement request must include all related travel reimbursement expenses relating to a particular trip for which vendor seeks reimbursement. Partial travel reimbursement requests will not be accepted (i.e. vendor shall not submit hotel and mileage one month then the next month submit rental car and airfare). If the travel reimbursement appears incomplete, the invoice will be sent back to the vendor to be submitted when all information is ready to submit in full.
- 2.5 Reimbursement for transportation costs will be at the most reasonable means of transportation (i.e.: airline costs will be reimbursed for coach rate, rental car costs will only be reimbursed if rental car travel was most reasonable means of travel as compared to travel by air).
- 2.6 County will not be responsible for, nor will County reimburse additional charges due to personal preference or personal convenience of individual traveling.
- 2.7 County will not reimburse airfare costs if airfare costs were higher than costs of mileage reimbursement.
- 2.8 Additional expenses associated with travel that is extended to save costs (i.e. Saturday night stay) may be reimbursed if costs of airfare would be less than the cost of additional expenses (lodging, meals, car rental, mileage) if the trip had not been extended. Documentation satisfactory to the Williamson County Auditor will be required to justify expenditure.
- 2.9 County will only reimburse travel expense to necessary personnel of the vendor (i.e. no spouse, friends, or family members).

- 2.10** Except as otherwise set forth herein, a vendor must provide a paid receipt for all expenses. If a receipt cannot be obtained, a written sworn statement of the expense from the vendor may be substituted for the receipt.
- 2.11** Sales tax for meals and hotel stays are the only sales taxes that will be reimbursed. Sales tax on goods purchased will not be reimbursed. A sales tax exemption form is available from the Williamson County Auditor's Office upon request.
- 2.12** County will not pay for any late charges on reimbursable items. It is the responsibility of the vendor to pay the invoice first and seek reimbursement from County.

3. Meals

- 3.1** Meal reimbursements are limited to a maximum of **fifty (\$50) per day** on overnight travel. On day travel (travel that does not require an overnight stay), meal reimbursements are limited to a maximum of **twenty (\$20) per day**. The travel must be outside the Williamson County, Texas line by a **fifty (50)-mile radius**.
- 3.2** Receipts are required on meal reimbursement amounts up to the maximum per day amount stated for overnight or day travel. If receipts are not presented, the vendor can request per diem (per diem limits refer to **3.2**). However, a vendor cannot combine per diem and meal receipts. Only one method shall be allowed.
- 3.3** Meals are reimbursable only for vendors who do not have the necessary personnel located within a **fifty (50)-mile radius** of Williamson County, Texas that are capable of carrying the vendor's obligations to County. Meals will not be reimbursed to vendors who are located within a **fifty (50)-mile radius** of Williamson County, Texas.
- 3.4** County will not reimburse for alcoholic beverages.
- 3.5** Tips are reimbursable but must be reasonable to limitation of meal allowance
- 3.6** No meals purchased for entertainment purposes will be allowed.
- 3.7** Meal reimbursement must be substantiated with a hotel receipt.

4. Lodging

- 4.1** Hotel accommodations require an itemized hotel folio as a receipt. The lodging receipt shall include name of the motel/hotel, number of occupant(s), goods or services for each individual charge (room rental, food, tax, etc.) and the name of the occupant(s). Credit card receipts or any other form of receipt are not acceptable.
- 4.2** Vendors will be reimbursed for a single room rate charge plus any applicable tax. If a single room is not available, the vendor must provide documentation to prove that a single room was not available in order to justify the expense over and above the single

room rate. A vendor may also be required to provide additional documentation if a particular room rate appears to be excessive.

- 4.3** Personal telephone charges, whether local or long distance, will not be reimbursed.

5. Airfare

- 5.1** County will only reimburse up to a coach price fare for air travel.
- 5.2** County will exclude any additional charges due to personal preference or personal convenience of the individual traveling (i.e. early bird check in, seat preference charges, airline upgrades, etc. will not be an allowable reimbursement)
- 5.3** Air travel expenses must be supported with receipt copy of an airline ticket or an itinerary with actual ticket price paid. If tickets are purchased through a website, vendor must submit a copy of the webpage showing the ticket price if no paper ticket was issued.
- 5.4** Cancellation and/or change flight fees may be reimbursed by County but vendor must provide the Williamson County Auditor with documentation in writing from a County department head providing authorization for the change.
- 5.5** County will not reimburse vendor for tickets purchased with frequent flyer miles.

6. Car Rental

- 6.1** Vendors that must travel may rent a car at their destination when it is less expensive than other transportation such as taxis, airport shuttles or public transportation such as buses or subways.
- 6.2** Cars rented must be economy or mid-size. Luxury vehicle rentals will not be reimbursed. Any rental costs over and above the cost of a mid-size rental will be adjusted.
- 6.3** Vendors will be reimbursed for rental cars if the rental car cost would have been less than the mileage reimbursement cost (based on the distance from vendor's point of origin to Williamson County, Texas) had the vendor driven vendor's car.
- 6.4** Vendors must return a car rental with appropriate fuel levels as required by rental agreement to avoid the car rental company from adding fuel charges.
- 6.5** Rental agreement and credit card receipt must be provided to County as back up for the request for reimbursement.
- 6.6** Insurance purchased when renting vehicle may also be reimbursed.

- 6.7** Car Rental optional extras such as GPS, roadside assistance, and administrative fees on Tolls will not be reimbursed.

7. Personal Car Usage

- 7.1** Personal vehicle usage will be reimbursed in an amount equal to the standard mileage rate allowed by the IRS.
- 7.2** Per code of Federal Regulations, Title 26, Subtitle A, Chapter 1, Subchapter B, Part IX, Section 274(d), all expense reimbursement requests must include the following:
- 7.2.1** Date
 - 7.2.2** Destination
 - 7.2.3** Purpose
 - 7.2.4** Name of traveler(s)
 - 7.2.5** Correspondence that verifies business purpose of the expense
- 7.3** The mileage for a personal vehicle must document the date, location of travel to/from, number of miles traveled and purpose of trip.
- 7.4** Mileage will be reimbursed on the basis of the most commonly used route.
- 7.5** Reimbursement for mileage shall not exceed the cost of a round trip coach airfare.
- 7.6** Reimbursement for mileage shall be prohibited between place of residence and usual place of work.
- 7.7** Mileage shall be calculated from employee's regular place of work or their residence, whichever is the shorter distance when traveling to a meeting or traveling to Williamson County, Texas for vendors who are located outside of Williamson County, Texas by at least a **fifty (50)-mile radius**.
- 7.8** When more than one person travels in same vehicle, only one person may claim mileage reimbursement.
- 7.9** Tolls, if reasonable, are reimbursable. Receipts are required for reimbursement. If a receipt is not obtainable, then written documentation of expense must be submitted for reimbursement (administrative fees on Tolls will not be reimbursed).
- 7.10** Parking fees, if reasonable are reimbursable for meetings and hotel stays. For vendors who contract with a third party for visitor parking at vendor's place of business, Williamson County will not reimburse a vendor based on a percentage of its

contracted visitor parking fees. Rather, Williamson County will reimburse Vendor for visitor parking on an individual basis for each time a visitor uses Vendor's visitor parking. Receipts are required for reimbursement. If a receipt is not obtainable, then written documentation of expense must be submitted for reimbursement.

- 7.11** Operating and maintenance expenses as well as other personal expenses, such as parking tickets, traffic violations, and car repairs and collision damage are not reimbursable.

8. Other Expenses

- 8.1** Taxi fare, bus tickets, conference registrations, parking, etc. must have a proper original receipt.

9. Repayment of Non-reimbursable Expenses

Vendors must, upon demand, immediately repay County for all inappropriately reimbursed expenses whenever an audit or subsequent review of any expense reimbursement documentation finds that such expense was reimbursed contrary to these guidelines and this Policy. Williamson County reserves the right to retain any amounts that are due or that become due to a vendor in order to collect any inappropriately reimbursed expenses that a vendor was paid.

10. Non-Reimbursable Expenses

In addition to the non-reimbursable items set forth above in this Policy, the following is a non-exhaustive list of expenses that will not be reimbursed by Williamson County:

- 10.1** Alcoholic beverages/tobacco products
- 10.2** Personal phone calls
- 10.3** Laundry service
- 10.4** Valet service (excludes hotel valet)
- 10.5** Movie rentals
- 10.6** Damage to personal items
- 10.7** Flowers/plants
- 10.8** Greeting cards
- 10.9** Fines and/or penalties
- 10.10** Entertainment, personal clothing, personal sundries, and service

- 10.11** Transportation/mileage to places of entertainment or similar personal activities
- 10.12** Upgrades to airfare, hotel and/or car rental
- 10.13** Airport parking above the most affordable rate available
- 10.14** Excessive weight baggage fees or cost associated with more than two airline bags
- 10.15** Auto repairs
- 10.16** Babysitter fees, kennel costs, pet, or house-sitting fees
- 10.17** Saunas, massages, or exercise facilities
- 10.18** Credit card delinquency fees or service fees
- 10.19** Doctor bills, prescription and other medical services
- 10.20** Hand tools
- 10.21** Safety Equipment (hard hats, safety vests, etc.)
- 10.22** Office Supplies
- 10.23** Lifetime memberships to any association
- 10.24** Donations to other entities
- 10.25** Any items that could be construed as campaigning
- 10.26** Community outreach items exceeding \$2 per item
- 10.27** Technology Fees
- 10.28** Sales tax on goods purchased

Any other expenses which Williamson County deems, in its sole discretion, to be inappropriate or unnecessary expenditures.

EXHIBIT D



UNIFORM GENERAL CONDITIONS

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 CONTRACT DOCUMENTS

Contract Documents are enumerated in the Contract between the Owner and Contractor (hereinafter the Contract) and consist of the Contract, Conditions of the Contract as revised, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Contract 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 Owner or 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.

1.1.2 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.

1.1.3 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.

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 KNOWLEDGE

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

1.1.9 PRODUCT

Materials, systems, and equipment incorporated or to be incorporated in the Work.

1.1.10 PROVIDE

Furnish and install and shall include, without limitation, labor, materials, equipment, transportation, services, and other items required to complete the referenced tasks.

1.1.11 FURNISH

Pay for, deliver (or receive), unload, inspect, and store products, materials, equipment, and accessories as specified while retaining care, custody and control until received for installation based on a signed receipt.

1.1.12 INSTALL

Receive, unload, inspect, and store as specified while retaining care, custody and control; set or place in position, make required connections; and adjust and test as specified in the Contract Documents for satisfactory performance and operation.

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 one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Owner or the Architect's interpretation. The terms and conditions of this **Paragraph 1.2.1**, however, shall not relieve the Contractor of any of the obligations set forth in the Contract Documents.

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** Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor, if required by the Specifications or if requested by the Owner, shall present evidence from the manufacture, certifying the product complies with the particular Standard or Specification. When required by the Contract Documents, supporting data shall be submitted to substantiate compliance.
- .2** Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted in strict accordance with the Substitution requirements stated in the Specifications or, if no Substitution requirements are stated in the Specifications, in accordance with the requirements stated elsewhere in the Contract Documents. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

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 published by the American Institute of Architects.

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 USE OF DRAWINGS AND OTHER INSTRUMENTS OF SERVICE

1.5.1

The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights, except as provided in the Owner-Architect Agreement. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution 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 Architect's or Architect's consultants' reserved rights.

1.5.2

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, Architect and the Architect's consultants.

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 establish the necessary protocols governing such transmissions in writing, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

2.1 GENERAL

The Owner means Williamson County acting through any duly authorized representative as provided in the Contract, 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 ("Owner's Designated Representative"). The term "Owner" means the Owner or the Owner's authorized representative.

2.2 OWNER

2.2.1 Appropriation of Funds by Owner

Owner believes it has sufficient funds currently available and authorized for expenditure to finance the costs of the Agreement between Owner and Contractor. Contractor understands and agrees that the Owner's payment of amounts under the Agreement between Owner and Contractor is contingent on the Owner receiving appropriations or other expenditure authority sufficient to allow the Owner, in the exercise of reasonable administrative discretion, to continue to make payments under the Agreement.

2.2.2

Unless specifically stated otherwise in the Contract Documents, Contractor shall secure and pay for necessary permits, approvals, 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. Except for surveys or grade information, the Contractor shall compare the information furnished by the Owner, including, but not limited to, soil tests, with visibly observable physical conditions and the Contract Documents and, on the basis of such review, promptly report to the Owner and the Architect any known conflicts, errors or omissions. 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.

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 repeatedly 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.

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 a **ten (10)-calendar day** period after receipt of written notice from the Owner 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.

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 (1) granted in the Contract Documents, (2) at law, or (3) in equity.

2.5.2

In no event shall the Owner 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 any of the rights and authority granted the Owner in the Contract Documents.

2.6 OWNER'S RIGHT TO RECORDS

2.6.1

The Contractor's records, which shall include but not be limited to accounting records, written policies and procedures, subcontractor files (including proposals of successful bidders), original estimates, estimating work sheets, correspondence, schedules, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this contract (all foregoing hereinafter referred to as "records") and shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Contractor or any of his payees. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Contract.

2.6.2

For the purpose of such audits, inspections, examinations and evaluations, the Owner's agent, or authorized representatives shall have access to said records from the effective date of this Contract for the duration of Work and until **three (3) years** (or longer if required by law) after the date of final payment by Owner to Contractor.

2.6.3

Owner's agent or its authorized representative shall have access during normal business hours to the Contractor's facilities, shall have access to all necessary records and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this **Section 2.6**. Owner's agent or authorized representative shall give auditees reasonable advance notice of intended audits.

2.6.4

Contractor shall require all subcontractors, insurance agents, and material suppliers (payees) with cost plus contracts, if permitted, and not fixed price contracts to comply with the provisions of this **Article 2** by insertion of the requirements hereof in a written contract agreement between Contractor and payee. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related payee's costs from amounts payable to the Contractor pursuant to this contract.

ARTICLE 3 CONTRACTOR

3.1 GENERAL

3.1.1

The Contractor is the person or entity identified as such in the Contract 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. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under the Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative, and if these General Conditions are used in conjunction with the Contract between Owner and Construction Manager-At-Risk, the term "Contractor" shall mean the Construction Manager.

3.1.2

The Contractor shall perform the Work in strict 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 Contract, the Contractor and each Subcontractor shall have evaluated and satisfied themselves as to the observable 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, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes 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 and its Subcontractors shall be responsible for providing a safe place for the performance of the Work. The Owner 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**.

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 **Paragraph 2.2.3**, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe 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 Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information. 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. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner. The Contractor shall verify the accuracy of elevations, dimensions, locations, and field measurements. In all cases of the interconnection of its Work with existing or other Work, the Contractor shall verify at the site all dimensions relating to such existing or other Work.

- .1 All of Contractor's and Subcontractors' work shall conform to the Contract Documents. Contractor shall be responsible for the details of the Work necessary to carry out the intent of the drawings and specifications, or which are customarily performed. When more detailed information is required for performance of the Work or when an interpretation of the Contract Documents is requested, the Contractor shall submit a written request for information to the Architect or Owner (as required), and the Owner or Architect shall furnish such information or interpretation. Where only part of the Work is indicated, similar parts shall be considered repetitive. Where any detail is shown and components thereof are fully described, similar details not fully described shall be considered to incorporate the fully described details and components.
- .2 The Contractor has had an opportunity to examine, and has carefully examined, all of the Contract Documents and Project site, and has fully acquainted itself with the scope of work, design, availability of materials, existing facilities, access, general topography, soil structure, subsurface conditions, obstructions, and all other conditions pertaining to the Work, the site of the Work, and its surrounding; that it has made necessary investigations to a full understanding of the difficulties which may be encountered in performing the Work; and that anything in any Contract Documents, or in any representations, statements, or information made or furnished by Owner or its representatives notwithstanding, Contractor will complete the Work for the compensation stated in the Contract. In addition thereto, Contractor represents that it is fully qualified to do the Work in accordance with the terms of the Contract in the time specified.

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 Owner and the Architect any nonconformity discovered by or made known to the Contractor as a request for information.

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 **Paragraphs 3.2.2 or 3.2.3** above, the Contractor shall make Claims as provided in **Article 15**.

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. Subcontractors are responsible for directing their forces on their portions of the Work. 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 and Subcontractors 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

Inspection of the progress, quantity, or quality of the Work done by the Owner, any Owner's representative, any governmental agency, or the Architect, or any inspector, shall not relieve the Contractor of any responsibility for the compliance of the Work with the Contract Documents. The Owner or its approved representative (heretofore referred to as Owner's representative) shall have access to the worksite and all Work. No supervision or inspection by the Owner's representative, nor the authority to act nor any other actions taken by the Owner's representative shall relieve the Contractor of any of its obligations under the Contract Documents nor give rise to any duty on the part of the Owner.

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.

.1 Duty to Pay Prevailing Wage Rates. The Contractor shall pay not less than the wage scale of the various classes of labor as shown on the “Prevailing Wage Schedule” provided by the Owner. The specified wage rates are minimum rates only, and are not representations that qualified labor adequate to perform the Work is available locally at the prevailing wage rates. The Owner is not bound to pay—and will not consider—any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract Documents. The “Prevailing Wage Schedule” is not a representation that quantities of qualified labor adequate to perform the Work may be found locally at the specified wage rates.

a) For classifications not shown, workers shall not be paid less than the wage indicated for Laborers. The Contractor shall notify each worker commencing work on the Project the worker’s job classification and the established minimum wage rate required to be paid, as well as the actual amount being paid. The notice must be delivered to and signed in acknowledgement of receipt by the employee and must list both the monetary wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested by Owner, competent evidence of compliance with the Texas Prevailing Wage Law shall be furnished by Contractor.

b) A copy of each worker wage rate notification shall be submitted to the Owner with the Application for Payment for the period during which the worker began on-site activities.

.2 Prevailing Wage Schedule. The “Prevailing Wage Schedule” shall be determined by the Owner in compliance with **Texas Government Code, Chapter 2258**. Should the Contractor at any time become aware that a particular skill or trade not reflected on the Owner’s Prevailing Wage Schedule will be or is being employed in the Work, whether by the Contractor or by a subcontractor, the Contractor shall promptly inform the Owner and shall specify a wage rate for that skill or trade, which shall bind the Contractor.

- .3 Penalty for Violation.** The Contractor and any Subcontractor shall pay to the Owner a penalty of **sixty dollars (\$60.00)** for each worker employed for each calendar day, or portion thereof, that the worker is paid less than the wage rates stipulated in the Prevailing Wage Schedule or any supplement thereto pursuant to **Paragraph 3.4.1.2** above. The Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all workers employed in connection with the Work, and showing the actual per diem wages paid to each worker, which records shall be open at all reasonable hours for the inspection by the Owner.
- .4 Complaints of Violations of Prevailing Wage Rates.** Within **thirty-one (31) days** of receipt of information concerning a violation of **Texas Government Code, Chapter 2258**, the Owner shall make an initial determination as to whether good cause exists to believe a violation occurred. The Owner's decision on the initial determination shall be reduced to writing and sent to the Contractor or Subcontractor against whom the violation was alleged, and to the affected worker. When a good cause finding is made, the Owner shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the Prevailing Wage Schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.
- .5 Arbitration Required if Violation not Resolved.** After the Owner makes its initial determination, the affected Contractor or Subcontractor and worker have **fourteen (14) days** in which to resolve the issue of whether a violation occurred, including the amount that should be retained by Owner or paid to the affected worker. If the Contractor or Subcontractor and affected worker reach an agreement concerning the worker's claim, the Contractor shall promptly notify the Owner in a written document signed by the worker. If the Contractor or Subcontractor and affected worker do not agree before the **fifteenth (15th) day** after the Owner's determination, the Contractor or Subcontractor and affected worker must participate in binding arbitration in accordance with the **Texas General Arbitration Act, Chapter 171, Tex. Civ. Prac. & Rem. Code**. The parties to the arbitration have **ten (10) days** after the expiration of the **fifteen (15) days** referred to above, to agree on an arbitrator; if by the **eleventh (11th) day** there is no agreement to an arbitrator, a district court shall appoint an arbitrator on the petition of any of the parties to the arbitration.
- .6 Arbitration Award.** If an arbitrator determines that a violation has occurred, the arbitrator shall assess and award against the Contractor or Subcontractor the amount of penalty as provided in this **Section 3.4** and the amount owed the worker. The Owner may use any amounts retained hereunder to pay the worker the amount as designated in the arbitration award. If the Owner has not retained enough from the Contractor or Subcontractor to pay the worker in accordance with the arbitration

award, the worker has a right of action against the Contractor and Subcontractor as appropriate, and the surety of either to receive the amount owed, attorneys' fees and court costs. The Contractor shall promptly furnish a copy of the arbitration award to the Owner.

.7 Prevailing Wage Retainage. Money retained pursuant to this **Section 3.4** shall be used to pay the claimant or claimants the difference between the amount the worker received in wages for labor on the Project at the rate paid by the Contractor or Subcontractor and the amount the worker would have received at the general prevailing wage rate as provided by the agreement of the claimant and the Contractor or Subcontractor affected, or in the arbitrator's award. The full statutory penalty of **sixty dollars (\$60.00) per day** of violation per worker shall be retained by the Owner to offset its administrative costs, pursuant to **Texas Government Code, §2258.023**. Any retained funds in excess of these amounts shall be paid to the Contractor on the earlier of the next progress payment or final payment. Provided, however, that the Owner shall have no duty to release any funds to either the claimant or the Contractor until it has received the notices of agreement or the arbitration award as provided under **Paragraphs 3.4.2 and 3.4.3**.

.8 No Extension of Time. If the Owner determines that good cause exists to believe a violation has occurred, the Contractor shall not be entitled to an extension of time for any delay arising directly or indirectly from of the procedures set forth in this **Section 3.4**.

3.4.2

Except in the case of minor changes in the Work authorized by the Owner or Architect in accordance with **Paragraphs 3.12.8 or Section 7.4**, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor shall comply with the Substitution requirements listed in the Specifications, or if there are no Substitution requirements listed in the Specifications, then the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (1) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (2) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (3) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (4) a statement indicating Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect.

Proposals for substitutions shall be to the Architect in sufficient time to allow the Architect no less than **ten (10) working days** for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

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

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.

3.4.5.

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

3.5.1

The Contractor warrants to the Owner: (1) that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise; (2) that the Work will conform to 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; (3) that the Work will be done strictly in accordance with the Contract Documents; (4) that all products are installed per the manufacturer's instructions, and in such a way that the manufacturer's warranties are preserved, including the use of a manufacturer-certified installer, if required by the manufacturer; (5) and that the Work, when finally completed, will provide a complete Project that meets the intent of the Contract Documents.

The Contractor represents and warrants to the Owner that its materials and workmanship, including without limitation, construction means, methods, procedures and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are and shall be consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work subject to **Paragraph 3.2.3.** Work, materials, or equipment not conforming to these requirements shall

be considered defective, and promptly after written notification of non-conformance shall be repaired or replaced by Contractor with Work conforming to this warranty. 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 Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- .1 Contractor further warrants that all materials or equipment of a category or classification will be a product of the same manufacturer and such materials or equipment shall be of the same lot, batch or type and that such materials and equipment will be as specified.

3.5.2

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.

3.6 TAXES

State Sales and Use Taxes. Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable; provided, however, Owner is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes under Texas Tax Code Ann. 151.309, as amended, and the services and materials subject of the Contract are being secured for use by Owner. Exemption certificates will be provided to Contractor upon request. As a precondition to the Owner reimbursing Contractor for allowable sales and use taxes, Contractor must, on its own, first attempt to use such tax exemption certificates in order to assert the exemption. In the event Contractor's efforts to use the tax exemption certificate is unsuccessful and provided that under the laws of the State of Texas an exemption from sales and use taxes is allowed. Owner will reimburse Contractor for such sales and use taxes upon Contractor providing sufficient and satisfactory documentation to the Williamson County Auditor.

3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

3.7.1

Unless otherwise provided, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

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, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction and damages resulting therefrom.

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 **twenty-one (21) calendar days** after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner 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 authorize an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner 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 Owner shall promptly notify the Contractor in writing, stating the reasons. If the Contractor disputes the Owner's determination, the Contractor party may assert a Claim as provided in **Article 15**.

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**.

3.8 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 Contractor shall, prior to purchasing any such materials, notify the Owner in writing of the cost and whether such cost will exceed the amount of the allowance. If Owner authorizes Contractor to proceed, after receiving the Contractor's estimate of the total cost, then 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 **Paragraph 3.8.2.1** and (2) changes in Contractor's costs under **Paragraph 3.8.2.2**.

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. The superintendent shall represent the Contractor, and communications given to the superintendent or Contractor's project manager shall be as binding as if given to the Contractor. Important oral communications shall be immediately confirmed in writing.

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 Owner or Architect may reply within **fourteen (14) calendar 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 Owner and Architect require additional time to review. Failure of the Owner or Architect to reply within the **fourteen (14)-calendar day** period shall constitute notice of no reasonable objection.

3.9.3

The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1

The Contractor, as provided in 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 shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

3.10.4

The construction schedule shall be a detailed precedence-style critical path management ("CPM") schedule in a format satisfactory to the Owner that shall (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) 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 the "Milestone Date"). Upon review and acceptance by the Owner of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise

the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions as set forth in **Paragraph 3.10.1** or if requested by the Owner. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorize pursuant to a Change Order.

3.10.5

In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reach the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, and (3) other similar measures. Such measures so continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require such measures is solely for the purpose of ensuring the Contractors compliance with the construction schedule.

3.11 DOCUMENTS 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.

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 **Paragraph 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 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.

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.

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. 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 **Paragraph 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.

3.13 USE OF SITE

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.

3.14 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 as required by the Contract Documents. 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 Owner and Architect shall, at all times, have 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 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 INDEMNITY

OTHER THAN EMPLOYEE PERSONAL INJURY CLAIMS. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER, ITS EMPLOYEES, AND ASSIGNS (THE "INDEMNIFIED PARTIES" OR "INDEMNITEES") FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR ALLEGED TO BE RESULTING FROM THE PERFORMANCE OF THIS CONTRACT, TO THE EXTENT CAUSED BY THE NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF THE CONTRACTOR, SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. CONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY, HOLD HARMLESS OR DEFEND THE INDEMNIFIED PARTIES AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, OR THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE OF THE INDEMNITEE, OR OTHER PARTY OTHER THAN CONTRACTOR OR ITS AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER, EXCEPT THAT CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTIES AGAINST ANY CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF CONTRACTOR, ITS AGENTS, OR IT SUBCONTRACTORS OF ANY TIER.

3.18.2 INDEMNITY – EMPLOYEE PERSONAL INJURY CLAIMS

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES AND SHALL ASSUME ENTIRE RESPONSIBILITY AND LIABILITY (OTHER THAN AS A RESULT OF AN INDEMNIFIED PARTY'S GROSS NEGLIGENCE) FOR ANY CLAIM OR ACTION BASED ON OR ARISING OUT OF THE PERSONAL INJURY, INCLUDING THE DEATH, OF ANY EMPLOYEE OF THE CONTRACTOR, SUBCONTRACTORS, OR ANY SUB-SUBCONTRACTOR, OR OF ANY OTHER ENTITY FOR WHOSE ACTS THEY MAY BE LIABLE, WHICH OCCURRED OR WAS ALLEGED TO HAVE OCCURRED ON THE PROJECT SITE OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK OF THIS CONTRACT. CONTRACTOR HEREBY INDEMNIFIES THE INDEMNIFIED PARTIES EVEN TO THE EXTENT THAT SUCH PERSONAL INJURY WAS CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY THE COMPARATIVE OR CONCURRENT NEGLIGENCE OF THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEES BENEFIT ACTS.

3.18.3

THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS **SECTION 3.18** SHALL ALSO SPECIFICALLY INCLUDE, WITHOUT LIMITATION, ALL FINES, PENALTIES,

DAMAGES, LIABILITY, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) 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, METHODS, PROCEDURES, TECHNIQUES, OR SEQUENCES OF EXECUTION OR PERFORMANCE OF THE WORK, AND (3) FAILURE TO SECURE AND PAY FOR PERMITS, FEES, APPROVALS, LICENSES, AND INSPECTIONS 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.

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 Contract 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.

4.1.3

In the event that Owner has not engaged an architect and an architect is not identified in the Contract, but, rather, engages an engineer for the Project, all references made in these General Conditions to the "Architect" shall mean and include the engineer identified as the "Engineer" in the Contract and all duties, responsibilities and limitations of authority of the Architect, as set forth in the Contract Documents, shall apply to the Engineer.

4.2 ADMINISTRATION OF THE CONTRACT

4.2.1

The Architect will provide administration of the Contract as described in the Owner-Architect Agreement. 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, 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 **Paragraph 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.

4.2.4 COMMUNICATIONS AND 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 relate relevant communications between Owner and Architect to the Architect. 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.

4.2.5

If included in Architect's scope of work, the agreement between Owner and Architect, or if requested by the Owner, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts based on the Architect's evaluations of the Contractor's Applications for Payment.

4.2.6

To the extent permitted by the agreement between Owner and Architect, 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, in consultation with the Owner,

will have authority to require inspection or testing of the Work in accordance with **Paragraphs 13.5.2 through 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 or the Owner 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

To the extent provided in the agreement between Owner and Architect, 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 Owner and 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 3.3, 3.5, and 3.12**. 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

If requested by Owner, the Architect will prepare Change Orders and Construction Change Directives with the Owner's prior written consent, but the Architect may authorize minor changes in the Work as provided in the agreement between Owner and Architect, or in **Section 7.4**. If requested by Owner, the Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in **Paragraph 3.7.4**.

4.2.9

If requested by Owner, 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

If requested by Owner, the Architect will interpret and decide 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 and decisions 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.

4.2.13

The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents, and if approved by Owner.

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 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

5.2.1 FOR CONSTRUCTION MANAGER AT-RISK CONTRACTS

The Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. The Construction Manager may seek to perform portions of the work itself if:

- .1 the Construction Manager submits its bid or proposal for those portions of the Work in the same manner as all other trade contractors or Subcontractors; and
- .2 the Owner determines that the Construction Manager's bid or proposal provides the best value for the Owner.
- .3 **Review of Bids or Proposals.** Construction Manager shall review all trade contractor or Subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the Construction Manager, Architect, Engineer, or Owner. All bids or proposals shall be made available to the Owner on request and to the public after the later of the award of the Contract or the **seventh (7th) business day** after the date of final selection of bids or proposals. If the Construction Manager reviews, evaluates, and recommends to the Owner a bid or proposal from a trade contractor or subcontractor but the Owner requires another bid or proposal to be accepted, the Owner shall compensate the Construction Manager by a change in the Contract Sum, Contract Time, or Cost of the Work for any additional cost and risk that the Construction manager incurs because of the Owner's requirement that another bid or proposal be accepted.

5.2.2

The Contractor shall not contract with a proposed Subcontractor, person, or entity to whom the Owner has made reasonable objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made a reasonable objection.

5.2.3

If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time may 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 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 the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. 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 and, if requested, Contractor shall provide Owner with copies of executed subcontracts.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1

The Contract is for Owner's benefit, its successors and assigns who, as well as Contractor, may directly enforce all rights and warranties, express or implied herein, but Subcontractors shall have recourse only against Contractor and not against Owner. Owner may rely solely upon Contractor for enforcement of all Subcontracts. To effect such purpose, Contractor assigns to Owner all right to bring any actions against subcontractors and material vendors without waiver by Owner of his right against Contractor because of defaults, delays and

effects for which a subcontractor or material vendor may also be liable, said assignment being effective only if:

- .1 Contractor is in default under the Contract Documents; or
- .2 Owner has terminated the Contract in accordance with the Contract Documents; and
- .3 Only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .4 The assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

5.4.2

Upon such assignment, if the Work has been suspended for more than **thirty (30) calendar days**, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from 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. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

5.4.4

The Architect and the Owner shall have the right to request from any Subcontractor at any time during the course of construction, a notarized affidavit stating the amount of monies which have been paid to the Subcontractor as of any certain stipulated date.

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 Contract.

6.1.3

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.

6.2 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 for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the Owner 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 **Paragraph 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

All separate contractors shall sign a site access agreement with Contractor setting forth duties, responsibilities, safety, and administrative requirements.

6.3 OWNER'S RIGHT TO CLEAN UP

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

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 may be issued by the Owner or 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** and **Paragraph 9.7.2**, 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 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 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.

7.2.2

Contractor's Change Order shall set forth in clear and precise detail breakdowns of labor and materials for all trades involved and the estimated impact on the dates of Substantial Completion. Contractor shall furnish supporting data as reasonably requested by Owner.

7.2.3

Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1

A Construction Change Directive is a written order 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 percentage fee; or
- .4 As provided in **Paragraph 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 Owner 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 as set forth in the Contract, or if no such amount is set forth in the Contract, a reasonable amount. In such case, and also under **Paragraph 7.3.3.3**, the Contractor shall keep and present, in such form as the Owner or Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **Paragraph 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 costs of supervision and field office 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 Owner or 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 Owner will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner determines to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of Contractor to disagree and assert a Claim in accordance with **Article 15**.

7.3.10

When the Owner and Contractor agree with a determination made 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.

7.4 MINOR CHANGES IN THE WORK

If permitted in the agreement between Owner and Architect, 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.

ARTICLE 8 TIME

8.1 CONTRACT TIME

TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT. The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time, as otherwise agreed to in writing, will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract. If Contractor fails to achieve Final Completion within **thirty (30) calendar days** after Substantial Completion or a mutually agreed upon longer period of time between Contractor and Owner, Contractor shall be responsible for Owner's additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.

8.2 NOTICE TO PROCEED

Owner will issue a Notice to Proceed which shall state the dates for beginning the Work and for achieving Substantial Completion of the Work.

8.3 WORK PROGRESS SCHEDULE

Unless indicated otherwise, Contractor shall submit to Owner and Architect the initial Work Progress Schedule for the Work in relation to the entire Project not later than **twenty-one (21) calendar days** after the effective date of the Notice to Proceed. Unless indicated otherwise, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents, and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

8.3.1 SCHEDULE REQUIREMENTS

Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail, so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

- .1 Contractor shall resubmit initial schedule as required to address review comments from Architect and Owner until such schedule is accepted as the Baseline Schedule.
- .2 Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.

8.3.2 SCHEDULE UPDATES

Contractor shall update the Work Progress Schedule and the Submittal Register monthly, as a minimum, to reflect progress to date and current plans for completing the Work, while maintaining original schedule as Baseline Schedule and submit electronic copies of the update to Owner and Architect as directed, but as a minimum with each request for payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to Owner and to Architect via an executive summary accompanying the updated schedule for review prior to final implementation of revisions into a revised Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to Owner and Architect and shall not be incorporated into the revised Baseline Schedule without Owner's consent.

8.3.3

The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning the Work. Owner's acceptance of a schedule, schedule update, or revision constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on the schedule.

- .1** Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration.
- .2** Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of the Contract, or waive either Contractor's responsibility for timely completion or Owner's right to damages for Contractor's failure to do so.
- .3** Scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.

8.4 COMPLETION OF WORK

Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.

8.4.1

If, in the judgment of Owner, the work is behind schedule and the rate of placement of Work is inadequate to regain scheduled progress to ensure timely completion of the entire Work or

a separable portion thereof, Contractor, when so informed by Owner, shall immediately take action to increase the rate of work placement by:

- .1 An increase in working forces.
- .2 An increase in equipment or tools.
- .3 An increase in hours of work or number of shifts.
- .4 Expedite delivery of materials.
- .5 Other action proposed, if acceptable to Owner.

8.4.2

Within **ten (10) calendar days** after such notice from Owner, Contractor shall notify Owner in writing of the specific measures taken or planned to increase the rate of progress. Contractor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should Owner deem the plan of action inadequate, Contractor shall take additional steps or make adjustments, as necessary, to its plan of action until it meets with Owner's approval.

8.5 MODIFICATION OF CONTRACT TIME

8.5.1

Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in **Article 7**.

8.5.2

When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities without delaying the project Substantial Completion date(s).

- .1 A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather or related site conditions prevent Contractor from performing **seven (7) continuous hours** of Work on the critical path between the hours of 7:00 a.m. and 6:00 p.m.

- A. Weather days are excusable delays and, in the event of precipitation, Contractor may claim **one (1) Weather Day** for each day of the duration of the precipitation plus an additional day for each **tenth (1/10th) of an inch** of accumulation as determined by a third-party website agreed upon by Owner and Contractor.
 - B. At the end of each calendar month, Contractor shall submit to Owner and Architect a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by Owner, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a Construction Change Directive (CCD) for a fair and reasonable time extension.
- .2 Excusable Delay.** Contractor is entitled to an equitable adjustment of the Contract Time, issued via Change Order, for delays caused by the following:
 - A. Errors, omissions, and imperfections in design, which Architect corrects by means of changes in the Drawings and Specifications.
 - B. Unanticipated physical conditions at the Site, which Architect corrects by means of changes to the Drawings and Specifications or for which Owner directs changes in the Work identified in the Contract Documents.
 - C. Failure of Owner to have secured property, right-of-way, or easements necessary for Work to begin or progress.
 - D. Changes in the Work that effect activities identified in Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by Owner or recommended by Architect and ordered by Owner.
 - E. Suspension of Work for unexpected natural events, Force Majeure (sometimes called "acts of God"), civil unrest, strikes or other events which are not within the reasonable control of Contractor.
 - F. Suspension of Work for convenience of Owner, which prevents Contractor from completing the Work within the Contract Time.
 - G. Administrative delays caused by activities or approval requirements related to an Authority Having Jurisdiction.

8.5.3

Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor's schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in **Subparagraph**

8.5.2.2.D and within the reasonable control of Owner, the Contract Sum and Contract Time are to be equitably adjusted by Owner pursuant to the provisions of **Article 7**.

8.6 NO DAMAGES FOR DELAY

Due to the unique requirements of working within a public facility which may be shared with other user-groups and adjacent to other public facilities, Owner may, at any time, restrict the Work to non-disruptive activities to reduce noise, vibration, air pollution, or any other nuisance, intrusion, or danger affecting adjacent public functions and duties. In each case, Owner will make a good faith effort to provide sufficient advanced notice of restriction to Contractor; and, Contractor shall make a good faith effort to reallocate activities, materials, and forces onsite to avoid delay to the project schedule. Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of Owner.

8.7 CONCURRENT DELAY

When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, Contractor may not be entitled to a time extension for the period of concurrent delay.

8.8 OTHER TIME EXTENSION REQUESTS

Time extensions requested in association with changes to the Work directed or requested by Owner shall be included with Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by **Paragraph 8.5.2.1** above. If Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give Owner written notice, stating the nature of the delay and the activities potentially affected, within **five (5) calendar days** after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. State claims for extensions of time in numbers of whole or half days.

8.8.1

Within **ten (10) calendar days** after the cessation of the delay, Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in **Article 7**.

8.8.2

No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.

8.8.3 CONTENTS OF TIME EXTENSION REQUESTS

Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:

- .1 The nature of the delay and its cause; the basis of Contractor's claim of entitlement to a time extension.
- .2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor's Work Progress Schedule, and any concurrent delays.
- .3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.

8.8.4 OWNER'S RESPONSE

Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.

- .1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.
- .2 Owner will respond to each properly submitted Time Extension Request within **fifteen (15) calendar days** following receipt. If Owner cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, Owner will notify Contractor in writing. Unless otherwise agreed by Contractor, Owner has no more than **fifteen (15) additional calendar days** to prepare a final response. If Owner fails to respond within **forty-five (45) calendar days** from the date the Time Extension Request is received, Contractor is entitled to a time extension in the amount requested.

8.9 FAILURE TO COMPLETE WORK WITHIN THE CONTRACT TIME

TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT. Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in the Contract.

8.10 LIQUIDATED DAMAGES

Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Contract.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Contract 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 ("GMP"), the Contractor shall submit to the Owner and Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1

As provided in the Contract and in the Contract Documents, the Contractor shall submit to the Owner and 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.

- .1** As provided in **Paragraph 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 Owner or the Architect, but not yet included in Change Orders.
- .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.
- .3** If requested by Owner or required elsewhere in the Contract Documents, Each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner:

- a) With each Application for Payment: a current Sworn Statement from the Contractor setting forth all Subcontractors and all material suppliers with whom the Contractor has subcontracted, the amount of each such subcontract, the amount requested for any Subcontractor or material supplier in the Application for Payment, and the amount to be paid to the Contractor from such progress payment;
- b) With each Application for Payment: a duly executed Conditional Waiver and Release on Progress Payment from the Contractor and Subcontractors establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment;
- c) Commencing with the second Application for Payment submitted by the Contractor, a duly executed Unconditional Waiver and Release on Progress Payment from Contractor and all Subcontractors, material suppliers and, where appropriate, lower tier subcontractors that have billed more than **five thousand dollars (\$5,000)** on a single application of payment, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Contractor of the current Application for Payment;
- d) With the Final Application for Payment: Contractor shall submit a Conditional Waiver and Release on Final Payment as required by **Texas Property Code, §53.284**. Upon receipt of final payment, Contractor shall submit an Unconditional Waiver and Release on Final Payment as required by **Texas Property Code, §53.284**; and
- e) Such other information, documentation, and materials as the Owner, or the title insurer may require in order to ensure that Owner's property is free of lien claims. Such other documents may include, without limitation, original copies of lien or bond claim releases suitable for filing with the County Clerk in Williamson County, Texas.

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 Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, bond claims, 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 Owner, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against Owner as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, or any portion of the property of any of Owner (referred to collectively as "liens" in this **Paragraph 9.3.3**), provide the Owner has paid Contractor pursuant to the requirements of the Contract Documents. The Contractor hereby agrees to indemnify and hold Owner harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.
- .2 The Owner shall release any payments withheld due to a lien or bond claims if the Contractor obtains security acceptable to the Owner, however, the Contractor shall not be relieved of any responsibilities or obligations under this **Paragraph 9.3.3**, including, without limitation, the duty to defend and indemnify Owner.
- .3 **Retainage.** The Owner shall withhold from each progress payment, as retainage, **five percent (5%)** of the total earned amount. Retainage so withheld shall be managed in conformance with **Texas Government Code, Chapter 2252, Subchapter B**. Any request for reduction or release of retainage shall be accompanied by written consent of the Contractor's Surety. No such request shall be made until the Contractor has earned at least **sixty-five percent (65%)** of the total Contract Sum.
- .4 For purposes of **Texas Government Code, §2251.021 (a)(2)**, the date the performance of service is completed is the date when the Owner's representative approves the Application for Payment.

9.4 CERTIFICATES FOR PAYMENT

9.4.1

The Architect will, within **seven (7) business 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 **Paragraph 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.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1

The Owner or Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner or Architect's opinion the representations to the Owner required by **Paragraph 9.4.2** cannot be made. If the Owner or Architect is unable to certify payment in the amount of the Application, the Owner or Architect will notify the Contractor. If the Contractor and Architect, or Contractor and Owner, as the case may be, cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount that can be certified. The Owner or 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 Owner or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in **Paragraph 3.3.2**, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;

- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 failure to maintain the scheduled progress, or reasonable evidence that the Work will not be completed within the Contract Time;
- .7 failure to comply with the requirements of **Texas Government Code, Chapter 2258** (Prevailing Wage Law);
- .8 failure to include sufficient documentation to support the amount of payment requested for the Project;
- .9 failure to obtain, maintain, or renew insurance coverage, payment/performance bonds or warranty bond required by the Contract Documents; or
- .10 repeated failure to carry out the Work in accordance with the Contract Documents.

9.5.2

When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1

The Owner shall make payment in the manner and within the time provided in the Contract Documents and in accordance with **Texas Government Code, Chapter 2251**.

9.6.2

The Contractor shall pay each Subcontractor no later than **ten (10) calendar days** after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3

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 (7) calendar 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.

9.6.4

Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in **Paragraph 9.6.2**.

9.6.5

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.

9.7 FAILURE OF PAYMENT

9.7.1

If the Architect is required to issue Certificates for Payment and, through no fault of the Contractor, the Architect fails to timely issue Certificates for Payment in the time permitted in the Contract Documents, or if the Owner does not pay the Contractor by the date established in the Contract Documents, then the Contractor may, upon **twenty-one (21) business days** written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received.

9.7.2

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, in the Owner's sole discretion, elect either to (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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; provided, however, that as a

condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

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 Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment (punch list). Failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3

Upon receipt of the Contractor's punch list, the Owner and Architect will examine the Work to determine whether the Work or designated portion thereof is substantially complete. If the Owner and/or Architect's examination discloses any item, whether or not included on the Contractor's punch list, that is not sufficiently complete in accordance with the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner or Architect. In such case, the Contractor shall then submit a request for another examination by the Owner or Architect to determine Substantial Completion.

9.8.4

When the Work or designated portion thereof is substantially complete, the Architect, if required by the Contract Documents, or Owner 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. Unless otherwise provided, Contractor shall complete all items on the punch list within **thirty (30) calendar days** of Substantial Completion. 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 and consent of surety, if any, the Owner shall make payment of retainage.

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, provided such occupancy or use is consented to by the insurer as required under **Paragraph 11.3.1.5**, the surety, and 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 **Paragraph 9.8.2**. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

9.9.2

Immediately prior to 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

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 Owner and Architect will make such inspection and, when the Owner and Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will 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 **Paragraph 9.10.2** as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or 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 Owner and Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, within the period of time required by **Texas Government Code, Chapter 2251**, (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 **thirty (30) business 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 to final payment, (5) a warranty bond in a form acceptable to Owner, and (6) other data establishing payment or satisfaction of obligations, such as receipts, unconditional full and final 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.

9.10.3

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

- .1 Claims, 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; or
- .3 terms of warranties required by the Contract Documents.

9.10.4

Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor and its Subcontractors shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1

The Contractor and its subcontractors shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement during construction.

10.2.2

The Contractor and its Subcontractors 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. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

10.2.3

The Contractor and its Subcontractors 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.

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.

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 **Paragraphs 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 **Paragraphs 10.2.1.2 and 10.2.1.3**, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of

the Contractor. 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 and its Subcontractors 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 **twenty-one (21) calendar days** after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

10.2.9

When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all covering and fully protect the Work, as necessary, from injury or damage by any cause.

10.2.10

The Contractor shall promptly 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.

10.3 HAZARDOUS MATERIALS

10.3.1

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. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written notice from the Owner.

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 expressly required by the Contract Documents. The Owner shall be responsible for materials or substances expressly 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 or negligently handles, or (2) where the Contractor fails to perform its obligations under **Paragraph 10.3.1**, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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, if any, claimed by the Contractor on account of an emergency shall be determined as provided in **Article 7** and **Article 15**.

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1

The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than **four (4) years** following final payment; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under **Section 3.18**.

11.1.2

The insurance required by **Paragraph 11.1.1** shall be written for not less than limits of liability specified in the Contract or the Contract Documents. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

11.1.3

Unless otherwise provided, copies of the insurance policies, in form acceptable to the Owner, shall be provided to Owner within **thirty (30) calendar days** of Owner's request. Except as otherwise provided, all of the policies provided shall name Owner as an additional insured, and such policies shall immediately deliver to Owner copies of all such insurance policies, together with certificates by the insurer evidencing Owner's coverage there under. Each policy of insurance obtained by Contractor pursuant to the Contract Documents shall provide, by endorsement or otherwise (1) that such policy shall not be canceled, endorsed, altered or reissued to effect a change in coverage for any reason or to any extent whatsoever unless the insurer shall have first given Owner and Lender at least **thirty (30) calendar days** prior written notice thereof, and (2) that Owner may, but shall not be obligated to, make premium payments to prevent the cancellation, endorsement, alteration or reissuance of such

policy and such payments shall be accepted by the insurer to prevent the same. Such policies shall provide, by endorsement or otherwise, that Contractor shall be solely responsible for the payment of all premiums under the policies, and that Owner shall have no obligation for the payment thereof, notwithstanding that Owner is named as additional insured under the policy. Any insured loss or claim of loss shall be adjusted to the Owner, and any settlement payments shall be made payable to the Owner as a trustee for the insureds, as their interests may appear. Upon the occurrence of an insured loss or claim of loss, monies received will be held by Owner who shall make distribution in accordance with an agreement to be reached in such event between Owner and Contractor. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be resolved in accordance with **Article 15**, below, but the Work of the Project shall nevertheless progress during any such period of dispute without prejudice to the rights of any party to the dispute. The Contractor shall be responsible for any loss within the deductible area of the policy. If Owner is damaged by the failure of Contractor to purchase or maintain such insurance, then Contractor shall bear all costs properly attributable thereto. The Contractor shall affect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Final Completion of the Project.

11.1.4

The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

11.3 PROPERTY INSURANCE

11.3.1

Unless otherwise provided in the Contract Documents, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in **Section 9.10** or until no

person or entity other than the Owner has an insurable interest in the property required by this **Section 11.3** to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

- .1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect’s and Contractor’s services and expenses required as a result of such insured loss as well as coverage for building materials while in transit or building materials suitably stored at a temporary location. Property insurance provided by the Contractor shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor under this **Paragraph 11.3.1** shall include a waiver of subrogation in accordance with the requirements of **Paragraph 11.3.4**.
- .2 If the Contractor does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Contractor shall so inform the Owner in writing prior to commencement of the Work. If the Owner is damaged by the failure or neglect of the Contractor to purchase or maintain insurance as described above, without so notifying the Owner in writing, then the Contractor shall bear all reasonable costs properly attributable thereto.
- .3 Contractor shall be responsible for any deductibles to the extent that the loss arose out of or was caused by Contractor’s negligence or breach of the Contract.
- .4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.
- .5 Partial occupancy or use in accordance with **Section 9.9** shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.3.2 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in **Article 6**, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this **Section 11.3** or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. However, this waiver shall not apply to property insurance purchased by Owner after completion of the Work or Final Payment, whichever comes first. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in **Article 6**, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.3.3

A loss insured under the property insurance shall be adjusted in good faith and made payable to the Owner in good faith for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4 BONDS

11.4.1

The Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by law. In the event Contractor fails to provide such bonds within the time provided by the Contract, Owner may immediately, upon notice of such failure, or within a reasonable time thereafter, at its sole option and discretion: (1) void this Contract in its entirety; or (2) procure such bonds on behalf of the Contractor, deducting such amounts from the Contract Sum. In the event Owner voids the Contract under this **Section 11.4**, Contractor may forfeit its bid bond.

11.4.2

A Performance Bond is required if the Contract Sum is in excess of **fifty thousand dollars (\$50,000)**. The performance bond is solely for the protection of the Owner, in the full amount of the Contract Sum and conditioned on the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Owner.

11.4.3

A Payment Bond is required if the Contract Sum is in excess of **twenty-five thousand dollars (\$25,000)**. A payment bond is payable to the Owner, in the full amount of the Contract Sum and solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a supplier of required materials or labor. The form of bond shall be approved by the Owner.

11.4.4 Warranty Bond.

Prior to final final payment, Contractor shall provide Owner with a Warranty Bond in the sum of **ten percent (10%)** of the Contract Sum or **ten percent (10%)** of the GMP for Construction Manager At-Risk Contracts for **twelve (12) months** from Substantial Completion of the Work. The form of bond shall be approved by the Owner.

11.4.5

Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code.

11.4.6

Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner. If any bond is for more than **ten percent (10%)** of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized, accredited, or trusted to do business in the State. A reinsurer may not reinsure for more than **ten percent (10%)** of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall within **thirty (30) calendar days** after such loss furnish a replacement bond at no added cost to the Owner.

11.4.7

Each bond shall be accompanied by a valid Power-of-Attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

11.4.8

The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with **Texas Government Code, Chapter 2253**. If for any reason a statutory payment or performance bond is not honored by the surety, the Contractor shall fully indemnify and hold the Owner harmless of and from any costs, losses, obligations or liabilities it incurs as a result.

11.4.9

Owner shall furnish certified copies of a payment bond and the related Contract between Owner and Contractor to any qualified person seeking copies who complies with **Texas Government Code, §2253.026**.

11.4.10 Claims on Payment Bonds.

Claims on payment bonds must be sent directly to the Contractor and its surety in accordance with Texas Government Code, §2253.041. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or its surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

11.4.11 Payment Claims when Payment Bond not Required.

When the value of the Contract between Owner and the Contractor is less than twenty-five thousand dollars (\$25,000), claimants and their rights are governed by Texas Property Code, §53.231-239. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claims.

11.4.12

Sureties shall be listed on the **Department of the Treasury's Listing of Approved Sureties** stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).

11.5 GENERAL REQUIREMENTS

11.5.1

Unless otherwise provided in the Contract Documents, all insurance coverage procured by the Contractor shall be provided by insurance companies having policy holder ratings no lower than "A" and financial ratings not lower than "VIII" in the Best's Insurance Guide, the latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

11.5.2

If the Owner is damaged by failure of the Contractor to purchase or maintain insurance required under this **Article 11**, then the Contractor shall bear all reasonable costs (including attorneys' fees and court and settlement expenses) properly attributable thereto.

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 Owner or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or Architect, be uncovered for examination and be replaced at the Contractor's expense without change in the Contract Time. 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 (other than start-up), 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.

12.1.2

If a portion of the Work has been covered that the Owner or Architect has not specifically requested to examine prior to its being covered, the Owner or 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

The Contractor shall promptly correct Work rejected by the Owner or 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, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.2 AFTER SUBSTANTIAL COMPLETION

- .1** In addition to the Contractor's obligations under **Section 3.5**, if, within **one (1) year** after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under **Paragraph 9.9.1**, or by terms of an applicable special warranty required by the Contract Documents, 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. The Owner shall give such notice promptly after discovery of the condition. 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, without prejudice to any other remedies, correct it in accordance with **Section 2.4** or file a claim with the surety of any applicable warranty bond.

- .2** The **one (1)-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.

12.2.3

The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4

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.

12.2.5

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 (1)-year** period for correction of Work as described in **Paragraph 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.

12.3 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.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The Contract shall be governed by the law of Williamson County, Texas.

13.2 SUCCESSORS AND ASSIGNS

The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in the Contract Documents or by law, 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.

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

Except as expressly provided in the Contract Documents, 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 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. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. The Owner shall bear costs of 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 **Paragraph 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 Owner and Architect of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures.

13.5.3

If such procedures for testing, inspection or approval under **Paragraphs 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 shall be at the Contractor's expense. The Contractor also agrees the cost of testing 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 Owner and 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.

13.6 INTEREST

The rate of interest that accrues on an overdue payment is 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:

13.6.1

one percent (1%); and

13.6.2

the prime rate as published in the Wall Street Journal on the **first (1st) day of July** of the preceding fiscal year that does not fall on a Saturday or Sunday pursuant to **Texas Government Code, §2251.025**.

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 time limits provided by law. Nothing herein shall be construed as shortening the period of time Owner has for commencing claims to less than what is required by law.

13.8 APPLICATION TO SUBCONTRACTS

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

13.9 GENERAL PROVISIONS

13.9.1

All personal pronouns used in the Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and paragraphs are for convenience only and neither limit nor amplify the provisions of the Contract. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

13.9.2

Wherever possible, each provision of this Contract shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Contract, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Contract or valid portions of such provision, which are hereby deemed severable.

13.10 NO ORAL WAIVER

The Provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing 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 matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

13.11 TEXAS PUBLIC INFORMATION ACT

To the extent, if any, that any provision in the Contract Documents is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that Owner, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any information or data furnished to Owner whether or not the same are available to the public. It is further understood that Owner, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Owner, its officers and employees shall have no liability or obligation to Contractor for the disclosure to the public, or to any person or persons, of any software or a part thereof, or other items or data furnished to Owner by Contractor in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

13.12 EQUAL OPPORTUNITY IN EMPLOYMENT

The Contractor agrees that during the performance of the Contract it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Parties will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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 **ninety (90) 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; or
- .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 **Paragraph 9.4.1**, or because the Owner has not made payment on an undisputed 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 **one hundred percent (100%)** of the total number of days scheduled for completion, or **one hundred twenty (120) days** in any **three hundred sixty-five (365)-day** period, whichever is less.

14.1.3

If one of the reasons described in **Paragraph 14.1.1 or 14.1.2** exists, the Contractor may, upon **thirty (30) business days** written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1

The Owner may terminate the Contract if the Contractor

- .1 fails to commence the Work in accordance with the provisions of the Contract,
- .2 fails to prosecute the Work to completion thereof in a diligent, efficient, timely, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract,
- .3 fails to use an adequate amount or quality of personnel or equipment to complete the Work without undue delay,

- .4 fails to perform any of its obligations under the Contract,
- .5 fails to make prompt payments when due to its Subcontractors and Suppliers, or as required by **Texas Government Code, Chapter 2251**,
- .6 files any petition or other pleading seeking any relief under any provisions of the Federal Bankruptcy Act, as amended, or any other federal or state statute or law providing for reorganization of debts or other relief from creditors, permits a receiver or other person to be appointed on account of its insolvency or financial condition, or becomes insolvent,
- .7 creates any situation or state of facts which would authorize or permit an involuntary petition in bankruptcy to be filed against Contractor, or
- .8 has not met or in Owner's opinion will not meet the dates of Substantial Completion set forth in the Contract Documents.

14.2.2

When any of the above reasons exist, the Owner, in its sole and absolute discretion, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, **thirty (30) calendar 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 **Paragraph 14.2.1**, the Contractor shall not be entitled to receive further payment until the Work is finished. In the event that a final decision under **Article 15**, below, is rendered that sufficient cause did not exist for termination under this **Section 14.2**, then the termination shall be considered a termination for convenience, under **Section 14.4**, below.

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 and costs incurred by the Owner in finishing the Work 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.

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 **Paragraph 14.3.1**. Adjustment of the Contract Sum shall include profit. 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, the Contractor shall recover the amounts provided in **Paragraph 12.1.3 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 for events arising during the performance of the Work by Contractor must be initiated by written notice to the other party with a copy sent to the Owner; provided, however, that the claimant shall use its best efforts to furnish 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 take steps 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 Contractor must be initiated within **ten (10) business days** after occurrence of the event giving rise to such Claim or within **ten (10) business days** after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims may also be reserved in writing within the time limits set forth in this **Paragraph 15.1.2**. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information available to the claimant that will facilitate prompt verification and evaluation of the Claim.

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 Contract Documents.

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

- .1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.
- .2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

15.2 MEDIATION

15.2.1

Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived shall be subject to mediation as a condition precedent to seeking redress in a court of competent jurisdiction.

15.2.2

The parties shall endeavor to resolve their Claims by mediation, which shall consist of a single mediator who is knowledgeable about the subject matter of the Contract. A request for mediation shall be made in writing, delivered to the other party to the Contract.

15.2.3

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Williamson County, Texas. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

15.2.4

All disputes not resolved through mediation shall be decided in litigation in Williamson County, Texas.

15.2.5 NO WAIVER OF IMMUNITY

Nothing in the Contract Documents shall be deemed to waive, modify or amend any legal defense available at law or in equity to Owner, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Owner does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.