ATTACHMENT B

RFP2026-08

DRAFT

AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

«Hood County Jail Expansion »
«400 Deputy Larry Miller Dr
Granbury, TX 76048»

THE OWNER:
(Name, legal status and address)

«Hood County
«Ron Massingill, County Judge (or Successor) »
«100 E. Pearl St.
Granbury, TX 76048»

THE ARCHITECT:

«DRG Architects, LLC »
«13300 Old Blanco Road #175
San Antonio, TX 78216 »

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ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 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 The Project Manual

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.9 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, recognizes, and discovers in exercising the degree of care, skill, competence and diligence ordinarily possessed by reputable contractors practicing in the locale of the Project with experience in the construction of buildings and other improvements similar to those detailed in the Contract Documents, but expressly does not include any inference that Contractor "should have known", "should have recognized" or "should have discovered" together with any respective derivatives of those terms, it being the intention to only include actual knowledge, actual recognition and actual discovery. However, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interrupted to mean reasonably inferable by a contractor familiar with the Project and exercising the degree of care, skill, competence and diligence ordinarily possessed by reputable contractors practicing in the locale of the

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Project with experience in the construction of buildings and other improvements similar to those detailed in the Contract Documents.

§ 1.1.10 Equal to (or Approved Equal)
Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contact Documents and which may be incorporated in the Work after review and approval by the Architect of the information about such products and acceptance by the owner in writing.

§ 1.1.11 Punch List
A written list of items that are uncompleted, damaged, or unacceptable items of the Work that do not interfere with the Owner's use and occupancy of any part of the Project.

§ 1.1.12 Intellectual Property Rights
Intellectual Property Rights shall mean: (a) all software, source code and object code, and modifications (including software under development), ideas and discoveries and inventions (whether or not patentable), trade secrets, information (confidential or otherwise), technical data, techniques, processes, methods, plans, designs, drawings, schematics, specifications, communications protocols, test procedures, algorithms, technology, know-how, customer lists, marketing and customer information, documentation, materials and works of authorship which are the subject matter of copyright, regardless of how embodied; and (b) all intangible intellectual property rights therein, including the right to make, sell, license or otherwise distribute, and use, and any and all applications for United States or foreign patents or issued patents; all trademarks, service marks, trade names, or trade dress, and all pending or issued United States or foreign registrations thereof; and copyrights and United States and foreign applications and registrations thereof, including the rights to copy, sell, license or otherwise distribute, display, publish and create derivative works therefrom.

§ 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 indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 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.

§ 1.2.4 If Contractor has actual knowledge that Work is required in a manner to make it impossible to produce work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request in writing an interpretation from the Architect before proceeding with the Work. If the Contractor has actual knowledge of the facts described in the preceding grammatical sentence and fails to make such a request, no excuse will thereafter be entertained for failure to carry out Work in the required manner or provide required guarantees or warranties, and the Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

§ 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.

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§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the 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 suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery, or by electronic transmission to the email address of the parties' specified representative. Electronic Claim notices shall also satisfy the transmittal-record requirements of Section 13.3. This Section does not modify any statutory notice or service requirement.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. For this Project, the administrative designation of Kitchell CEM in Section 8.2 of the Agreement does not grant authority to bind Hood County. Owner shall separately identify in writing the County official or governing body authorized for financial commitments and changes to Contract Sum or Contract Time.

§ 2.1.2 Upon written request, Owner shall furnish project and payment-bond information required by applicable Texas public-works law. Nothing in the Contract Documents creates a right to a lien against public property where

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prohibited by law or makes the prime Contractor a beneficiary of its own payment bond. Payment by Owner shall comply with Texas Government Code Chapter 2251, including Section 2251.021, and the payment provisions of the Agreement.

§ **2.2** Evidence of Owner's Financial Arrangements
§§ **2.2.1 through 2.2.4** Intentionally Deleted.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

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

§ 2.3.5 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.

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

§ 2.3.7 The Owner, having retained a competent design professional to design the Work of this Agreement, expects the adequacy of the design for its intended purpose. Should the design prove improper, not in strict compliance with the Applicable Laws or should Contractor incur additional costs to construct the Work due to improper, inadequate, or erroneous design, the Contractor may be granted an adjustment in the Contract Sum and Contract Time upon request in writing listing the issues that have arisen, such a request will not be unreasonably denied.

§ 2.4 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, except to the extent required by Section 6.1.3.

§ 2.4.1 After consultation with the Architect, if suspension of the Work is warranted by reason of unforeseen conditions which may adversely affect the Work if such Work were continued, the Owner may suspend the Work by written notice to the Contractor. In such event, the Contract Time shall be adjusted accordingly, and the Contract Sum shall be adjusted to the extent that additional costs are incurred by reason of such suspension, as more particularly described in Section 14.3. If the Contractor, in its reasonable judgment, believes a suspension is warranted by unforeseen circumstances which may adversely affect the Work if the Work were continued, the Contractor shall immediately notify the Owner and the Architect of such belief and describe in detail the particular reasons therefor.

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§ 2.5 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-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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

§ 2.5.3 If defective or nonconforming Work creates an emergency requiring immediate action to protect persons or property, Owner may take reasonably necessary corrective measures without awaiting expiration of the ordinary notice and cure periods. Owner shall notify Contractor and Architect as soon as practicable and permit Contractor to participate to the extent consistent with addressing the emergency. Contractor shall reimburse reasonable, documented emergency correction costs to the extent the underlying condition is Contractor's responsibility under the Contract Documents. This Section does not shift construction means, methods or safety-program responsibility to Owner.

§ 2.6 Owner's Right to Audit

§ 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 and unsuccessful bidders), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related exclusively to change orders, material substitution, and schedule slippage (all of the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction, upon reasonable advance written notice from Owner, during normal working hours by Owner's agent or 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 pursuant to the execution of the Work on the Project and the Cost of the Work of the Project. Such Records shall also include, without limitation, those documents or other records deemed necessary by Owner to evaluate and verify direct costs as they may apply to costs associated with this Agreement.

§ 2.6.2 For the purposes of such audits, inspections, examinations and evaluations, the Owner's agent or authorized representative shall have access to said Records from the effective date of this Agreement for duration of the Work and until three (3) years (or longer if required by law), after the date of the final payment by Owner to Contractor pursuant to this Agreement. If requested in writing by Owner, Contractor shall transfer or deliver a complete copy of the Records to Owner upon final payment, with the reasonable copying expense to be paid by Owner.

§ 2.6.3 Owner's agent or its authorized representative shall have access 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 the provisions of this Section 2.6. Owner's agent or authorized representative shall give Contractor reasonable notice of intended audits.

§ 2.6.4 To the extent practicable, Contractor shall use good faith efforts to require all subcontractors and material suppliers ("Payees") to comply with the provisions of this Section 2.6 by insertion of the requirements hereof into each written agreement between Contractor and Payees solely as to Change Orders.

§ 2.6.5 If an audit, inspection or examination in accordance with Section 2.6 discloses overcharges (of any nature) by the Contractor to Owner in excess of one percent (1%) of the total billings pursuant to this Agreement, the reasonable cost of the Owner's audit shall be paid by the Contractor.

§ 2.7 ACCELERATIONS FOR OWNER'S CONVENIENCE

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§ 2.7.1 Owner shall be entitled to direct the acceleration or re-sequencing of the Work in order to achieve completion prior to the milestone dates or the scheduled Substantial Completion Date. In the event Owner desires to accelerate the base-line Project Schedule or the latest revised Project Schedule as applicable, in whole or in part, for reasons other than delays caused by or attributable in whole or in part to a concurrent delay, Owner shall so notify the Contractor in writing and shall equitably adjust the Contract Time and Contract Sum accordingly.

§ 2.7.2 Upon receipt of such written instruction, Contractor shall provide Owner with a plan, provided such plan is feasible, to achieve the acceleration and its anticipated not-to-exceed cost. Before proceeding with any such Owner-directed acceleration plan under this Section 2.7, the Contractor shall have received the Owner's prior written approval of the plan and its anticipated not-to-exceed cost. Upon approval by Owner, Contractor shall require its personnel and its Subcontractors to work such overtime hours and/or to increase their respective work forces as may be reasonably necessary to meet Owner's acceleration schedule.

§ 2.7.3 Such written acceleration instructions shall be considered a Construction Change Directive and Contractor shall respond in accordance with Section 7.3; provided, however, that if Owner has accepted Contractor's plan in full, the accepted plan shall govern adjustments to the Contract Sum and Contract Time.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The 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 this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

§ 3.1.3 The Contractor shall not be relieved of its 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 The Contractor acknowledges that it has visited the site of the Project prior to submitting a proposal. Such site visit shall be for the purpose of familiarizing the Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas; provided, however, and notwithstanding anything in the foregoing provisions which may be interpreted to the contrary, the representations and/or warranties contained in this Section 3.2.1 shall not be interpreted to imply that the Contractor, after reasonable diligence and/or investigation consistent with the Contractor's applicable standard of care, is responsible for unknown underground condition for which the Contractor did not have knowledge.

§ 3.2.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has examined the site and its surroundings and become familiar with the conditions (based on Contractor's observations and tests and studies provided by Owner on which Contractor may rely as provided herein and tests and studies performed by or for Contractor [herein referred to as the "Known Information"]) under which the Work is to be performed. . Although the Contractor may be entitled to rely upon the accuracy of the Known Information, the Contractor may not rely upon such information or any other information provided by or on behalf of the Owner when the Contractor knows that such information is inaccurate, inadequate, noncomplete or otherwise unfit for its intended purpose. As provided below, Contractor shall promptly notify Owner whenever Contractor has actual knowledge that any of the Known Information or other information provided by the Owner is inaccurate, inadequate, noncomplete or otherwise unfit for its intended purpose. 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.

Prior to execution of the Agreement, the Contractor evaluated and satisfied itself as to the conditions and limitations under which the Work is to be performed, including, without limitation: (a) the location, condition, layout and nature of the Project site and surrounding areas, (b) technical reports (c) generally prevailing climatic conditions, (d) anticipated labor supply and costs, (e) availability and cost of materials, tools and equipment, and (f) other similar issues.

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§ 3.2.1.2 Except as otherwise required to be included in a clarification document or supplemental document that may contain value engineering refinements and other required classifications, the Contractor acknowledges and warrants that it has closely examined all the Contract Documents in order to enable the Contractor to complete the Work in a timely manner for the Contract Sum.

§ 3.2.1.3 While the exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect or Architect's consultants, or the work installed by other contractors, is not guaranteed by the Owner, the Contractor may rely on the drawings. The Contractor is not expected to perform exhaustive verification of existing grades, benchmarks, inverts, property lines or other empirical data that is required for the accuracy and basis of the placement of structures and construction of the Project, but shall perform customary verification of such items. The Contractor shall, therefore, based on reliance on benchmarks, inverts and property lines shall satisfy itself as to the accuracy of all design grades, elevations, dimensions, and locations. In addition, Contractor may specifically rely on the Architect's and Engineer's dimensions, chain of dimensions and coordination of the documents by the Owner's Consultants in order to establish layout. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. In the event of discovered errors or issues, prior to or at the time of the performance of Contractor's Work affected by such errors or issues, the Contractor will stop any Work affected by such errors or issues and immediately notify the Owner and Architect. If any Work is required to be corrected or replaced due to Contractor's failure to timely perform its obligations under this Section 3.2.1, it shall be promptly corrected or replaced by the Contractor at no cost or expense to Owner.

§ 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, Architect or Architect's consultants, pursuant to Section 2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe and verify any conditions at the site affecting it, which can be ascertained by a reasonable on-site inspection or pursuant to tests furnished by Owner and/or obtained by Contractor. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Laws, except those drawings prepared by the Contractor or its Subcontractors, but the Contractor shall promptly report to the Architect and Owner in writing of any nonconformity the Contractor discovers or knows. If the Contractor performs any construction activity when it knew it was not in accordance with Applicable Laws without such notice to the Architect, with a copy to Owner, and instruction to proceed, the Contractor shall be liable for any damages, costs or liability resulting therefrom, including, without limitation, any fines, Architect's fees, consulting fees, and costs of correction of the Work.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to Applicable Laws, unless Contractor recognized such error, inconsistency or omission and knowingly failed to promptly report it to the Architect or Owner.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite

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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 notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative 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, Sub-subcontractors (which includes, but is not limited to, suppliers and materialmen), 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 or Sub-subcontractors. The Contractor shall be responsible to the Owner for all damages, losses, costs and expenses resulting from the acts and omissions of the Contractor's employees, Subcontractors, and their agents and employees, and other persons performing any of the Work under a contract with the Contractor or supplying any material for the Work.

§ 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.

§ 3.3.3.1 In addition to the foregoing, the Contractor shall require each of its Subcontractors and Sub-subcontractors to inspect Work in place prior to proceeding with the Subcontractor's or Sub-subcontractor's Work to determine that such Work is in proper condition to receive the Subcontractor's or Sub-subcontractor's Work. The Contractor shall attempt to include in each subcontract a provision that a decision by a Subcontractor or Sub-subcontractor to proceed with its Work shall constitute an acknowledgement that the Subcontractor or Sub-subcontractor in question has inspected the Work in place, a provision that the Work is in proper condition to receive the Subcontractor's or Sub- subcontractor's Work, and a waiver of any Claims related to or resulting from such failure to make such inspection.

§ 3.3.4 The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent performance of the Work and the Contractor shall use its best efforts to maintain labor peace for the duration of the Project. In the event of a labor dispute unique to the Project and not a general labor dispute, the Contractor shall not be entitled to any increase in the Contract Sum or extension of the Contract Time.

§ 3.3.5 The Contractor shall keep and maintain on the Project site at all times and make available to the Owner one or more copies, as reasonably required by the Owner, of the Contractor's daily log, all Drawings, Specifications, field orders, Samples, approved Shop Drawings, Change Orders, catalog cuts and the like, in good order and marked to record all changes made during construction. The daily log shall contain details of the weather conditions, materials delivered, Work performed, operating hours, and the number of persons workings on the Project for each Subcontractor. All of the above documents shall be delivered to the Owner upon Substantial Completion.

§ 3.3.6 The Contractor shall make all Work fit together and function properly as set forth in Contract Documents. The Contractor shall perform or cause to be performed, all cutting, fitting or patching of the Work, whether originally performed by the Contractor, a Subcontractor or anyone else under the Contractor's control, that may be required to make all parts of the Work fit together and function properly, in conformity with the Contract Documents and so as not to endanger the Work or any part of it; and to that end the Contractor shall diligently coordinate, inspect, and supervise all aspects of the Work, whether performed by the Contractor or any of its Subcontractors, shall guard against any and all defects and deficiencies, shall stop any part of the Work that does not meet the requirements of the Contract Documents, and shall replace all and any of such Work irrespective of whether the same shall be fabricated, installed or completed. Before placing concrete or masonry that will conceal or affect another trade's installations, Contractor shall notify the affected trades in sufficient time to coordinate and complete required embedded or concealed Work.

§ 3.3.7 The Contractor shall familiarize the Owner's personnel with the operation of all systems and equipment. In cooperation with the Architect, the Contractor, prior to Substantial Completion, shall provide the Owner with such services as may be necessary or useful in checking for readiness of the utilities, systems and equipment installed in the Project, assist in their initial start-up and testing, and provide initial training of such personnel to make them familiar with such systems and equipment, and videotape such training sessions.

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§ 3.3.8 Consistent with the need to avoid impeding progress of the Work and the availability of materials at the time of placing orders, the Contractor shall use its good faith efforts to keep the amount of surplus construction materials to a minimum and to avoid unnecessary stockpiling of materials at the Project site in advance of the time when such materials will be needed.

§ 3.3.9 The Contractor shall keep the floors and stairs of the Project site reasonably clean and safe at all times. Owner acknowledges that as a process of construction materials/debris will accumulate, then are cleaned within a reasonable time and the process repeats. The Contractor acknowledges that the Owner may from time to time visit the Project site and may bring any lenders, investors, affiliates and their representatives. All such visitors shall follow the safety procedures and precautions established by the Contractor.

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with 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 submits an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply.

§ 3.4.2.1 The Contractor must submit to the Architect and the Owner (a) 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; (b) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (c) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; and (d) the adjustment, if any, in the Completion Date and the construction schedule in the event the substitution is acceptable; and (e) written confirmation that the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and that the 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 submitted in triplicate to the Architect and Owner 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 required in this Section 3.4.2.1.

§ 3.4.2.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (a) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (b) specified products are unavailable through no fault of the Contractor; (c) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (d) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (e) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time or other considerations.

§ 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.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform 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. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials

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and equipment. In the event Owner claims that Contractor has breached any warranty, Owner shall give Contractor notice and a reasonable opportunity to cure any alleged breach of any warranty.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. Contractor shall obtain and deliver required Subcontractor and manufacturer warranties in a form directly enforceable by Owner, through issuance in Owner's name or an effective assignment, without diminishing Contractor's obligations. No extended warranty is represented as secured by the performance bond beyond the bond's express terms.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contract Sum or Contract Time shall be equitably adjusted by Change Order for additional costs or time needed resulting from any change in Applicable Law, including increased taxes or tariffs enacted after the date of this Agreement.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The cost of any Permits shall be included in the Contract Sum, without an increase in the Contract Sum, all other trade permits, governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required when bids are received or negotiations concluded. Among other things, the Contractor shall provide licenses and related fees, inspection fees, special inspection fees, and taxes on such fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. The Contractor shall post copies of all obtained Permits at the Project site and deliver copies of all such Permits to the Owner and Architect prior to execution of the Work and originals upon Substantial Completion. Certificates of inspection, use and occupancy shall be delivered to the Owner upon Substantial Completion of the Work in accordance with the deadlines set forth in the Contract Documents.

§ 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 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with all Applicable Laws. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification. Additionally, if the Contractor performs Work that Contractor knows to be contrary to Applicable Laws without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 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 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both subject to approval by the Hood County Commissioners Court or a County official acting within lawful delegated authority for the specific adjustment. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons.

§ 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

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

§ 3.7.6 Prevailing Wages and Payroll Records. Contractor and its Subcontractors shall comply with Texas Government Code Chapter 2258 and shall pay covered workers not less than the applicable wage rates and fringe benefits identified in Agreement Exhibit F, General Decision TX20260153, Modification No. 1, published May 18, 2026, for Building Construction in Hood County, Texas. Contractor shall include these obligations in its Subcontracts. Contractor and each Subcontractor shall maintain the records required by applicable law, including each covered worker's name, classification and actual wages paid, and shall make required records available to Owner and authorized representatives for inspection. Contractor shall submit certified payrolls covering its Work and that of its Subcontractors weekly, concurrently to the Hood County Auditor and the Architect, with a copy to Kitchell CEM, Owner's Representative, using the submission address designated under A101 Section 5.1.3 or a secure delivery method designated in writing by Owner for those recipients. Weekly certified payroll submissions shall be made independently of the monthly Application for Payment. Each submission shall include a certification by an authorized representative that the payroll information is accurate and complete and that applicable prevailing wage and fringe-benefit requirements have been met. Any additional federal labor-standard requirements shall apply to the extent independently applicable to the Project.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-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 and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the

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Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. In addition to the initial schedule required above, Contractor shall submit a detailed critical path method baseline schedule within fifteen (15) calendar days after receipt of the Notice to Proceed. The baseline shall identify activity logic and durations, procurement, submittals, permitting, Owner interfaces, testing, security-system integration, training and completion milestones within the contracted scope. Contractor shall maintain and update the schedule under Sections 3.10.2 and 3.10.4 and Exhibit D. Review of a schedule does not change Contract Time.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably 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.

§ 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 Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner and the Architect of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions as set forth in Section 3.10.1 or if requested by the Owner or the Architect. If Contractor indicates any delays, the Contractor shall propose an affirmative plan to correct the delay (if feasible), including overtime and additional labor, if necessary as more particularly described in Section 3.2.2 of the Agreement. In no event shall any report by the Contractor of any delay be deemed an adjustment to the Contract Time or Contract Sum unless agreed to by the Owner (within a reasonable time) and authorized in writing by a Change Order executed by all parties.

§ 3.10.5 Contractor shall submit monthly updates of the critical path method schedule showing actual progress, current logic, forecast milestones and recovery measures. Contractor shall provide a rolling three-week look-ahead at regular progress meetings. These submissions supplement, and do not replace, prompt notice of delay and recovery obligations under Section 3.10.4 and Section 3.2.2 of the Agreement. Contractor shall furnish the current construction schedule and applicable updates to its Subcontractors and coordinate their Work accordingly.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes to the Work, 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 Owner 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. Said "record" documents shall show the location, size and configuration of all underground or otherwise concealed conditions of the Work which may vary from the Contract Documents. Prior to final payment, the Contractor shall transfer all such "record" information onto a set of reproducible Drawings and submit same to the Architect for the Architect's review. The Contractor shall be responsible for the completeness and accuracy of such "record" Drawings and Specifications, notwithstanding any review of same by the Architect.

§ 3.11.1.1 Two (2) complete sets of "as-built / red-line" Drawings which correctly indicate the Work as finally constructed shall be delivered to the Owner upon Substantial Completion of the Project. These sets will be in electronic format and delivered via compact disk and via email to the Owner.

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§ 3.11.1.2 The Contractor shall certify by letter that the record copy of all documents which it delivers to the Owner are, to the best of the Contractor's knowledge, accurate and represent actual field conditions at Substantial Completion of the Project with any and all Modifications shown and described thereon.

§ 3.11.2 The Contractor shall keep the record copy of all documents up-to-date as the Work progresses and changes occur. Recorded changes shall include all architectural and structural changes; plumbing, heating, ventilating, air conditioning, and electrical Work changes; and changes to grades, utilities and other Work as well as Work required by Change Orders. Mechanical, plumbing, special-systems and electrical record drawings shall identify changes in material and equipment size, type and capacity; equipment, device and outlet locations; concealed service routes with measured offsets from accessible, identifiable walls, columns or building corners; sewer invert elevations; and elevations at the top of water lines.

§ 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 how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action. All Shop Drawings shall (i) comply with performance Specifications and other criteria established by the Architect; and (ii) permit the Work, when completed, to conform with the requirements of the Contract Documents. Shop Drawings shall be modified at no cost to the Owner as necessary to obtain any Permits, certificate or approvals and as required to comply with any requirements of the Contract Documents. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's approval thereof.

§ 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.

§ 3.12.7.1 Shop Drawings, Product Data and Samples shall be properly identified with the name of the Project, the Contract, the Subcontractor and the date. Each set submitted shall be accompanied by an approved transmittal form referring to the name of the Project, to the number of the Specifications section and to the Section number, when applicable, for identification of each item. Shop Drawings for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. Each Shop Drawing and Sample shall be retained throughout all revisions. Each Shop Drawing and Sample shall have a clear space for the stamps of

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the Contractor and Architect. Where a clear space is not available on Samples, Samples should be submitted with tags or stickers attached thereto.

§ 3.12.7.2 Shop Drawings and Samples shall bear the Contractor's stamp certifying that the Contractor has verified (as to existing conditions) or will verify (as to Work not then constructed or installed) all materials, field measurements and field conditions applicable thereto, and that such Shop Drawings and Samples have been coordinated and checked by the Contractor for completeness and compliance with the Contract Documents, Submissions without this stamp and submissions which, in the Architect's opinion, are incomplete, contain numerous errors, or have not been checked or have only been checked superficially, will be returned for resubmission. Proposed deviations and substitutions from the Contract Documents shall be clearly noted on the submittals and handled as elsewhere herein described. The Contractor shall be solely responsible for any quantities and dimensions which may be shown on the submittals.

§ 3.12.7.3 Samples of materials which are generally furnished in containers bearing manufacturer's descriptive labels and printed application instructions shall, if not submitted in standard containers, be furnished with such labels and application instructions.

§ 3.12.7.4 The Contractor shall prepare or cause to be prepared, Shop Drawings and installation layouts to depict all conditions as necessary to coordinate the Work and to depict proposed solutions for tight field conditions. These Shop Drawings and field installation layouts shall be coordinated in the field by the Contractor and Subcontractors for proper relationship to the Work of all other trades based on field conditions. Before materials are fabricated or Work begun, the Contractor shall submit to the Architect complete Shop Drawings at not less than the scale of Architect's Drawings. The Contractor shall make the Shop Drawings and installation layouts available at all times at the Project site. The Contractor shall coordinate all field work and Shop Drawings of the various trades prior to installation of the Work. In spaces where various installations cannot be accommodated, the Contractor shall, prior to fabrication or installation of the Work, notify the Architect and Owner and shall cooperate with the Architect and Owner in developing a solution to the problem. The Contractor shall be responsible for coordinating the various trades involving the location and size of all sleeves, electrical outlets, inserts, piping, conduits, hangers, ducts and similar installations. The Contractor agrees that all such installations shall be clear of obstructions and shall be constructed in a manner presenting an orderly appearance at no additional cost or increase in time to the Owner.

§ 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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 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.

§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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

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and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.
§ 3.12.11 Contractor shall follow applicable manufacturer's installation instructions and keep them available at the Project site for Architect's review. Where instructions conflict with the Contract Documents or indicate an unsatisfactory result, Contractor shall notify Owner and Architect and obtain written clarification before proceeding with the affected Work. Unaffected Work shall continue. This requirement does not authorize Architect to change Contract Sum or Contract Time; Articles 7 and 15 apply to any such adjustment.

§ 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, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. After equipment is no longer required for the Work, it shall be promptly removed from the project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall provide a clean and secure site so as to limit Project site damage from vandalism, theft, and other occurrences. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Cutting and repair of completed Work shall be coordinated with the original installer and performed by that installer or another qualified firm approved in writing by Owner after consultation with Architect, without impairing applicable warranties. If Contractor fails to perform required cutting or restoration, Owner's correction rights shall be administered under Section 2.5.

§ 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work. Structural members shall not be cut or altered without prior written approval from the Architect and the structural Engineer responsible for the affected design.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and 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. Flammable and combustible materials shall be stored outside buildings at locations approved for the Project and in compliance with applicable fire requirements. Materials needed inside for the day's Work shall be kept in approved closed containers and removed to the designated storage location at the end of the working day. Storage shall not obstruct access, egress or jail operations.

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

§ 3.15.3 During its Work, Contractor and each Subcontractor shall keep the Work neat and orderly by frequent periodic waste removal and cleanup. Crates and cartons in which materials, equipment or fixtures are received shall be removed daily. Upon completion of its division of the Work, each Subcontractor shall collect and remove all

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rubbish, surplus material, tools and scaffolding pertaining to its Work. Contractor and each Subcontractor shall be responsible for collection and disposal of rubbish created by its materials, workers and Work. Contractor shall perform periodic broom cleaning of the building areas after pouring of concrete floor slabs and concrete fill. Contractor shall be responsible for cleanup of debris, dirt and dust in the Work area.

§ 3.15.4 At the Date of Substantial Completion of the Project, Contractor in addition to removal of accumulated debris and rubbish, shall clean all glass, and replace any broken glass, remove stains, spots and marks from finish work and hardware. Building hard floors shall be damp mop clean, and carpeted floors shall be vacuumed at the time they are turned over to Owner.

§ 3.15.5 Garbage, used wrappings, and other refuse generated during lunch and break periods, and cups used at drinking facilities shall be immediately placed in waste containers provided by Contractor; said containers shall be emptied daily or weekly to prevent any rodent problems and unsanitary conditions.

§ 3.15.6 Contractor's employees and Subcontractor's employees shall not use the air-conditioned finished areas of the Project for lunch or break areas without the prior written approval of the Owner.

§ 3.15.7 Contractor shall maintain streets and sidewalks around the Project site in a clean condition. Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas, shall repair any damage to such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such area.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 The Contractor shall, to the fullest extent permitted by law, with respect to its obligations under the Contract Documents, indemnify, defend and hold harmless Hood County, its elected and appointed officials and employees, and Kitchell CEM and its employees acting within the authorized scope of services for the Project (each an "Indemnified Party" and collectively the "Indemnified Parties") from and against each and all of the following:

§ 3.18.1.1 Any claims, liabilities, losses, damages, costs, expenses, including attorney's fees, awards, fines or judgments, resulting from or arising out of (i) the performance of the Work, provided that such claim, damage, loss or expense is attributable to death, bodily injury, sickness, disease or injury, or injury to or destruction of tangible property to anyone other than an employee of Contractor, any Subcontractor, or (ii) damage or injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly employed by them or anyone for whose acts they may be liable regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. The intent of this Section 3.18.1.1. is to adopt the law of proportionate responsibility set forth in Chapter 33 of the Texas Civil Practice & Remedies Code as to any claim for indemnification arising hereunder. Notwithstanding the foregoing or anything else to the contrary appearing herein, it is understood and agreed that the obligations of the Contractor under this paragraph shall not extend to liability for the errors or omissions of the Architect, the Architect's consultants, and agents and employees of any of them arising in whole or in part out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specifications, or (2) the giving of or failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them, it being understood that Owner shall look solely to Architects and their insurers in the event of any loss, injury or damage

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due in whole or in part to the causes set forth above, subject, however, to Contractor's responsibilities hereunder with respect to Contractor's actual knowledge of errors or omissions in the Drawings and Specifications.

§ 3.18.1.2 Any and all liens and charges of every type, nature, kind or description, including attorney's fees, which may at any time be filed or claimed against the Project, or any portion thereof, as a consequence of acts or omissions of Contractor, Contractor's agents, servants, employees, Subcontractors, Sub-subcontractors or any or all of them and which are not due to Owner's failure to perform its obligations under the Contract Documents.

§ 3.18.1.3 Any claim, liability, loss, cost, damage or expense, including attorneys' fees, arising out of or in connection with any claim for the bodily injury or death of any employee of Contractor, employee of any Subcontractor, employee of any Sub-subcontractor, anyone employed directly or indirectly by any of them or for whose acts they may be liable. Contractor shall be obligated to indemnify and hold harmless an Indemnified Party even if the concurrent negligence or fault of Owner or another Indemnified Party is alleged or proven.

§ 3.18.1.4 Any claim, damages, liability, fine, penalty, loss, costs, judgment, or expense, including attorneys' fees, arising out of or in connection with any violations or alleged violations of the Immigration Reform and Control Act, 8 U.S.C. § 1324a, et seq., associated with employees hired to perform Work on the project by Contractor, any Subcontractor, any Sub-subcontractor, or anyone employed directly or indirectly by any of them or for whose acts they may be liable.

§ 3.18.2 Owner shall have the right, at its option, upon notice to Contractor, to approve (in the exercise of reasonable judgment) such counsel as Contractor deems necessary to represent Owner in connection with any liability indemnified under this Section 3.18 (provided that if Contractor's insurer reserves the right to select such counsel, the counsel selected by Contractor's insurer shall be deemed approved by Owner), and all reasonable fees and expenses of such counsel shall be the sole responsibility of Contractor.

§ 3.18.3 TO THE MAXIMUM EXTENT PERMITTED BY LAW, WITH RESPECT TO ANY CLAIM, LIABILITY, LOSS, COST, DAMAGE OR EXPENSE, INCLUDING ATTORNEYS' FEES, ARISING OUT OF OR IN CONNECTION WITH ANY CLAIM FOR THE BODILY INJURY OR DEATH OF ANY EMPLOYEE OF CONTRACTOR, EMPLOYEE OF ANY SUBCONTRACTOR, EMPLOYEE OF ANY SUB-SUBCONTRACTOR, ANYONE EMPLOYED DIRECTLY OR INDIRECTLY BY ANY OF THEM OR FOR WHOSE ACTS THEY MAY BE LIABLE, CONTRACTOR SHALL BE OBLIGATED TO DEFEND, INDEMNIFY, AND HOLD HARMLESS AN INDEMNIFIED PARTY EVEN IF THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF OWNER OR ANOTHER INDEMNIFIED PARTY IS ALLEGED OR PROVEN.

§ 3.18.4 Additionally, in any and all claims against any Indemnified Party by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor of any tier under workers' compensation acts, disability benefit acts or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Contractor and/or each Subcontractor, as applicable, expressly waive for purposes of the indemnification obligations hereunder any immunity it might otherwise have or assert under the workers' compensation laws of Texas.

§ 3.18.5 The obligations in this Section shall be enforced only to the extent permitted by applicable law, including Texas Insurance Code Chapter 151. Nothing in this Section requires indemnification, a defense or insurance coverage prohibited by law. This limitation does not eliminate an obligation that is permitted under an applicable statutory exception.

§ 3.19 RECORD DRAWINGS

§ 3.19.1 All record drawings shall be kept electronically.

§ 3.19.2 Contractor shall supply electronic copies of all maintenance manuals, installation instructions, and warranties for all products or equipment installed or furnished to the Project.

§ 3.19.3 Proper Record Drawings shall be submitted to the Architect as soon as possible after completion of the Work and before request for Final Payment.

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§ 3.19.4 Record Drawings shall include the following additional drawings of as-built conditions: (1) for any new building, a drawing to show location of each building as built on the property and its said location to be certified by registered surveyor; and (2) drawings of any underground lines, tanks, or structures shall indicate the locations, identifications and sizes of such lines, tanks, and structures.

§ 3.20 Certificate of Occupancy

Contractor shall obtain Certificates of Occupancy if and as required by governing Town, City, County or State authorities, and give same to Owner at the earliest feasible date, but in no event later than the Date of Substantial Completion, unless withheld for reasons beyond Contractor's scope or control. As provided in the Agreement, there may be multiple Substantial Completion dates and certificates of occupancy with respect to the Project.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner may in its sole discretion, from time to time, assign to others some of the Architect's functions or duties, for any period of time as determined by the Owner. The duties and functions of the Architect may be partially assumed and partially assigned and may be divided among several different persons or entities, all as the Owner deems fit, provided Owner selects one of these persons or entities as its decision maker in matters pertaining to the Architect. Whether singular or plural in number, the above described parties are referred to throughout the Contract Documents as 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.

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, 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.

§ 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) 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

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 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. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

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

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number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 7 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity. Failure of the Architect to provide notice within the 7-day period shall constitute notice of no reasonable objection.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. The Owner may require the Contractor to change any Subcontractor or Sub-subcontractor previously approved based on Owner's reasonable objection(s) as to such Subcontractor's or Sub-subcontractor's performance with respect to the Project and, if at such time the Contractor is not in default hereunder, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change.

§ 5.3 Subcontractual Relations

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 that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. 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.

§ 5.3.1 Contractor shall use good faith efforts to cause each subcontract agreement and/or purchase order, as applicable, in excess of $10,000 (herein referred to as a "Major Subcontract" and the Subcontractor under the Major Subcontract being referred to as "Major Subcontractor") to be in writing on Contractor's standard form subcontract agreement or purchase order, as applicable, with general terms and conditions. If requested in writing by Owner, Contractor shall deliver copies of certain executed subcontract agreements and purchase orders to Owner within five

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(5) days after the effective date hereof with respect to those subcontract agreements and purchase orders entered into as of such date. With respect to subcontract agreements and purchase orders entered into after the effective date hereof, copies of requested subcontract agreements shall be delivered to Owner within five (5) days following the execution thereof. Contractor also shall use good faith efforts to cause each written subcontract agreement to:

(1) require that the Work be performed in accordance with the requirements of the Contract Documents;

(2) require submission to Contractor of applications for payment under each subcontract to which Contractor is a party, in reasonable time to enable Contractor to apply for payment;

(3) require the Subcontractor to carry and maintain liability insurance in accordance with the Contract Documents;

(4) provide that Owner is a third-party beneficiary of the subcontract;

(5) indemnify the Indemnified Parties to the same extent as Contractor is required to indemnify the Indemnified Parties under the Contract Documents;

(6) furnish a release or waiver of rights to liens in form and substance acceptable to Owner as required by the Contract Documents; and

(7) require the Subcontractor to furnish to Contractor in a timely fashion all information necessary for the preparation and submission of the reports required under the Contract Documents.

§ 5.4 Contingent Assignment of Subcontracts

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

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 60 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.4.4 Upon such assignment, if the Work of a particular Subcontractor has been suspended for more than 60 days, such Subcontractor's compensation shall be equitably adjusted for documented increases in cost resulting from the suspension.

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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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§ 6.1.3 The Contractor shall provide for coordination of the activities of the Owner's own forces including, without limitation, any of Owner's tenants' contractors, special equipment installers, telephone/data vendors, signage installers, and furniture installers, and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule as (i) required by Owner (if Contractor claims additional costs is involved because of such revisions to the scheduled Contractor shall make such claim for such costs as well as for additional days to perform such revisions as provided elsewhere in the Contract Documents), and (ii) deemed necessary after a joint review and mutual agreement by the Owner and the Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 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 notify the Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Owner of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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

§ 6.2.6 If any Separate Contractor initiates legal or any other proceedings against the Owner on account of any damage caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at its own expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court and other costs which the Owner has incurred over and above those paid for directly by the Contractor. The Owner shall require other contractors that perform work in the areas where the Work is performed under this Agreement to indemnify and defend the Owner and the Contractor and to hold the Owner and the Contractor harmless from all claims for bodily injury and property damage that may arise from the Separate Contractor's operations.

§ 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 the cost will be allocated among those responsible.

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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.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, 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 Section 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 the Owner has been unjustly enriched by any alteration 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 any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contact 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, the instrument may be prepared by the Architect:

- **.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 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, the Contract Time, and the construction schedule.

§ 7.2.3 All Change Orders shall be accompanied by a complete itemization of costs, including labor, and materials. Subcontracts shall be itemized similarly. Contractor shall submit proposed Change Order pricing promptly, and if possible within fourteen (14) calendar days after it has received the information relating to the change from Owner and/or Architect. If the preparation of the Change Order will take more than fourteen (14) calendar days, the Contractor will promptly notify the Owner in writing via email of the anticipated additional time required. Cost-based pricing for Change Orders and Construction Change Directives shall comply with Section 7.3.3.1. Agreed unit prices shall not receive an additional markup for overhead or profit already included in those prices.

§ 7.2.4 In the event of a credit Change Order, the credit shall include the actual net cost of the deleted Work and the associated overhead and profit included in the Contract Sum for that Work. For related additions and deletions in one change, overhead and profit shall be calculated on the net increase, if any; a net decrease shall include the associated overhead and profit credit without duplication.

§ 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 instrument may be prepared by the Architect. 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:

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.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 accordance with Section 7.3.3.1.

§ 7.3.3.1 For cost-based Change Orders and Construction Change Directives, the combined allowance for overhead and profit shall be fifteen percent (15%) of permitted direct cost for Work performed by Contractor's own forces; fifteen percent (15%) of permitted direct cost for Work performed by each Subcontractor's own forces; and five percent (5%) of the amount properly due the Subcontractor for Contractor's administration of subcontracted Work. A Subcontractor's own-force percentage shall not be applied to another tier's subcontract amount. No additional tier markup is authorized by this Section. Permitted direct cost consists of materials and delivery; labor, including Social Security, Medicare and unemployment insurance; workers' compensation insurance; and reasonable rental value of power tools and equipment used for the changed Work. A prorated share of foremen's time may be included as direct labor only when a Contract Time extension is granted for the change. Bond premiums, dues, other supervision, management, timekeepers, watchmen, clerks, small tools, incidentals, office expense and project documentation, and expenses not expressly included as permitted direct cost, are included in overhead and shall not be charged separately. Each cost shall be counted only once. Credits shall comply with Section 7.2.4. Agreed unit prices remain subject to Section 7.3.4 and shall not receive duplicate overhead or profit.

§ 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 Contractor has twenty-one (21) days following receipt of a Construction Change Directive or minor change in the work to inform the Owner and Architect in writing that it disagrees with (i) the amount or method for determining the amount set forth in the Construction Change Directive for change in the Contract Sum or Contract Time, or (ii) if it believes that the minor change in the work involves an adjustment in the Contract Sum or extension of the Contract Time or is inconsistent with the intent of the Contract Documents. If Contractor should fail to timely respond (as outlined above) to any applicable Construction Change Order, the Contractor shall be deemed to have irrevocably consented to and agreed to all terms and information contained in the applicable Construction Change Order.

If agreement cannot be reached, the cost of the Construction Change Directive shall be determined under Section 7.3.3.1, subject to Sections 7.3.9 and 7.3.10 and the claims procedures in Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner 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.

§ 7.3.7 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.

§ 7.3.8 Credits and the netting of related additions and deletions shall be calculated in accordance with Section 7.2.4. The same cost, overhead or profit shall not be included more than once.

§ 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 accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. A change shall not be considered a minor change if it involves an alteration, addition or deletion in the Work which increases or decreases the Cost of the Work or changes the critical path of the performance of the Work as a direct result of: (i) the addition of a new element of scope to the Work that is not required by, or reasonably inferable from, the Contract Documents and is not covered by an allowance or alternate set forth in the Contract Documents, or (ii) a requirement of additional construction means, methods, techniques, sequences or procedures that differ substantially from those that would have been used, but for such change in the Work that is not caused by or attributable to the fault or neglect, in whole or in part, of the Contractor, a Subcontractor, or any person performing Work on any of their behalf or for whom the Contractor or any Subcontractor may be responsible, including, without limitation, the failure to perform the Work in strict compliance with the requirements of the Contract Documents.

§ 7.4.1 Notwithstanding anything contained in Article 7 to the contrary, in no event shall any changes in the Work with respect to the manufacturer of a specified item or material. or the color, quality or grade, or physical composition of any specific item or material be made without the written consent of the Owner, nor shall any change in any dimension of any component of the Work or equipment incorporated into the Work be made without the written consent of Owner if such changes affect the operation or functionability of the Project or aesthetics of the Project, even if any of the above described changes would be considered a minor change in the Work.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

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

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, Covid-19 or other pandemics, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5)

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by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. If Contractor incurs additional costs because of a delay for which an extension of time is entitled, Contractor may be granted an adjustment in the Contract Sum for such additional costs if approved by Owner in writing.

§ 8.3.1.2 The completion time contemplated by this Agreement includes the number of lost days of the critical path of the Project due to normal inclement weather conditions, based on the historical average days of inclement weather as documented by the National Weather Service and indexed to the zip code of the Project ("NWS Delays"). The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay of the Project attributable to inclement weather in excess of the NWS Delays only to the extent that such delay: (1) is not caused, or could not have been reasonably anticipated, or prevented by the Contractor; (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay; and (3) is of a duration not cumulatively less than one (1) day.

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

§ 8.3.4 Except where additional compensation is expressly authorized by another provision of the Contract Documents or required by applicable law, Contractor's remedy for an excusable delay shall be an appropriate adjustment of Contract Time under Section 8.3.1 and Article 15. This Section does not eliminate compensation expressly provided under Section 3.2.3 of the Agreement or Sections 2.3.7, 2.7, 6.2.3, 9.7, 10.3.2, 14.3 or 14.4 of these General Conditions, or under an authorized Change Order or other applicable express provision. Any adjustment remains subject to the applicable notice, substantiation, mitigation and nonduplication requirements. No compensation is due to the extent a delay is Contractor's responsibility. Nothing in this Section expands the statutory remedies available against Hood County.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

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

§ 9.3.1.1 Based upon Applications for Payment in a form reasonably satisfactory to the Owner and the Architect and accompanied by all supporting documentation required by Owner and the Architect on the Application for Payment, including all required mechanic's lien waivers and releases, submitted to the Owner and the Architect by the Contractor and Certificates for Payment issued by the Owner and the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. As provided in Section 7.3.9, such applications may include requests for payment on account of

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changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Owner and the Architect, but not yet included in Change Orders.

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

§ 9.3.1.3 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 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. Before requesting payment for off-site materials, Contractor shall submit: written evidence that early delivery and off-site storage support completion within Contract Time; a narrative identifying the storage location, protection and transportation arrangements; separate invoices or bills of sale; evidence of insurance protecting Owner's interest; and written surety approval of the requested payment. Materials shall be protected from loss and deterioration, segregated, and labeled by description, ownership and Project destination. Contractor shall provide access for Architect's inspection before each payment certification that includes off-site materials. Payment for storage shall not advance the commencement of any warranty or correction period established elsewhere in the Contract Documents.

§ 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, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 Each Application for Payment shall identify outstanding payment claims known to Contractor and certify the amounts paid from prior payments, amounts presently requested and any unpaid or disputed amounts, with reasons. Contractor shall furnish the supporting public-works payment documentation required by Section 5.1.4 of the Agreement. No certification of payment shall be required for an amount not yet received, and no unlawful advance waiver of statutory payment-bond rights shall be required.

§ 9.3.5 Contractor shall promptly notify Owner of a payment claim arising from Contractor's or a lower-tier party's performance of the Work and shall furnish reasonably requested information concerning its basis and status. To the extent the claim results from Contractor's failure to pay an amount due after receipt of the corresponding payment from Owner, Contractor shall promptly satisfy or lawfully resolve the claim, or diligently contest it on a good-faith basis. Owner's withholding shall comply with Section 9.11 and applicable law. Contractor shall indemnify Owner against losses, costs and reasonable attorney fees attributable to Contractor's failure to pay amounts properly due, to the extent permitted by law and except to the extent caused by Owner's failure to perform its payment obligations. Nothing in this Section creates a lien against public property where prohibited or requires use of a private-property bond-around procedure.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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§ 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 in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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. 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 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 Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a Separate Contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner also may withhold any payment to the Contractor hereunder for the reasons listed in Section 9.5.1, above; provided, however, that any such holdback shall be limited to the amount sufficient in the reasonable opinion of the Owner to cure, or to otherwise protect Owner from loss resulting from, any such default or failure of performance by the Contractor. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven 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. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers 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 or supplier, except as may otherwise be required by law.

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

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

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

§ 9.7.1 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, provided that the Owner is not in default of the payment provisions of the Contract, 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 the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work caused by the negligent act or omission and/or willful misconduct of the Contractor, the Owner shall have an absolute right to offset such amount (and applicable interest) against the Contract Sum and may, in the Owner's sole discretion, after five (5) business days written notice to the Contractor, elect either to: (i) deduct an amount equal to that which the Owner is entitled (from any payment then or thereafter due the Contractor from the Owner) or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 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, 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 unless

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receipt of such permits and approvals is delayed by others. For the Work or an approved phase to be substantially complete, Contractor shall also complete the operational tests, security and life-safety interfaces, training and approvals expressly required by the Contract Documents as prerequisites to safe, secure intended use of that Work or phase. This requirement does not assign to Contractor County staffing, licensing or other obligations excluded from Contractor's scope. A delay in a required approval shall be addressed under the Contract's time and payment provisions and shall not be construed as permission for unlawful occupancy.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.8.6 Contractor shall endeavor to complete punch-list Work within ten (10) calendar days after delivery of the punch list and shall complete it no later than the adjusted Final Completion deadline under Section 9.10.1. Delay in delivering the punch list does not automatically extend that deadline; any resulting request for additional time or compensation shall be addressed under the change and Claim procedures of the Contract Documents.

§ 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 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 Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

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§ 9.10 Final Completion and Final Payment

§ 9.10.1 Contractor shall achieve Final Completion of the Work within thirty (30) calendar days of the achievement of Substantial Completion of the Work. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner's representative will promptly make such inspection and, when the Architect and Owner's representative finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. All warranties, guarantees, and contract closeout documents 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, guarantees, and contract closeout documents have been received by the Owner. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. For this public Project, payment evidence, releases and security under this Section shall be required only in a legally permissible form appropriate to the applicable claim. No private-property lien release, unlawful advance waiver of payment-bond rights or unconditional acknowledgment of an unreceived payment shall be required. Withholding and release shall comply with Section 9.11 and applicable law.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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.

§ 9.11 Contractor shall identify outstanding payment claims arising from the Work and furnish information reasonably necessary to evaluate their status, payment and resolution. Owner may withhold only amounts authorized

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by the Contract Documents and applicable Texas public-payment law, including Government Code Chapters 2251 and 2252, and shall provide required written notice of the basis and amount. Amounts already withheld for the same exposure shall be credited. Final payment and retainage release shall not be conditioned on a private-property Affidavit of Completion under Texas Property Code Section 53.106. This Section does not waive statutory payment-bond rights, lawful indemnity obligations or applicable surety-consent requirements.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- **.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, a Subcontractor, or a Sub-subcontractor; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

§ 10.2.3 The Contractor shall implement, 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 the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, as a Cost of the Work, for all measures necessary to protect any property adjacent to the Project and improvements therein as recommended by property insurance carrier as job cost. Any damage to such property or improvements caused by a negligent act or omission of the Contractor or any Subcontractor of the Contractor shall be promptly repaired by the Contractor with the prior written approval of Owner.

§ 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 Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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 establish and administer its Safety, Loss Prevention and Security Plan, including fire prevention, in compliance with governmental authorities having jurisdiction thereof. The Contractor shall designate a safety, loss prevention and security supervisor whose duty shall be the prevention of accidents, and the coordination and enforcement of such Plan. This person shall be on the Project site and shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. The Contractor shall have full responsibility for preventing overstress of any structure or any part or member of the Project during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

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§ 10.2.8 Injury or Damage to Person or Property

The Contractor shall promptly report to the Owner in writing any accident occurring on or off the Project site that relates to the Work and, in no event, later than twenty-four (24) hours after the Contractor's learning of such accident, and shall, in addition, immediately give notice, by telephone or messenger, of any accident resulting in death or serious personal injury or property damage. Such report shall include all known details of the circumstances, the nature and extent of any injuries or property damage, the names of all witnesses and other persons who may have knowledge of the circumstances of the accident, and such other details as the Owner or the Owner's insurer shall require. If any claim for damage or otherwise is made as a result of any accident, the Contractor shall promptly report the facts in writing to the Owner, giving full details of the claim so that the Owner may assess responsibility, if any, protect its interest in the Project and prepare in a timely fashion relevant information for its insurance carrier. The Contractor shall be liable for all costs, whether direct or indirect, incurred by the Owner arising out of or related to accidents proximately caused by the negligent act or omission and/or willful misconduct of the Contractor or a Subcontractor.

§ 10.2.9 Contractor shall protect adjoining private or municipal property and shall provide barricades, temporary fences, and covered walkways as necessary to protect the safety of passersby, as required by prudent construction practices, local building codes, ordinances or other laws, and the Contract Documents, as a Cost of the Work, but subject to the Contract Sum.

§ 10.2.10 When required by Applicable Laws or for the safety of the Work or existing structures, Contractor shall shore up, brace, underpin and protect foundations and other portion of existing structures and partially completed portions of the Work which are in any way affected by the Work. All parts of the Work shall be braced to resist wind or other loads. Contractor shall perform the Work with the explicit understanding that the design of the Project is based on all parts of the Work having been completed. Temporary items such as, but not limited to, scaffolding, staging, lifting and hoisting devices, shoring, excavation, barricades, and safety and construction procedures necessary for the completion of the Project shall be the responsibility of the Contractor and its Subcontractors and shall comply with all Applicable Laws. It shall not be the responsibility of Owner, Architect or their representatives to determine if Contractor, Subcontractors or their representatives are in compliance with Applicable Laws. In addition to its other obligations pursuant to this Article 10, the Contractor shall promptly repair any damage or disturbance to walls, utilities, sidewalks, streets, curbs and the property of third parties (including municipalities) resulting from the performance of the Work, as a Cost of the Work, but subject to the Contract Sum.

§ 10.2.11 Contractor shall employ such practices as are necessary to protect all completed and partially completed Work and all existing improvements located on the Project site from loss and damage, including from subsequent operations of the Contractor or later to be performed Work, theft or damage by weather and, if necessary, shall provide suitable shelter therefor. Contractor shall correct at its own expense any damage or disfigurement to work or property (whether or not located on the Project site) resulting from the fault, neglect or omission of Contractor, any Subcontractor, any Sub-subcontractor or any other person or entity for whom any of them is legally responsible.

§ 10.2.12 Contractor shall be responsible for any of its fines, penalties or charges by any regulatory body by reason of any violation of safety or health regulations by Contractor, its Subcontractors, Sub-subcontractors or any other person or entity for whom any of them is legally responsible in the performance of the Work

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect

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will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 Intentionally deleted.

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

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.3.7 Only materials and products as specified by the Architect will be installed as part of the Work. The Contractor shall install HVAC systems in compliance with local building codes and ASHRAE requirements and shall circulate air as necessary during the performance of the Work to promote proper air control and humidity in the indoor environment, as specified by the Architect. No vinyl or plastic wall products shall be installed as part of the Work, except as specified by the Architect. If the Architect specifies material that the Contractor is aware is in violation of the above requirements, the Contractor shall notify the Owner immediately. In the Owner's sole good faith discretion, it may approve in writing the materials or products that are not in compliance with these requirements. As part of the Contract Sum, the Contractor shall use an industrial hygienist experienced in mold-related concerns in new construction, or alternatively the hygienist may be hired by the Owner, to evaluate and provide recommendations for removal of the portions of the Work that have been exposed to conditions that would promote the growth of mold. Any findings or reports, including documentation of any replacement, shall be submitted to the Owner for review and approval. If the portions of the Work to be removed are caused by the Contractor due to negligence or other failure to perform the work as required by the Contract Documents, the costs associated with such removal shall be borne by the Contractor and shall be included as a Cost of the Work, but shall not cause an increase in the Contract Sum. If the mold to be removed is not caused by the Contractor, the costs of removal and of the industrial hygienist shall be included as a Cost of the Work, but will not be cause for an increase in the Contract Sum

§ 10.3.8 The term "rendered harmless" shall be interpreted to mean the levels of hazardous materials, including but not limited to asbestos and polychlorinated biphenyls, that are less than any applicable exposure standard set forth in OSHA, EPA or any other applicable federal, state or municipal regulations. In no event however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any Sub-subcontractor, materialman or supplier or any person or entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are hazardous, toxic or comprised of any items that are hazardous or toxic.

§ 10.3.9 The Contractor shall notify the Owner and Architect immediately and stop Work in the area affected if any one of the products or materials specified in the Contract Documents or proposed by the Contractor or its Subcontractors contain or are suspected to contain hazardous materials in any form, so that a qualified consultant retained by the Owner can determine whether such materials may be used in the Work or need to be removed from the Project site or rendered harmless in a manner which will not adversely affect the health of any persons and which will comply with Applicable Laws.

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§ 10.3.10 Work in the affected area shall be immediately resumed in the absence of any hazardous materials or when such hazardous materials have been rendered harmless.

§ 10.4 Emergencies

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

§ 10.5 If the Contractor visually observes mold or fungi contamination in the Project, or observes evidence of water infiltration into wall or partition cavities, the Contractor shall notify the Owner on same day observation is made. Contractor will take necessary steps to protect Contractors and Subcontractor's workmen from exposure to the contamination. Owner shall, pursuant to Section 10.3.7 above, be responsible to assess the extent of any suspected water damage or mold growth including the use of a boroscope to view spaces in ductwork or behind walls and a moisture meter to detect moisture in building materials. HVAC systems shall be visually checked for damp filters or damp conditions elsewhere in the system. If a visual inspection is not certain, the Owner, at Owner's option, may direct the Contractor to open up building cavities and inspect for visible mold or fungi growth. If fungi or mold is determined to be present and presence is due to the fault or negligence of Contractor or its Subcontractors, the Contractor will be responsible for the sampling and testing costs and repairing of any damage to the building.

§ 10.6 The Contractor will be responsible to stop, clean and remediate the underlying cause of moisture or water accumulation causing mold or fungal growth. Initial water infiltration shall be stopped and cleaned as soon as possible and thorough clean up, drying and/or removal of water damaged material shall be performed. If the source of water is elevated humidity, relative humidity should be reduced to levels that will inhibit mold growth. Contractor is not a mold remediation specialist and shall rely on Owner's Consultant to ensure proper safety equipment and techniques are deployed by employees or subcontractors during remediation including respirators, gloves, eye protection, dust/debris containment, proper disposal of remediate materials, HEPA vacuums, etc. depending on level of contamination.

§ 10.7 Excluding all rough carpentry and roof and floor decking, the Contractor shall provide 1) proper dry-in of Project at the end of each work day, 2) promptly repair of any water leaks whether roof, plumbing, etc., 3) promptly drying of wetted materials, 4) prompt replacement of wetted materials if drying cannot be achieved in 48 hours, 5) simplest and most expedient remediation to be used and, 6) correction of underlying cause of water accumulation. It is understood that the Architect will specify materials and products that are suited for the environment where this Project is located

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. The performance and payment bonds required for this Project shall comply with Texas Government Code Chapter 2253 and Section 8.5.2 of the Agreement.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation

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or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance and Contractor's Builder's Risk Insurance

§ 11.2.1 Builder's Risk Insurance. The Contractor shall obtain, at his expense, on an All-Risk of physical loss basis, Builder's Risk Insurance coverage, including workmanship, acceptable to the Owner, in the amount of insurance equal at all times to 100% of the insurable value of materials delivered and labor performed. The policy so issued in the name of the Contractor shall also name his Subcontractors and the Owner as additional insured, as their respective interests may appear. The policy shall have an endorsement as follows:
"This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."
Contractor shall pay all deductibles and self-insured retentions associated with the required Builder's Risk insurance. These amounts shall not be charged to Owner or added to the Contract Sum. Coverage for existing structures, the coverage period and evidence of insurance shall comply with Exhibit A, Section II.B. Owner's separate commercial general liability insurance remains optional under Exhibit A, Section II.A.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. This Section applies only to property insurance expressly required to be purchased by Owner under the Contract Documents. It does not apply to Builder's Risk insurance assigned to Contractor under Section 11.2.1 and Exhibit A, Section II.B. Contractor's failure to obtain or maintain that insurance does not entitle Contractor to an increase in Contract Sum or Contract Time; Section 11.1.4 and Exhibit A, Section I govern Contractor's failure to maintain required coverage.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance. This Section applies only to property insurance expressly required to be purchased by Owner under the Contract Documents. It does not apply to Builder's Risk insurance assigned to Contractor under Section 11.2.1 and Exhibit A, Section II.B. Contractor's failure to obtain or maintain that insurance does not entitle Contractor to an increase in Contract Sum or Contract Time; Section 11.1.4 and Exhibit A, Section I govern Contractor's failure to maintain required coverage.

§ 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the

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individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. The waivers in this Section are subject to the express qualifications in Exhibit A, Sections II.B and III.C. No waiver relieves Contractor of its expressly assigned deductible obligations.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner shall purchase and maintain insurance protecting against loss of use of Owner's property or inability to conduct normal operations due to fire or other causes of loss to the extent that protection is not provided by the Contractor-procured insurance required under Exhibit A. Owner is not required to purchase duplicate coverage for the same interest and risk. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

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§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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. If prior to the date of Substantial Completion, the Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any 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 notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. If the Contractor does not proceed with correction of such nonconforming work within a reasonable time as fixed by the written notice, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay the costs of such removal and storage within ten (10) days after written notice, the Owner may, upon ten (10) additional days' notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting the costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall immediately upon demand pay the difference to the Owner. The notice and opportunity-to-correct requirements and related waiver in this Section are subject to the emergency procedure in Section 2.5.3.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work, except that warranties shall be issued based on Substantial Completion of the applicable building which represents the "date placed in service."

§ 12.2.2.3 Upon completion of any Work pursuant to Section 12.2, the one-year correction period in connection with the Work requiring correction shall be renewed and recommence not to exceed eighteen (18) months in the aggregate. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work. It is understood that this warranty requirement in Section 12.2.2.3 will be stated in the Architect's Specifications.

§ 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 of the Owner or Separate Contractors, whether completed or partially completed, 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-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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§ 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

This Agreement will be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of the Agreement shall be Hood County, Texas. Tex. Civ. Prac. & Rem. Code §15.015 (An action against a county shall be brought in that county). Therefore, any action shall be brought in a state District Court in Hood County, Texas.

§ 13.2 Successors and Assigns

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

§ 13.2.2 Intentionally deleted.

§ 13.3 Written Notice

All notices required under this Agreement shall be in writing, signed by the party giving same, and shall be deemed properly given only if hand delivered or sent by reputable overnight courier, or by registered or certified U.S. mail, return receipt requested, postage pre-paid or by email to the designated notice address with a retained transmittal record and no delivery-failure notification and addressed as follows:

If to Owner:

Email: _____
Phone: _____
Fax No: _____

With a copy to:

Email: _____
Phone: _____
Fax No: _____

If to Architect:

Email: _____
Phone: _____
Fax No: _____

If to Contractor:

Email: _____
Phone: _____
Fax No: _____

§ 13.4 Rights and Remedies

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

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

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§ 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, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection, or approval under Sections 13.5.1 and 13.5.2 reveal failure due to Contractor's negligence 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, and such costs shall not be included in computing the Contract Sum, including the cost of retesting for verification of compliance if necessary, until the Architect certifies that the Work in question does comply with the requirement of the Contract Documents. Work that may fail testing during the normal process such as soil densities, may fail requiring additional work as part of the normal and expected process and such procedure shall be covered within the Cost of the Work. Contractor's obligation is to ensure that the Work complies with the Contract Documents, standards established by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities using established testing, inspection and approval protocols to meet those standards.

§ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

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

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 All observations, tests and approvals of any methods or means of construction, materials or workmanship included in the Work required by the Specifications or by Applicable Laws shall be performed by independent agencies acceptable to the Owner. Representatives of the testing laboratories and observers shall have access to the Work at any place performed and during normal business hours. The Contractor shall furnish samples of all materials and component parts of the Work reasonably required as test specimens in connection with the tests and observations and shall furnish labor and facilities at the Project site as reasonably necessary in connection with testing and observation services.

§ 13.5.8 The Owner may require testing or observation, not required by the Specifications or by Applicable Laws, or by any methods or means of construction, materials or workmanship, in order to determine the acceptability thereof under the Contract Documents. Representatives of the testing laboratories and observers shall have access to the Work at all reasonable times when such testing is scheduled with Contractor. The Contractor shall furnish samples of all materials and component parts of the Work required as test specimens in connection with the testing and observation services. All observations or testing shall be done in a timely manner so as to avoid unnecessary delay in the completion of the Work by the Contractor. If such testing or observation discloses that the methods or means of construction material or workmanship are in compliance with the Contract Documents, the Owner shall bear the cost of such testing and observation and of the labor and facilities in connection with such testing and observations. If such testing or observation discloses that such methods or means of construction, material or workmanship are not

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in compliance with the Contract Documents, the Contractor shall bear all such related costs and the time for corrections required thereby and shall not increase the Contract Time.

§ 13.5.9 The Owner may in its discretion provide and pay for such other tests and inspections it deems necessary or appropriate during the construction through an independent quality control agency. The Contractor shall cooperate with such tests and shall notify the testing agency at least twenty-four (24) hours prior to performing any test directed by the Owner or required by the Contract Documents. The Contractor acknowledges that the tests referred to herein may include, without limitation, concrete and reinforcement inspection and testing, waterproofing inspection, structural steel inspection, and inspections and testing in connection with mechanical, plumbing, electrical and other installations. Notwithstanding the foregoing, the Contractor will be responsible for any testing and inspection costs associated with defective or non-conforming Work caused by the Contractor and its Subcontractors.

§ 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the default rate.

§13.7 Nondiscrimination

§ 13.7.1 During the performance of this Contract, Contractor and its subcontractors shall not deny the Contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

§ 13.7.2 Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

§ 13.7.3 Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Work under the agreement.

§ 13.8 Nothing in the Contract Documents expands a statutory waiver of Hood County's governmental immunity or the remedies available against it under applicable law, including Texas Local Government Code Section 262.007. No provision of the Contract shall be construed as a waiver of immunity beyond that provided by applicable law.

§ 13.9 Owner's disclosure and records obligations are governed by the Texas Public Information Act and other applicable law. Contractor shall protect security-sensitive information in accordance with Section 2.6 of the Agreement and Exhibit B. A designation of information as confidential does not bind Owner's legal disclosure determination. Contractor shall promptly provide contracting information that Owner is entitled to obtain under applicable law and shall comply with any applicable records-preservation and production requirements of Texas Government Code Chapter 552, Subchapter J.

§ 13.9.1 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

Contractor shall preserve contracting information for the duration of the Contract in accordance with the records-retention requirements applicable to Owner; promptly provide such information in Contractor's custody or possession when Owner requests it; and, upon completion, either provide all such information to Owner at no cost or preserve it in accordance with Owner's applicable retention requirements. These obligations shall be administered consistently with applicable law.

§ 13.10 Foreign Ownership and Critical Infrastructure. To the extent this Agreement is subject to Texas Government Code Chapter 2275, Contractor represents that it is neither subject to the ownership or control restrictions in Section 2275.0102(a)(2)(A) nor headquartered in China, Iran, North Korea, Russia, or a country designated under Section 2275.0103. The terms "company," "critical infrastructure" and "designated country" have the meanings given in Chapter 2275. This representation applies to access or control covered by Section 2275.0102(a)(1), including its stated exception for specifically authorized product warranty and support access, and is made for compliance with that chapter to the extent consistent with applicable federal and State law.

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ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 Intentionally deleted.

Should Contractor elect to suspend Work due to Owner's failure to make payment when due in lieu of terminating the Contract and in accordance with Section 9.7 of the AIA A201 General Conditions, Contractor shall be entitled to a Change Order extending the Substantial Completion date by the number of days such Work was delayed due to the suspension of Work and increasing the amount of the Contract Sum by the amount of the costs resulting from such suspension, if such suspension lasts more than ten (10) days.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 Should the Contractor: (a) cease Work without contractual justification, or fail to submit or diligently implement the recovery plan required by Section 3.2.2 of the Agreement for delay attributable to Contractor; (b) repeatedly refuse or fail to supply enough properly skilled workers or proper materials to adhere to the Contract Time and applicable Project Schedule as required to meet the performance criteria of Article 3 of the Agreement and Section 14.2.1(a), above; (c) fail to make payment to the Subcontractors or suppliers for materials or labor in accordance with its agreements with the Subcontractors or suppliers; (d) Intentionally deleted; (e) be guilty of a substantial breach of the Contract Documents; (f) perform the Work in a manner that is repeatedly rejected, without the Contractor's correction, by the Owner, the Architect or governmental inspectors having jurisdiction over the Project, for a period of ten (10) days; (g) file bankruptcy, assign assets for the benefit of creditors, become insolvent, or be unable or fail to pay its obligations as they mature; (h) disregard laws, ordinances, or rules, regulations or orders of a governmental authority having jurisdiction over the Project; or (i) fail to maintain bonds or insurance as required herein, then the Owner may deem the Contractor to be in default, and, at the Owner's sole option, without limitation to any other remedies available at law or in equity, may take one or more of the following actions after giving the Contractor seven (7) days' written notice, provided that the Contractor's default remains uncured:

,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 undertake and obtain temporary possession of all of the Contractor's materials and equipment intended for or related to performance of the Work (whether or not located on the Project site) for a period up to 120 hours in order to assure availability thereof for the completion of the Work;

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.3 take appropriate steps to cure and remedy defaults at the Contractor's expense, and deduct the cost thereof, plus ten percent (10%) for the Owner's overhead, from the Contract Sum or payment due Contractor.

.4 bring an action against the Contractor for damages incurred due to the default;

.5 accept assignment of subcontracts pursuant to Section 5.4; and

.6 finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

§ 14.2.2 In the event of termination of the Contract as provided, in Section 14.2.1, the Contractor shall receive no further payment until such time as the Work is completed.

§ 14.2.3 Except as otherwise specified herein, if the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 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 Owner shall have the right to terminate this Contract without cause at any time by giving to Contractor seventy-two (72) hours written notice thereof. Upon receipt of such notice, Contractor immediately shall terminate performance of the Work and make reasonable efforts to mitigate its losses and damages hereunder; provided, however, that in connection with such termination, Contractor shall perform such acts as may be necessary to preserve and protect that part of the Work theretofore performed hereunder. Upon such termination without cause, Contractor shall retain all sums of money theretofore paid hereunder to Contractor and provided that no liens or claims have been filed of record or otherwise delivered to Owner with respect to the Work performed hereunder by Contractor, Owner, contemporaneously with Owner's receipt of legally permissible payment documentation under Section 5.1.4 of the Agreement from Contractor, Subcontractors and suppliers covering the period up to the time of termination and being paid in connection with the termination of the Contract, shall pay to Contractor (i) all retainages, if any, theretofore retained hereunder by Owner in respect of the Work properly performed to the date of such termination, (other than the retainage relating to portions of the Work performed by Subcontractors whose subcontracts Owner assumes, which retained amounts under such subcontracts will continue to be paid at the time and in the manner specified in Article 5 of the Agreement, (ii) payment for the Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract Documents), and (iii) for the direct costs incurred by Contractor in terminating the Work, limited to reasonable, documented and unavoidable demobilization costs and cancellation charges actually owed to third parties, without central office overhead or markup with respect to termination of this Contract authorized in accordance with the provisions of this Section 14.4.1, but Owner shall not otherwise be responsible for damages for lost or anticipated fees and/or profits on Work not performed on account of any termination described in this Section 14.4.1. The amounts owing by Owner to Contractor pursuant to the immediately preceding sentence shall be as specified in the Contractor's final Application for Payment approved by Owner. If Owner terminates without cause, then Owner (or a replacement contractor or another designee of Owner), shall, with respect to all subcontracts and purchase orders which Owner does not elect to terminate (or cause Contractor to terminate) assume the obligations of Contractor under such subcontracts and purchase orders covering the unperformed parts of the Work and properly entered into in accordance with the Contract and Owner (or such replacement contract or designee) shall indemnify Contractor from all liabilities.

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Upon receipt of a notice of termination pursuant to this Paragraph 14.4.1, Contractor shall immediately, according to instructions from Owner:

(1) cease operation as specified in the notice;

(2) place no further orders and enters into no further subcontracts for materials, labor, services or facilities except as otherwise specified in writing by Owner;

(3) terminate all subcontracts and purchase orders to the extent that Owner does not elect to assume such subcontracts and purchase orders; and

(4) take actions that may be necessary, or that Owner may direct in writing, for the protection and preservation of the Work.

In addition to payment for the Work performed prior to the effective date of termination and for any work performed following the date of termination pursuant to Owner's written request, Contractor shall be entitled to payment for materials timely fabricated off the Project site and delivered and stored in accordance with the Owner's instructions. Amounts payable under this Section shall be reduced by applicable credits, refunds and avoided costs. No cost or item shall be paid more than once or both as part of the Contract Sum and as a termination cost.

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, a change in the Contract Time, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 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.

§ 15.1.4.2 The Initial Decision Maker's decision shall be considered under Section 15.2.2 and shall remain subject to the dispute-resolution procedures of this Article. Any agreed change to Contract Sum or Contract Time shall be documented through a duly authorized Change Order. The Architect shall certify amounts properly due under the Contract Documents and applicable law; an initial decision alone does not authorize a commitment on behalf of Hood County.

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§ 15.1.5 Claims for Additional Cost
If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5.1 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension, or (7) other reasonable ground a Claim shall be filed in accordance with this Section 15.1.

§ 15.1.5.2 Said notice shall itemize all Claims and shall contain sufficient detail and substantial data to permit evaluation of same by Owner and Architect.

§ 15.1.6 Claims for Additional Time
§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

§ 15.1.6.2 Adverse Weather and Weather Delay Days Adverse Weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour day that prevents construction activity exposed to weather conditions or access to the site directly affecting critical path of work for more than four consecutive hours and with owner approval:

.1 Precipitation (rain, snow, or ice) in excess of one-half inch (0.5")liquid measure.
.2 Temperatures that do not rise above that required for the day's construction activity, if such temperature requirement is specified or accepted as standard industry practice.
.3 Sustained wind in excess of twenty-five (25) m.p.h.

Adverse Weather may include, "dry-out" or "mud" days resulting from precipitation days that occur, only if there is a hindrance to site access or sitework and Contractor has taken all reasonable accommodations to avoid such hindrance. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating the weather conditions for the claimed period of delay, and the critical path of work impacted by the delay.

§ 15.1.7 Waiver of Claims for Consequential Damages
The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to:

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.8 With respect to any litigation involving a Claim, the prevailing party shall be entitled to an award of reasonable attorney fees. For purposes of the foregoing, (i) "prevailing party" means (A) in the case of the party initiating the enforcement of rights or remedies, that it recovered substantially all of its Claims, and (B) in the case of the party defending against such enforcement, that it successfully defended substantially all of the Claims made against it, and (ii) if no party is a "prevailing party" within the meaning of the foregoing, then no party will be entitled to recover its costs and expenses (including attorney's fees and disbursements) from any other party. Any award of attorney fees against Hood County shall be subject to the requirements and limits of applicable law, including Texas Local Government Code Section 262.007.

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

§ 15.2.1 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.
§ 15.2.2 Initial Decision. Claims shall be submitted to the Initial Decision Maker identified in Section 6.1 of the Agreement, with copies to the other party and Architect. Within ten (10) calendar days after receipt, the Initial Decision Maker shall request reasonably necessary additional information or advise the parties that the submitted information is sufficient for review. The Initial Decision Maker shall issue a written decision with reasons within thirty (30) calendar days after receipt of the Claim, unless the parties agree in writing to an extension. If no decision is issued within that period, either party may proceed under Section 15.3. Either party may also proceed under Section 15.3 after a decision with which it disagrees. An initial decision is not a binding arbitration award and does not itself authorize a financial commitment or time change on behalf of Hood County. Continued performance and payment remain governed by the Contract Documents and applicable law. Neither submission nor review of a Claim extends a statutory notice or filing deadline.

§ 15.3 Mediation
§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7 shall be subject to mediation as a condition precedent to binding dispute resolution. However, before initiating mediation or any action for damages or other relief on account of any breach of this Agreement, they will attempt in good faith to resolve their dispute in accordance with the procedures set forth in this Section 15.3.1. The Owner Representative and Contractor Representative will first attempt in good faith to resolve any dispute. If, in the opinion of either party, resolution by such representatives is unlikely or will result in undue delay, such party may make a written request to the other Party that the dispute be submitted to the level of Owner and Contractor management immediately above such representatives. Upon the delivery of such request, the parties agree to submit the dispute to such level of management with decision-making authority who will attempt in good faith to resolve the dispute. In the event the foregoing level of management is unable to resolve the dispute within ten (10) days of delivery of such notice, the Parties agree to submit the dispute to mediation as provided herein.

§ 15.3.2 For Claims subject to Section 15.3.1, the parties shall endeavor to resolve their Claims by direct negotiation and then, if unsuccessful, by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

§ 15.3.4 WITH RESPECT TO ANY CONTROVERSY SUBJECT TO LITIGATION, OWNER AND CONTRACTOR, FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY (A) AGREE THAT NEITHER OF THEM SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT OR THE DEALINGS OR RELATIONSHIPS BETWEEN AND AMONG CONTRACTOR IN CONNECTION THEREWITH, (B) IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO ANY SUCH JURY TRIAL, AND (C) AGREE THAT NEITHER OF THEM SHALL SEEK TO CONSOLIDATE ANY SUCH LAWSUIT, ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION PROCEDURE AS TO WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER LAWSUIT, ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION PROCEDURE AS TO WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS SECTION HAS BEEN FULLY DISCUSSED BY OWNER AND CONTRACTOR, EACH OF WHOM HAS BEEN REPRESENTED BY COUNSEL. THIS SECTION 15.3.4 SHALL NOT BE SUBJECT TO ANY EXCEPTIONS, AND NO SUCH

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PERSON HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PERSON THAT THIS SECTION 15.3.4 WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

DRAFT

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