AGENDA

Regular Meeting

City Council

Tuesday, October 24, 2023

6:00 PM, City Hall

4000 Galleria Parkway

Bee Cave, Texas 78738-3104

THE CITY OF BEE CAVE COUNCIL MEETINGS ARE AVAILABLE TO ALL PERSONS REGARDLESS OF DISABILITY. IF YOU REQUIRE SPECIAL ASSISTANCE, PLEASE CONTACT KAYLYNN HOLLOWAY AT (512) 767-6641 AT LEAST 48 HOURS IN ADVANCE OF THE MEETING. THANK YOU.

A quorum of the Planning and Zoning Commission and/or Development Board may be in attendance at this meeting. No action will be taken by the Commission or Board.

1. Call meeting to order
2. Roll Call
3. Pledge of Allegiance
4. Recognition and Moment of Silence
5. Citizen Comments

This is an opportunity for citizens to address the City Council concerning an issue of community interest that is not on the agenda. Comments on the agenda items must be made when the agenda item comes before the Council. Any deliberation of the issue is limited to a proposal to place it on the agenda for a later meeting. Citizens will have up to 3 minutes to make comments.

6. Staff Comments

Each department of the city may present a monthly report to the City Council on informational items only which do not require action. Each department may provide a monthly report regarding department operations and any noteworthy events for council.

a. City secretary report
b. Communications report
c. Financial report
d. Human Resources report
e. Library report
f. Parks and Facilities report
g. Planning and Development report
h. Police Department report
i. City Manager's office report

7. Consent Agenda

All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member requests in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda. Information concerning consent agenda items is available for public view.

A. Consider approval of the minutes of the Regular Session conducted on September 26, 2023.
B. Consider approval of the finance and investment reports. (Q3)
C. Consider appointment of Thomas Hatfield as a Deputy City Secretary.

8. Discussion regarding update from Municipal Court and consider action on organizing a Teen Court in Bee Cave.

9. Second Public Hearing on Ordinance No. 520 regarding annexing a portion of State Highway 71 Right-Of-Way of an approximate total of 11.4 acres

10. Discuss and consider action regarding an application from the Special Olympics of Texas for use of Hotel Occupancy Tax Funds.

11. Discuss and consider action on a contract with HOAR for Construction Manager-at-Risk (CMAR) services for the new Bee Cave Public Library Building and authorize the City Manager to execute.

12. Discuss and consider action on a contract with CSHV HCG Retail LLC. for the holiday ice rink.

13. Close Regular Meeting

14. Open Executive Session

Open Executive Session. Executive session in accordance with the Texas Government Code, Section 551-072 – Deliberation regarding real property; and Section 551.071 - Consultation with Attorney regarding pending or

contemplated litigation or a settlement offer, or on any matters in which the Attorney has a duty to the City under the Texas Disciplinary Rules of Professional Conduct that clearly conflicts with the provisions of the Open Meetings Law. A quorum of the City Council will be present for the executive session.

A. Consultation with Attorney regarding pending litigation styled Citizens for Preservation of The Brown Property v. City of Bee Cave.

B. Deliberation regarding the potential acquisition of real property for public purposes

C. Consultation with attorney regarding legal issues associated with city's intellectual property rights, marketing campaigns, promotional product distribution and updates in state law.

15. Close Executive Session

16. Open Regular Meeting

17. Consider action, if any, on Executive Session

18. Adjournment

The Council may go into closed session at any time when permitted by Chapters 418 or 551, Texas Government Code, or Section 321.3022 of the Texas Tax Code. Before going into closed session a quorum of the Council must be present, the meeting must be convened as an open meeting pursuant to proper notice, and the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code, or Section 321.3022 of the Texas Tax Code authorizing the closed session.

I certify that the above notice of meeting was posted at Bee Cave City Hall, 4000 Galleria Parkway, Bee Cave, Texas, on the 20th day of October, 2023 at 3:00 P.M. (Seal)

_____

Kaylynn Holloway, City Secretary

City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**7.A.**
Agenda Title:	**Consider approval of the minutes of the Regular Session conducted on September 26, 2023.**
Council Action:	**Approve**
Department:	**City Secretary**
Staff Contact:	**Kaylynn Holloway, City Secretary**

1. INTRODUCTION/PURPOSE

2. DESCRIPTION/JUSTIFICATION

a) Background

b) Issues and Analysis

3. FINANCIAL/BUDGET

Amount Requested	Fund/Account No.
Cert. Obligation	GO Funds
Other source	Grant title
Addtl tracking info	

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

ATTACHMENTS:

Description	Type
Minutes of September 26, 2023	Backup Material

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL
CITY OF BEE CAVE
September 26, 2023

STATE OF TEXAS §
COUNTY OF TRAVIS §

Present:

Kara King, Mayor
Andrew Clark, Mayor Pro Tem
Kevin Hight, Council Member
Courtney Hohl, Council Member
Andrew Rebber, Council Member
Andrea Willott, Council Member

City Staff:

Clint Garza, City Manager
Rebecca Regueira, Deputy City Secretary
Thomas Gwozds, Attorney
Brian Jones, Police Chief
Lindsey Oskoui, Assistant City Manager
Amanda Padilla, Sr. City Planner
Kevin Sawtelle, City Engineer
Logan Maurer, Engineer
Lanie Marcotte, Parks and Facilities Director
Jenny Hoff, Communications Director
Dori Kelley, Communications Specialist
Anna Jensen, Sr. Administrative Assistant for Parks and Facilities

Call to Order and Announce a Quorum is Present

With a quorum present, the regular meeting of the Bee Cave City Council was called to order by Mayor King at 6:00 p.m. on Tuesday, September 26, 2023.

Recognition and moment of silence

Citizen Comments.

There were no citizen comments at this time.

Staff Comments.

There were no staff comments at this time.

Consent Agenda.

A. Consider approval of the minutes of the Regular Session conducted on September 12, 2023.
B. Consider approval of Resolution No. 2023-16 approving the Financial Investment Policy.
C. Consider approval of Resolution No. 2023-17 approving the Fund Balance Policy.
D. Consider approval of Ordinance No. 518 amending the City's Budget for Fiscal Year 2022-23.
E. Consider approval of Ordinance No. 519 amending the Bee Cave Development Corporation Budget for Fiscal Year 2022-23.

MOTION: A motion was made by Council Member Rebber, seconded by Council Member Hohl, to approve Consent Agenda items A – E.

The vote was taken on the motion with the following result:

Voting Aye:	Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay:	None
Absent:	None

The motion carried 6-0.

Discussion and update from Lake Travis Independent School District Superintendent Paul Norton.

Mr. Norton spoke to the City Council regarding the upcoming LTISD bond election.

Discuss and consider action on Ordinance No. 516, an Ordinance adding Section 14.06 pertaining to noise to Chapter 14 of the Bee Cave Code of Ordinances.

Discuss and consider action on Ordinance No. 517, an Ordinance to update Section 14.02.003 pertaining to nuisance of the Bee Cave Code of Ordinances.

The above two items were open together:

Sr. City Planner Amanda Padilla presented these items.

Mayor King opened the public hearing at 6:09 p.m.

There being no one wishing to provide public testimony, the public hearing closed at 6:10 p.m.

MOTION: A motion was made by Council Member Hohl, seconded by Council Member Rebber, to approve Ordinance No. 516.

The vote was taken on the motion with the following result:

Voting Aye: Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay: None
Absent: None

The motion carried 6-0.

Mayor King opened the public hearing at 6:10 p.m.

There being no one wishing to provide public testimony, the public hearing closed at 6:10 p.m.

MOTION: A motion was made by Council Member Hohl, seconded by Council Member Rebber, to approve Ordinance No. 517.

The vote was taken on the motion with the following result:

Voting Aye: Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay: None
Absent: None

The motion carried 6-0.

Discuss and consider action on a contract with Lake Flato Architects for the design of the new Bee Cave Public Library Building and authorize the City Manager to execute.

Project Manager Chelsea Maldonado presented this item.

MOTION: A motion was made by Mayor King, seconded by Council Member Rebber, to approve a contract with Lake Flato Architects for the design of the new Bee Cave Public Library Building and authorize the City Manager to execute.

The vote was taken on the motion with the following result:

Voting Aye: Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay: None
Absent: None

The motion carried 6-0.

Discuss and consider action on a contract with PGAL for the design of the new Bee Cave Public Safety Building and authorize the City Manager to execute.

Ms. Maldonado presented this item.

MOTION: A motion was made by Council Member Rebber, seconded by Council Member Hohl, to approve a contract with PGAL for the design of the new Bee Cave Public Safety Building and authorize the City Manager to execute.

The vote was taken on the motion with the following result:

Voting Aye: Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay: None
Absent: None

The motion carried 6-0.

Discuss and consider action on an addendum to the Interlocal Agreement for Dispatch Services between the City of Lakeway and the City of Bee Cave.

Discuss and consider action on an addendum to the Interlocal Agreement for Victim Services between the City of Bee Cave and the City of Lakeway.

The above two items were opened together.

Police Chief Brian Jones presented these items.

MOTION: A motion was made by Council Member Hohl, seconded by Council Member Hight, to approve an addendum to the Interlocal Agreement for Dispatch Services between the City of Lakeway and the City of Bee Cave.

The vote was taken on the motion with the following result:

Voting Aye: Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay: None
Absent: None

The motion carried 6-0.

MOTION: A motion was made by Council Member Hight, seconded by Council Member Hohl, to approve an addendum to the Interlocal Agreement for Victim Services between the City of Bee Cave and the City of Lakeway.

The vote was taken on the motion with the following result:

Voting Aye: Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay: None
Absent: None

The motion carried 6-0.

Discuss and consider action on future Council meeting dates.

MOTION: A motion was made by Council Member Rebber, seconded by Council Member Hohl, to cancel the Regular Council meeting scheduled for December 26th.

The vote was taken on the motion with the following result:

Voting Aye:	Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay:	None
Absent:	None

Discussion and possible action on establishing an annual Volunteer Appreciation Event.

MOTION: A motion was made by Council Member Hohl, seconded by Council Member Hight, to approval a maximum budget of $25,000 for the Volunteer Appreciation Event.

The vote was taken on the motion with the following result:

Voting Aye:	Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay:	None
Absent:	None

Executive Session:

The City Council closed the Open Session at 7:03 p.m. to convene in Executive Session.

At this point in the meeting, Mayor King publicly announced that a closed, executive session would be held and identified the section of the Open Meeting Law under which the meeting would be held.

Executive session in accordance with the Texas Government Code, Section 551.074 – Personnel Matters-to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; and Section 551.071 - Consultation with Attorney regarding pending or contemplated litigation or a settlement offer, or on any matters in which the Attorney has a duty to the City under the Texas Disciplinary Rules of Professional Conduct that clearly conflicts with the provisions of the Open Meetings Law. A quorum of the City Council will be present for the executive session.

A. Consultation with Attorney regarding pending litigation styled *Citizens for Preservation of The Brown Property v. City of Bee Cave*.
B. Personnel - City Manager.

The City Council closed the Executive Session at 7:16 p.m. and reconvened in Regular Session.

In Open Session:

MOTION: A motion was made by Council Member Hight, seconded by Council Member Hohl, to approve City Manager Clint Garza's contract amendment.

The vote was taken on the motion with the following result:

Voting Aye:	Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay:	None
Absent:	None

The motion carried 6-0.

Adjournment:

MOTION: A motion was made by Council Member Rebber, seconded by Council Member Hohl, to adjourn.

The vote was taken on the motion with the following result:

Voting Aye:	Mayor King, Mayor Pro Tem Clark, Council Members Hight, Hohl, Rebber and Willott
Voting Nay:	None
Absent:	None

The motion carried 6-0.

The City Council meeting adjourned at 7:16 p.m.

PASSED AND APPROVED THIS _____ DAY OF _____, 2023.

_____
Kara King, Mayor

ATTEST:

_____
Kaylynn Holloway, City Secretary

City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**7.B.**
Agenda Title:	**Consider approval of the finance and investment reports. (Q3)**
Council Action:	**Approve as Submitted**
Department:	**Finance**
Staff Contact:	**Administration**

1. INTRODUCTION/PURPOSE

The purpose of this consent agenda item is to provide the City Council with consideration and approval of the finance and investment reports for calendar Q3 and the period ending September 30th, 2023.

2. DESCRIPTION/JUSTIFICATION

a) Background

b) Issues and Analysis

This is the final quarterly report for fiscal year 2022-2023.

3. FINANCIAL/BUDGET

Amount Requested	Fund/Account No.
Cert. Obligation	GO Funds
Other source	Grant title
Addtl tracking info	

4. TIMELINE CONSIDERATIONS

Q3 represents the period ending 9/30/2023.

5. RECOMMENDATION

Approve as submitted.

ATTACHMENTS:

Description	Type
Finance & Investment Report	Cover Memo

To: City Manager, Mayor & Council
From: Finance
Date: 10/24/2023
Re: Quarterly Finance & Investments Report

Total Sales Tax revenue performance for FY 2022-2023 totaled just under $14.2M. Last fiscal year by comparison was just over $14.1M. As has been stated previously, these results represent stability over the course of 12 months with an increase of just 0.22% over that duration. There are two ways to interpret this performance; one being cautiously optimistic while the other being somewhat satisfied with the stability. We tend to embrace both positions as we close the book on the fiscal year and move forward.

Other General Fund Revenue:

Revenue Description	Budget	FYTD	Perform%
MIXED BEVERAGE TAX	$110,000	$181,308	164.83%
FRANCHISE FEES	$349,000	$443,141	126.97%
BUILDING FEES	$310,000	$1,146,497	369.84%
MUNICIPAL COURT	$225,000	$356,692	158.53%

Building and Development Revenue significantly outperformed our budget forecast in FY 2022-2023 due primarily to plat applications and other required development contribution fees. Not included in the listing above but should be noted that Property Tax Revenue in our Debt Service Fund finished the fiscal year at 98% at around $578K. While the result is slightly less than our forecast, this has been historically the case. Each fiscal year, we calculate property tax revenue based on the total value provided by the Appraisal

District. Given the timing, it's often a preliminary value as well. The slight reduction in the total revenue we receive during the fiscal year vs. the forecast is due primarily to the significant number of property owners actively petitioning their increased appraised values.

FYTD General Fund Expense by Department as compared to the Final Budget as Amended:

Dept	Final Amended Budget	FYTD	Perform%
5010 - ADMINISTRATION	$1,368,428	$1,407,611	102.9%
5020 - CITY COUNCIL	$36,130	$35,593	98.5%
5030 - LEGAL	$295,000	$280,775	95.2%
5040 - COMMUNICATIONS	$235,604	$217,860	92.5%
5120 - NON DEPARTMENTAL	$261,681	$158,786	60.7%
5140 - INFORMATION TECHNOLOGY	$450,195	$466,276	103.6%
5200 - LIBRARY	$1,064,882	$1,046,618	98.3%
5350 - PARKS	$437,325	$408,943	93.5%
5650 - FACILITIES	$349,692	$340,681	0.0%
5500 - MUNICIPAL COURT	$353,380	$328,796	93.0%
5520 - POLICE	$3,079,140	$2,933,795	95.3%
5620 - PLANNING & DEVELOPMENT	$1,114,951	$1,071,979	96.1%
5800 - CHAPTER 380	$145,742	$145,742	100.0%
5900- CIP NOC	$6,067	$6,067	0.0%

The City Council took action to approve the final FY 2022-23 budget amendment on September 26th. As with every other FY, we have revenue and expense transactions that trickle through the end of October into November that are posted to the prior FY as a part of 13th period reconciliations in preparation for the annual audit.

Banking:

	Beginning Balance	Contributions	Withdrawals	Interest Earned	Avg Rate	Ending Balance
Bank Account (Wells Fargo- Pooled Cash)	$367,630.71	$11,780,057.94	($12,072,367.68)	$2,226.66	1.0667%	$75,320.97
Bank Account (Wells Fargo - Govt MM)	$1,173.89	$1,150,000.00	($900,000.00)	$2,729.31	5.2367%	$253,903.20
Totals	**$368,804.60**	**$12,930,057.94**	**($12,972,367.68)**	**$4,955.97**	**3.1517%**	**$ 329,224.17**

Withdrawals from our Wells Fargo primary pooled cash account increased substantially in this quarter due primarily to the purchase of real property and contributions to our investment pools. Rates in the investment pools continue to provide substantially higher ROI. Our WF Money Market account serves as our Safe-Keeping account and its rate performance has also improved significantly during the quarter.

Investment Performance:

Account	Beginning Balance	Contributions	Withdrawals	Interest Earned	Avg Rate	Ending Balance
Govt Pool (Texas Class)	$21,059,383.56	$2,000,000.00	($2,500,000.00)	$287,723.90	5.4403%	$20,847,107.46
Govt Pool (Logic)	$15,264,232.10	$0.00	($325,000.00)	$208,208.88	5.4291%	$15,147,440.98
Govt Pool (TexStar)	$76,032.03	$0.00	$0.00	$1,008.41	5.2409%	$77,040.44
Govt Pool (TexPool)	$44,729.80	$0.00	$0.00	$594.41	5.2500%	$45,324.21
Totals	**$36,444,377.49**	**$2,000,000.00**	**($2,825,000.00)**	**$497,535.60**	**5.3401%**	**$ 36,116,913.09**

We increased our interest earnings once again in Q3 by almost $30K, totaling just over $500K with rates now exceeding 5.5%. The fiscal year 2023-2024 budget appropriation approved by Council has been implemented and we begin closing out the prior FY in preparation for our comprehensive financial audit.

Please contact Ms. Alma Sanchez via e-mail at asanchez@beecavetexas.gov with any questions.

City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**7.C.**
Agenda Title:	**Consider appointment of Thomas Hatfield as a Deputy City Secretary.**
Council Action:	**Approve**
Department:	**City Secretary**
Staff Contact:	**Kaylynn Holloway, City Secretary**

1. INTRODUCTION/PURPOSE

To consider appointment of Thomas Hatfield as a Deputy City Secretary.

2. DESCRIPTION/JUSTIFICATION

a) Background

Crystal Jaime served as a Deputy City Secretary until her resignation earlier this year.

The Code of Ordinances, Article 2.02, City Officers, allows for the City Council to appoint Deputy City Secretaries.

b) Issues and Analysis

3. FINANCIAL/BUDGET

Amount Requested	Fund/Account No.
Cert. Obligation	GO Funds
Other source	Grant title
Addtl tracking info	

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

Appoint Thomas Hatfield as a Deputy City Secretary.

City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**8.**
Agenda Title:	**Discussion regarding update from Municipal Court and consider action on organizing a Teen Court in Bee Cave.**
Council Action:	
Department:	**City Manager**
Staff Contact:	**Clint Garza, City Manager/Judge Sheehan**

1. INTRODUCTION/PURPOSE

Teen Court is a diversion program for Teens who have been charged with a class C misdemeanor. Instead of having a conviction or deferral on their record, they can have their case entirely dismissed upon successful completion of the program.
The system utilized is called a Master Jury Panel comprised of 6 teens. It is a mix of volunteers and those who have also been through the program themselves, who will hear the case from the teen's perspective. They would be able to ask questions of the teen and their parent and then deliberate and decide on an appropriate punishment. The punishments often include community service hours, classes, or coming back to serve on a Teen Court jury.

2. DESCRIPTION/JUSTIFICATION

a) Background

Any Class C misdemeanor applies to the program such as a traffic ticket, possession of drug paraphernalia, possession of e-cigarettes and vaping, fighting, graffiti, or public nuisance.

It costs $20 to be a part of the program.

b) Issues and Analysis

3. FINANCIAL/BUDGET

Amount Requested	Fund/Account No.
Cert. Obligation	GO Funds

Other source

Grant title

Addtl tracking info

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**9.**
Agenda Title:	**Second Public Hearing on Ordinance No. 520 regarding annexing a portion of State Highway 71 Right-Of-Way of an approximate total of 11.4 acres**
Council Action:	**Hold Public Hearing**
Department:	**Assistant City Manager**
Staff Contact:	**Lindsey Oskoui**

1. INTRODUCTION/PURPOSE

To hold a second public hearing regarding the annexation an approximately 11.4 acre portion of SH 71 ROW from approximately the intersection of Vail Divide and State Highway 71to approximately 2,500' westward of the intersection.

2. DESCRIPTION/JUSTIFICATION

a) Background

Section 1.03 of the Home Rule Charter adopted by the citizens of Bee Cave in May 2013 states that *"The City may from time to time alter its boundaries by annexing any territory adjoining boundaries, as such boundaries may exists from time to time, in any size or shape desired in any manner provided by State law and by any other method provided by law for any type of incorporated municipali8ty, with or without consent of the owners of such territory or the inhabitants thereof. The City may from time to time alter its boundaries by disannexing any territory adjoining its boundaries; as such boundaries may exist from time to time, by passage of an ordinance describing the territory to be disannexed. Any additional territory annexed to the City shall be part of the City for all purposes, and the property situated therein shall bear its pro rata part of the taxes levied by the City as provided by State law. The inhabitants thereof shall be entitled to all right and privileges of all citizens and shall be bound by the acts, ordinances, and resolutions of the City."*

Each calendar year, a City may initiate annexation from within its Extraterritorial Jurisdiction an amount equal to up to 10 percent of the area within its City Limits. (Annexation due to land owner petition does not count against this cap). Any 'unused' acreage from the maximum allowed may be carried over to the next calendar year.

Texas Local Government Code Chapter 43 establishes a detailed process for how annexations must be completed, including, for an annexation of this type ("C-1"):

- preparation of a service plan;

- issuance of notice in the newspaper and via mail to property owners of the subject land and those within 200'; and
- two public hearings at City Council.

On 9/12/2023, City Council approved Resolution 2023-15, which initiated the process of annexing an 11.4 acre area encompassing the right of way (ROW) of SH 71 located from approximately the intersection of Vail Divide and SH 71 to approximately 2,500' westward of that intersection, all of which is owned by Texas Department of Transportation (TXDOT). A survey is attached. This area generally includes SH 71 itself and all of the normal utilities and appurtenances found in a state ROW. There is no commercial development, nor residences. Adjacent neighbors include the Canyonside neighborhood and Bee Cave Primitive Park to the North and the Lake Travis Independent School District Bus Ban to the South. This area is outside of a Municipal Utility District.

b) Issues and Analysis

Annexation of this stretch of SH 71 completes incorporating all portions of SH 71 that were formerly within the City's Extraterritorial Jurisdiction.

In addition to initiating the process, approval of Resolution 2023-15 also had the effect of scheduling the two public hearings required by state law as part of this process. The first hearing was held on 10/23/23 and this is the second.

The ordinance that would complete the annexation is scheduled to be considered at the November 14th City Council meeting. The complete annexation calendar is attached.

3. FINANCIAL/BUDGET

Amount Requested	Fund/Account No.
Cert. Obligation	GO Funds
Other source	Grant title
Addtl tracking info	

4. TIMELINE CONSIDERATIONS

The rules in the Texas Local Government regarding the timing of each of the steps in annexation are very specific. Once this process is commenced, most dates cannot be modified without starting the process over.

5. RECOMMENDATION

No action.

ATTACHMENTS:

Description	Type
Draft Resolution 2023-15 - Initiating Intent to Annex	Resolution Letter
Map of Area Proposed to Be Annexed	Exhibit
Draft Annexation Calendar	Exhibit
Metes and Bounds	Backup Material

RESOLUTION NO. 2023-15

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BEE CAVE, TEXAS, DECLARING AN INTENT TO ANNEX A PORTION OF THE HIGHWAY 71 RIGHT OF WAY, OF AN APPROXIMATE TOTAL OF 11.4 ACRES; AUTHORIZING CITY STAFF TO POST AND SEND THE REQUIRED PUBLIC NOTICES, ORDERING THE SCHEDULING OF PUBLIC HEARINGS, DIRECTING CITY STAFF TO PREPARE A DRAFT ANNEXATION ORDINANCE FOR CITY COUNCIL'S CONSIDERATION AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City recognizes certain portions of the Highway 71 right-of-way described in the metes and bounds attached as Exhibit "A," (the "Property") lies outside of the City's municipal limits and in the City's extraterritorial jurisdiction; and

WHEREAS, the City Council finds it is in the best interest of the citizens and public to annex such Property into the City's municipal limits; and

WHEREAS, the City is authorized to annex an area of land which is a road and right-of-way; and

WHEREAS, the City Council hereby shall schedule public hearings, order a service plan to be prepared and notice be published, and otherwise shall comply with the legal requirements for annexation; and

WHEREAS, the area proposed for annexation is contiguous to the city limits of the City; and

WHEREAS, the area proposed for annexation, if annexed, would not exceed the maximum amount of area allowed for annexation per year by the City; and

WHEREAS, the City Council finds that proceeding forward with the annexation process is in the best interest of the public and the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEE CAVE, TEXAS:

SECTION 1.
The Council hereby adopts and finds to be true the recitals set out in the preamble to this resolution and they are incorporated for all purposes giving effect to this resolution.

SECTION 2.
Council expressly declares Council's intention to commence with public hearings required to commence the annexation process.

SECTION 3.
Council authorizes and orders the city manager to prepare a service plan that provides for the extension of full municipal services to the Property.

SECTION 4.
Council authorizes and orders the city manager to give written notice of the proposed annexation as required by law.

SECTION 5.
Council authorizes and orders the city manager to schedule two (2) public hearings to allow for the opportunity of persons interested in the proposed annexation to be heard. Such public hearings shall be scheduled for October 23, 2023 at 4:30 p.m., and for October 24, 2023 at 6:00 p.m.

SECTION 6.
Council authorizes and orders the city manager to post notice of two (2) scheduled public hearings in a newspaper of general circulation in the municipality and area proposed for annexation as well as on the City's web site, stating that the completed annexation of the area will expand the municipality's extraterritorial jurisdiction, describing the area that would be newly included in the municipality's extraterritorial jurisdiction, stating the purpose of the extraterritorial jurisdiction, and describing municipal ordinances that would be applicable to subdivision and property development within the Property.

SECTION 7.
Council authorizes and orders the city manager to create, or contract for the creation of, and make publicly available a digital map that identifies the area proposed for annexation and any area that would be newly included in the municipality's extraterritorial jurisdiction as a result of the proposed annexation in a format widely used by common geographic information system software or in any other widely used electronic format.

SECTION 8.
Council authorizes and orders the city manager to prepare or have prepared such other maps and documents as legally required for the proposed annexation.

DULY PASSED AND APPROVED, on the _____ day of _____, 2023 at a regular meeting of the City Council of Bee Cave, Texas, which was held in compliance with the Open Meetings Act, Tex. Gov't Code § 551.001, et. Seq. at which meeting a quorum was present and voting.

CITY OF BEE CAVE, TEXAS

_____
Kara King, *Mayor*

ATTEST:

_____
Kaylyn Holloway, *City Secretary*

APPROVED:

_____

Ryan S. Henry, *City Attorney*

SH 71
Vail Divide

DRAFT ANNEXATION CALENDAR:
11.4 acres of SH 71 ROW between Vail Divide/SH 71 Int and ~2,500' west of intersection

COMMENCEMENT		
Adopt Resolution	Tue 12 Sep 2023	Council adopts **RESOLUTION** directing staff to begin annexation process: prepare service plan, set public hearings.
SERVICE PLAN		
Deadline to Prepare Svc Plan	Sat 23 Sep 2023	Same date notices are mailed.
MAILED NOTICES		
Deadline to Mail Notices	Sat 23 Sep 2023	Notices to owners of properties being annexed, service providers, RR company, State Highway Department, etc. Notice must be mailed 30 days prior to first public hearing. Send regular and certified mail.
NEWSPAPER NOTICES		
Overlapping Date Range for Mailed Notices	Wed 4 Oct 2023 to Mon 9 Oct 2023	Notices must be published no fewer than 10 days before public hearing and no more than 20 days.

	20 Days Prior	10 Days Prior
First Public Hearing		
Mon 23 Oct 2023	Tue 3 Oct 2023	Fri 13 Oct 2023
Second Public Hearing		
Tue 24 Oct 2023	Wed 4 Oct 2023	Sat 14 Oct 2023

For hearing dates Mon 23 Oct 2023 and Tue 24 Oct 2023 their overlapping publishing dates are:

Wed 4 Oct 2023 to Mon 9 Oct 2023

Actual publication Date for Public Hearing 1	Wed 4 Oct 2023	If an overlapping date range exists, dates in cell B17 and B20 should be made to be the the same. If there is a Wednesday in the overlapping date range, it should be chosen so publication can be put in the LTV, which is cheaper than the Statesman.
LTV Deadline	*Wed 27 Sep 2023 by 12pm*	LTV publishes on Wednesday; deadline is the preceding Wednesday by **noon**. Doublecheck returned LTV deadline because it needs to be at least one week prior to the publication date.
Statesman Deadline	*Mon 2 Oct 2023 by 3pm*	Statesman publishes every day **except Saturday**. Need to send it in by 3p. Monday--> Thursday 3p Tuesday-->Friday 3p Wednesday --> Monday 3p Thursday--> Tuesday 3p Friday --> Wednesday 3p Saturday--> N/A
Actual publication Date for Public Hearing 2	Wed 4 Oct 2023	If an overlapping date range exists, dates in cell B17 and B20 should be made to be the the same. If there is a Wednesday in the overlapping date range, it should be chosen so publication can be put in the LTV, which is cheaper than the Statesman.
LTV Deadline	*Wed 27 Sep 2023 by 12pm*	LTV publishes on Wednesday; deadline is the preceding Wednesday by **noon**. Doublecheck returned LTV deadline because it needs to be at least one week prior to the publication date.

Statesman Deadline	*Mon 2 Oct 2023 by 3pm*	Statesman publishes every day **except Saturday**. Need to send it in by 3p. Monday--> Thursday 3p Tuesday-->Friday 3p Wednesday --> Monday 3p Thursday--> Tuesday 3p Friday --> Wednesday 3p Saturday--> N/A Sunday--> Thursday 3pm
HEARINGS		
Public Hearing Date Range	Thu 5 Oct 2023 to Wed 25 Oct 2023	Period during which two public hearings must be held—both must occur no fewer than 20 days and no more than 40 days preceding adoption date. **One of the hearings is likely to need to be a special meeting**
First Hearing Date	Mon 23 Oct 2023	Special Meeting. 4:30pm
Second Hearing Date	Tue 24 Oct 2023	Regularly scheduled meeting. 6 pm
ADOPTION		
Adoption Date	Tue 14 Nov 2023	Regular Council meeting. **ORDINANCE** needed. Metes and bounds and service plan attached.

DOUCET

7401B Highway 71 West, Suite 160, Austin, TX 78735
Office: 512.583.2600
Fax: 512.583.2601
Doucetengineers.com

"Exhibit "------"

11.13 Acre Highway 71 Annexation Tract Description **D&A Job No. 2051-003**
Travis County, Texas **September 8, 2023**

DESCRIPTION

BEING A 11.13 ACRE TRACT OF LAND IN THE T.C. RR. CO. SURVEY, ABSTRACT NUMBER 2259, AND THE T.C. RR. CO. SURVEY, ABSTRACT NUMBER 2525, TRAVIS COUNTY, TEXAS, SAID 11.13 ACRE TRACT OF LAND BEING A PORTION OF STATE HIGHWAY 71 (A VARIABLE WIDTH RIGHT-OF-WAY), DESCRIBED IN A DEED TO THE STATE OF TEXAS IN VOLUME 790, PAGE 582, DEED RECORDS, TRAVIS COUNTY, TEXAS, SAID 11.13 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY THE METES AND BOUNDS AS FOLLOWS:

BEGINNING at a calculated point on the north right-of-way line of said State Highway 71, for the southernmost southeast corner of Final Plat of Lot 1A, 1B and 1C, Block A of Falconhead West, Phase 1, Section 2 & Phase 2, a subdivision of record in Document Number 201700231 of the Official Public Records, Travis County, Texas [O.P.R.T.C.T.], same being the southwest corner of a called 22.997 acre tract described in a deed to Protestant Episcopal Church Council of the Diocese of Texas, recorded in Document Number 2018104077, O.P.R.T.C.T., and the northeast corner of the tract described herein;

THENCE over and across said State Highway 71, S28°04'41"W, a distance of 162.74 feet to a calculated point in the south right-of-way line of State Highway 71, for the northwest corner of Bella Colinas Commercial Plat, a subdivision of record in Document Number 201600051 O.P.R.T.C.T., same being the northeast corner of a called 136.059 acre tract of land described in a deed to Lake Travis Independent School District in Document Number 2010014061, O.P.R.T.C.T., and the southeast corner of the tract described herein;

THENCE with the south right-of-way line of said State Highway 71, same being the north line of said Lake Travis Independent School District tract, and the south line of the tract described herein, the following three (3) courses and distances:

1) N84°33'47"W, a distance of 168.86 feet to a calculated point of curvature,

2) With a curve to the left, defined by an arc length of 1,531.04 feet, a radius of 5,639.33 feet, a delta angle of 15°33'19", and a chord which bears S87°39'02"W, a distance of 1,526.34 feet to a calculated point of tangency, and

3) S79°54'05"W, at distance of 276.48 feet passing a calculated point for the northwest corner of said Lake Travis Independent School District Tract, same being the northeast corner of Sweetwater Crossing Lot 9, Block A Final Plat, a subdivision of record in Document Number 201700109 O.P.R.T.C.T., continuing for a total of 986.80 feet to a calculated point of curvature in the common line of State Highway 71 and the north line of said Sweetwater Crossing Lot 9, Block A Final Plat, and the south line of the tract described herein;

THENCE with the south right-of-way line of said State Highway 71, same being the north line of said Sweetwater Crossing Lot 9, Block A Final Plat, and with said curve to the right, defined by an arc length of 63.83 feet, a radius of 1,522.37 feet, a delta angle of 02°24'09", and a chord which bears S80°57'37"W, for a distance of 63.83 feet, to a calculated point for a northwestern corner of said Sweetwater Crossing Lot 9, Block A Final Plat, same being the northeastern corner of Sweetwater Crossing Phase One Final Plat, a subdivision of record described in Document Number 201700299 O.P.R.T.C.T., also being a point on curve to the right for the tract described herein;

THENCE with the south right-of-way line of said State Highway 71, same being the north line of said Sweetwater Crossing Phase One Final Plat, and continuing with a curve to the right, defined by an arc length of 340.85 feet, a radius of 1,522.37 feet, a delta angle of 12°49'41", and a chord which bears S88°34'54"W, for a distance of 340.14 feet, to a calculated point for the southwest corner of the tract described herein;

(CONTINUED ON NEXT PAGE)

7401B Highway 71 West, Suite 160, Austin, TX 78735
Office: 512.583.2600
Fax: 512.583.2601
Doucetengineers.com

THENCE over and across the said State Highway 71 right-of-way, N00°00'00"E, a distance of 178.80 feet to a calculated point in the north right-of-way line of State Highway 71, for the southwest corner of Mansions at Lakeway, a subdivision of record in Document Number 201300276, O.P.R.T.C.T., same being the southwest corner of Falconhead West Phase 1, Section 2 & Phase 2 Final Plat, a subdivision of record in Document Number 200800106, O.P.R.T.C.T., for a point of curvature and the northwest corner of the tract described herein;

THENCE with the north right-of-way line of said State Highway 71, same being the south line of said Falconhead West Phase 1, Section 2 & Phase 2 Final Plat, and the north line of the tract described herein, the following four (4) courses and distances;

1. With a curve to the left, defined by an arc length of 373.01 feet, a radius of 1,342.39 feet, a delta angle of 15°55'15", and a chord which bears N87°42'00E, for a distance of 371.81 feet, to a calculated point,

2. N83°41'22"E, a distance of 447.21 feet to a calculated point,

3. N79°50'35"E, a distance of 541.10 feet to a calculated point of curvature, and

4. With a curve to the right, defined by an arc length of 1,051.53 feet, a radius of 5,789.58 feet, a delta angle of 10°24'23", and a chord which bears N85°02'47E, for a distance of 1,050.09 feet, to a calculated point on curve to the right, said point being on the west right-of-way line of Vail Divide (a variable width right-of-way) as described in Document Number 200800106, O.P.R.T.C.T.,

THENCE with the north right-of-way line of said State Highway 71, same being the south line of said Vail Divide, also being the north line of the tract described herein with said curve to the right, defined by an arc length of 100.27 feet, a radius of 5,789.58 feet, a delta angle of 0°59'32", and a chord which bears S89°15'16E, for a distance of 100.27 feet, to a calculated point on curve to the right, being a southwest corner of Final Plat of Lot 1A, 1B, and 1C, Block A of Falconhead West, Phase 1, Section 2, & Phase 2, a subdivision of record in described in Document Number 201700231, O.P.R.T.C.T.,

(CONTINUED ON NEXT PAGE)

DOUCET

7401B Highway 71 West, Suite 160, Austin, TX 78735
Office: 512.583.2600
Fax: 512.583.2601
Doucetengineers.com

THENCE continuing with the north right-of-way line of said State Highway 71, and the south line of said Final Plat of Lot 1A, 1B, and 1C, Block A of Falconhead West, Phase 1, Section 2, & Phase 2, the following two (2) courses and distances;

1. With said curve to the right, defined by an arc length of 419.47 feet, a radius of 5,789.58 feet, a delta angle of 04°09'04", and a chord which bears N86°40'57E, for a distance of 419.38 feet, to a calculated point of tangency, and

2. S84°36'22"E, a distance of 231.62 feet to the **POINT OF BEGINNING** and containing 11.13 acres, more or less.

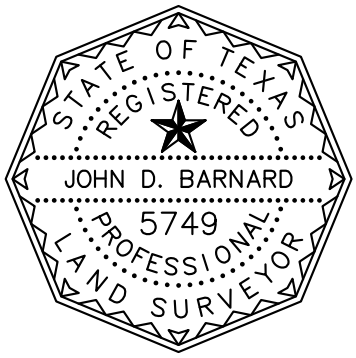
Basis of bearings is the N87°39'02"E, a distance of 1,526.34 feet from said Lake Travis Independent School District Tract, Document Number 2010014061 [O.P.R.T.C.T.].

Units: U.S. Survey Feet.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

09/08/2023

John Barnard Date
Registered Professional Land Surveyor
Texas Registration No. 5749
Doucet & Associates
JBarnard@DoucetEngineers.com
TBPELS Firm Registration No. 10105800

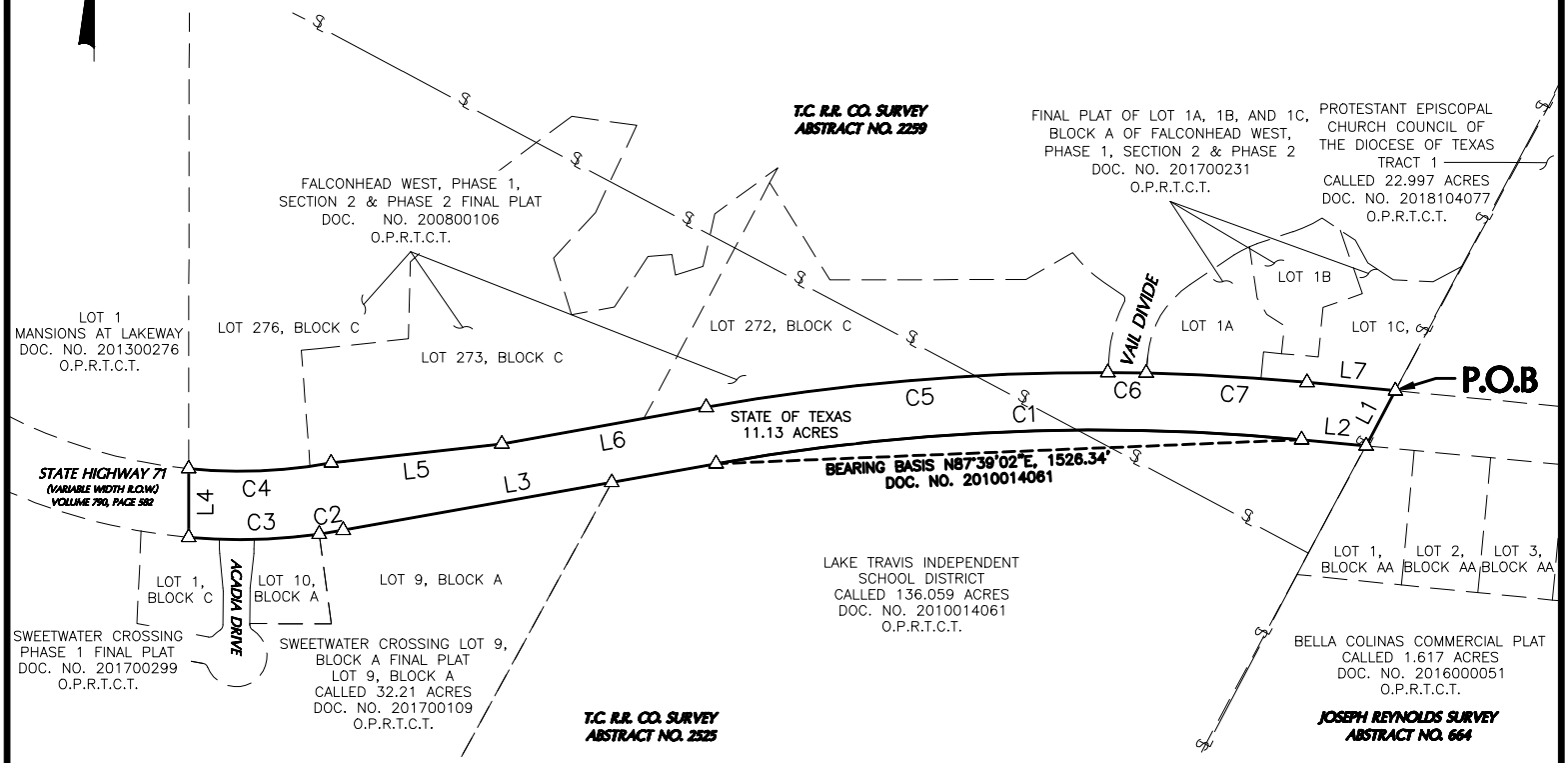


COMMITMENT YOU EXPECT | EXPERIENCE YOU NEED | PEOPLE YOU TRUST

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	1,531.04'	5,639.33'	15°33'19"	S87°39'02"W	1,526.34'
C2	63.83'	1,522.37'	2°24'09"	S80°57'37"W	63.83'
C3	340.85'	1,522.37'	12°49'41"	S88°34'54"W	340.14'
C4	373.01'	1,342.39'	15°55'15"	N87°42'00"E	371.81'
C5	1,051.53'	5,789.58'	10°24'23"	N85°02'47"E	1,050.09'
C6	100.27'	5,789.58'	0°59'32"	S89°15'16"E	100.27'
C7	419.47'	5,789.58'	4°09'04"	S86°40'57"E	419.38'

LEGEND

———	PROPERTY LINE
— — — —	ADJOINER PROPERTY LINE
——— ℄ ———	APPROXIMATE SURVEY LINE
△	CALCULATED POINT
P.O.B.	POINT OF BEGINNING
DOC. NO.	DOCUMENT NUMBER
R.O.W.	RIGHT-OF-WAY
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S28°04'41"W	162.74'
L2	N84°33'47"W	168.86'
L3	S79°54'05"W	986.80'
L4	N00°00'00"E	178.80'
L5	N83°41'22"E	447.21'
L6	N79°50'35"E	541.10'
L7	S84°36'22"E	231.62'

SURVEYOR'S NOTE:

ALL BEARINGS, DISTANCES AND CURVES SHOWN HEREON ARE RECORD AND DO NOT REFLECT THE THE RESULTS OF AN ON THE GROUND SURVEY.

THIS DOCUMENT WAS PREPARED UNDER 22 TAC §663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.

0 1" 2"

GRAPHIC SCALE: 1" = 500'

11.13 ACRE TRACT EXHIBIT

CITY OF BEE CAVE, TRAVIS COUNTY, TEXAS

DOUCET

Civil Engineering // Entitlements // Geospatial
7401 B. Highway 71 W, Ste. 160
Austin, TX 78735, Tel: (512)-583-2600
www.doucetengineers.com
TBPELS Firm Number: 3937
TBPELS Firm Number: 10194551

Date:	09/08/2023
Scale:	1" = 500'
Drawn by:	BSS
Reviewer:	JA/JB
Project:	2051-003
Sheet:	4 of 4
Field Book:	N/A
Party Chief:	N/A
Survey Date:	9/7/2023

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City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**10.**
Agenda Title:	**Discuss and consider action regarding an application from the Special Olympics of Texas for use of Hotel Occupancy Tax Funds.**
Council Action:	**Discussion and possible action**
Department:	**City Manager**
Staff Contact:	**Clint Garza, City Manager**

1. INTRODUCTION/PURPOSE

To discuss and consider action regarding an application from the Special Olympics of Texas for use of Hotel Occupancy Tax Funds.

2. DESCRIPTION/JUSTIFICATION

a) Background

Staff has been in discussions with Special Olympic of Texas regarding the 2024 SOTX Winter Games. If funding is approved, the event is planned from February 16, 2024 - February 18, 2024.

As provided in the application, the SOTX winter games is a statewide competition where Athletes with Intellectual Disabilities throughout the State of Texas compete in Floorball, Volleyball, and Powerlifting. There are 2000 overnight guests expected for the event. Both Bee Cave and Lakeway have been approached for funding as cooperation from each city is not only ideal but necessary to ensure event success.

The organization is partnering with Hill Country Indoor, Starhill Ranch, and Lake Travis ISD. Events and activities will be spread throughout different facilities including Bee Cave and Lake Travis Middle School campuses.

b) Issues and Analysis

At this time, SOTX has requested $185,000 in funding from the Hotel Occupancy Tax from Bee Cave.

The organization has expressed interest in holding the annual Winter Games in the area for 3-5 years.

3. FINANCIAL/BUDGET

Amount Requested	$185,000	Fund/Account No.
Cert. Obligation		GO Funds
Other source		Grant title
Addtl tracking info		

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

ATTACHMENTS:

Description	Type
Fund Balance	Backup Material
Expenses	Backup Material
Marketing Plan	Backup Material
BOD	Backup Material
Timeline	Backup Material
Event Matrix	Backup Material
Application	Backup Material

Budget Report

Fund: 04 - HOTEL OCCUPANCY TAX FUND

	Beginning Fund Balance	**$2,097,926**			
		Budget 9/30/2023	**FYTD 9/30/2023**	**Percent Used**	**Final Amended 9/30/2023**
Revenue					
04-4000-14100	HOTEL OCCUPANCY TAX REVENUE	$600,000	$471,570	78.60%	$600,000
04-4000-14500	HCG (ICE RINK)	$300,000	$340,920	113.64%	$340,920
04-4000-55000	DONATIONS	$0	$15,000	0.00%	$15,000
04-4990-70000	USE OF RESERVES	$0	$0	0.00%	$0
	Revenue Total:	**$900,000**	**$827,490**	**91.94%**	**$955,920**
Expense					
04-5010-11100	SALARY	$32,898	$49,072	149.16%	$51,532
04-5010-12200	MEDICARE @ 1.45%	$477	$701	146.96%	$735
04-5010-12400	RETIREMENT (TMRS)	$3,227	$4,733	146.67%	$5,018
04-5010-12500	VISION COVERAGE	$0	$80	0.00%	$85
04-5010-12600	HEALTH INSURANCE	$0	$4,994	0.00%	$5,330
04-5010-12700	DENTAL COVERAGE	$0	$337	0.00%	$364
04-5010-12900	LIFE INSURANCE	$0	$8	0.00%	$13
04-5010-21900	HCG ICE RINK	$300,000	$424,317	141.44%	$424,317
04-5010-62400	OTHER APPLICATION APPROVALS	$0	$260,000	0.00%	$260,000
04-5010-62500	ARTS PROMOTION	$50,000	$180,000	360.00%	$180,000
	Expense Total:	**$386,602**	**$924,242**	**239.07%**	**$927,394**
Fund: 04 - HOTEL OCCUPANCY TAX FUND Surplus (Deficit):		**$513,398**	**($96,752)**		**$28,526**
	Ending Fund Balance	**$2,611,324**	**$2,001,174**		**$2,126,452**

Please note the 15% Arts contribution threshold does NOT apply and is only required for cities with a population over 190,000. The City's internal policy is 15% of the current FY Revenue only or limited to $90K.

2023 SOTX Itemized List of Relevant Expenditures		
Item	**Cost**	**Total Cost**
Facilities		
HCI Sports & Fitness	$25,000	$25,000
LTISD	$8,000	$8,000
Star Hill Ranch	$13,000.00	$13,000.00
Meals		
Saturday Lunch	$11,322.00	$41,514.00
Saturday Dinner	$18,870.00	
Sunday Lunch	$11,322.00	
Hotels		
Hotel blocks	$361,350.28	$361,350.28
Rental Equipment		
Port-a-potties	$1,700	$1,700
Stage rental	$4,000	$4,000
Audio/Video	$5,000	$5,000
Tents	$13,782	$13,782
Golf carts/Vehicles	$650	$650
Transportation		
ISD Bus Rentals	$3,641	$3,641
Team transportation to Winter Games	$20,000	$20,000
Traffic Control		
PD Traffic Control/Security	$5,000	$5,000
Entertainment		
Opening Ceremony Band	$10,085	$10,085
Marketing/Promotions		
Promotionals	$24,319	$24,319
Marketing/Advertising	$15,893	$15,893
Overall Costs		$552,935

Special Olympics Texas

2024 SOTX Winter Games Marketing Plan

Special Olympics Texas events are always open and encouraged for the public to come be a part and see what's happening at our events. Some believe that Special Olympics events are closed off and only for those with disabilities, but we plan to change that narrative and focus on being welcoming and inclusive. With hosting our first Winter Games in the Bee Cave/Lakeway area, we believe the community saw Special Olympics and now is their time to embrace Special Olympics Texas and get involved even more. Below is our plan to market the 2024 Special Olympics Texas Winter Games:

We plan to promote and market this event using local radio stations, newsblasts, community outreach pages, social media and as many possible avenues to welcome and invite volunteers to assist in the competitions. We also hope that those who volunteered last year will have more of an interest in joining one of our planning committees and can bring even more of the community to our event. These volunteers have now seen the event, but we want them to bring in as many resources to make the event even bigger.

Our goal is to host multiple lead up events to promote the Winter Games. Some of these events include Tip-A-Cops where Athletes and Law Enforcement Officers assist restaurant servers in bringing out drinks and food to patrons and promote Special Olympic events. In return, patrons give a donation or "tip" to Special Olympics. We plan to host these events at any willing participating restaurant.

We will host a press conference to announce the 2024 Winter Games dates and promote the event further. This press conference will take place in a public space. Last year's press conference was a huge success in recruiting volunteers and we plan to continue to build off of that success.

Special Olympics Texas

2023 BOARD OF DIRECTORS ROSTER

Chair - Susanne Brady-Lusk; **Vice Chair** - Pete Carey; **Immediate Past Chair -** Steve Griffith;
Treasurer - Gabe Kwentus; **Secretary –** David Mantor; **At Large -** Chris Kingston

Sam Arciniega (2017)
(Area 4) M - Hispanic
HEB Blackhawk
General Manager
9828 Blackhawk Blvd
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361.774.6617 (c)
arciniega.sam@heb.com

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bblevins@google.com

Susanne Brady-Lusk (2018)
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Vice Pres/Market Unit General Mgr.
Arca Continental Coca-Cola Southwest Beverages
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281.380.7156 (c)
Susanne.Brady-Lusk@cocacolaswb.com
Assistant - Deborah Kesterton
deborah.kesterton@cocacolaswb.com

Elizabeth Campbell (2022)
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campbell.advo2017@gmail.com

Marian Cabanillas (2019)
(Area 4) F - Hispanic
President, Health Plan Operations
UnitedHealthcare of Texas
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Sugar Land, TX 77478
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866.374.4790 (fax)
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713.446.4106
marian_cabanillas@uhc.com
Assistant - Stephanie Vanarsdale
stephanie_n_vanarsdale@uhc.com

Pete Carey (2019)
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Retired - Toyota
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Chief Eddie Garcia (2022)
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Assistant - Susana Villalpando
susana.villalpando@dallascityhall.com

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(Alt)swgriffith@comcast.net

Mike Hayes (2020)
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Director-Pricewaterhouse Cooper, LLP
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Ralph Herring O.D., M.H.A. (2015)
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713.857.9411 (c)
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Dale Hosack (2016)
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CFO & Corporate Secretary
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mailing- 13316 Newcastle Creek Court, Houston, TX 77059
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512.423.0882 (c)
Dale.Hosack@wccoke.com

Dr. Jordan Kemere (2023)
(Area 4) F- Caucasian
Internal Medicine Physician
Assistant Professor
Baylor College of Medicine
1 Moursund St,
Houston, TX 77030
mailing - 8631 Hatton St
Houston, Tx 77025
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Kemere@bcm.edu
Jkemere@gmail.com

Chris Kingston (2019)
(Area 10) M - Caucasian
Vice President
Learfield
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469. 241.9191 ext 1844 (w)
ckingston@learfield.com

Special Olympics Texas

2023 BOARD OF DIRECTORS ROSTER

Chair - Susanne Brady-Lusk; **Vice Chair** - Pete Carey; **Immediate Past Chair -** Steve Griffith;
Treasurer - Gabe Kwentus; **Secretary –** David Mantor; **At Large -** Chris Kingston

Gabe Kwentus (2019)
(Area 10) M - Caucasian
Partner
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Shaun Linsey (2022)
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slinsey@sotx.org
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David Mantor (2019)
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Rick McCarty (2013)
(Area 20) M - Caucasian
Retired
Special Education Administrator
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San Antonio, TX 78261
210.651.3858 (h)
210.501.9200 (c)
wrmccarty@sbcglobal.net

Jessica McFarlin (2022)
(Area 11) F - Caucasian
Director II, Medicaid State operations,
Anthem insurance Companies, inc.
Keene, Texas
817. 456.6720 (w)
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Cedar Park, TX. 78613
512-917-5569
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1728 Briercroft Court
Carrollton, TX. 75006
830.708.5999
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Round Rock, TX 78665
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Tyler, TX 78752
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903.721.4911 (c)
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(Area 10) M - Caucasian
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1728 Briercroft Ct
Carrollton, TX 75006
972.395.6197 (w)
972.395.6597 (f)
214.587.9468 (c)
Steve.Hayes@brandt.us

2024 Winter Games Event Planning Timeline

Complete	Item	Timeframe
	Create Budget/Event Plan	12 months out
	Find facility	11 months out
	Confirm dates	10 months out
	Confirm venues	10 months out
	Confirm committee list	10 months out
	Create sponsor package	9 months out
	Create run of show	8 months out
	Solicit sponsors	8 months out
	Confirm Opening Ceremony entertainment	7 months out
	Confirm meals	6 months out
	Begin recruiting volunteers	5 months out
	Team registration due	2 months out

2024 Winter Games Event Guide

Special Olympics Texas

SPECIAL EVENTS	SITE	FRI 2/16	SAT 2/17	SUN 2/18
Team Registration	**HCI Sports & Fitness** *13875 Bee Cave Pkwy* *Bee Cave, TX 78738*	● 9:00am-4:00pm		
Coaches Meeting (Volleyball)	**HCI Sports & Fitness** *13875 Bee Cave Pkwy* *Bee Cave, TX 78738*	● 11:30am – 12:00pm		
Powerlifting Weigh Ins	**TBD**	Time TBD		
Volleyball	**HCI Sports & Fitness** *13875 Bee Cave Pkwy* *Bee Cave, TX 78738*	● 12:00pm-4:00pm Classifications	● 8:30am-5:00pm Competition	● 8:30am-2:00pm Competition
Floorball	**Bee Cave Middle School** *5400 Vail Divide* *Austin, TX 78738*		● 8:30am-5:00pm Competition	● 8:30am-2:00pm Competition (If necessary)
Powerlifting	**Bee Cave Middle School** *5400 Vail Divide* *Austin, TX 78738*		● 8:00am-6:00pm Competition	
Golf	**Lions Municipal Golf Course (Tentative)** *2901 Enfield Rd* *Austin, TX 78703*		● 10:30am-5:00pm Competition (Levels 2-5 only)	
Healthy Athletes	**HCI Sports & Fitness** *13875 Bee Cave Pkwy* *Bee Cave, TX 78738*		● 10:00am-3:00pm	
FUNdamental Sports (Infinitus Games)	**Bee Cave Middle School** *5400 Vail Divide* *Austin, TX 78738*		● 10:00am-1:30pm	
Champions Lounge	**HCI Sports & Fitness** *13875 Bee Cave Pkwy* *Bee Cave, TX 78738*		● 10:00am-4:00pm	
Meals	**Each Venue**		● 11:00am-1:00pm	
Opening Ceremonies/ Victory Dance	**Star Hill Ranch** *15000 Hamilton Pool Rd* *Bee Cave, TX 78738*	● Dinner 5:00pm-6:30pm OC/Victory Dance 7:00pm-9:00pm		

(as of 8/30/2023)

CITY OF BEE CAVE

Application for Use of Hotel Occupancy Tax

Organization Information

Organization Name: Special Olympics Texas

Contact Name: Chad Eason Date: 8/23/23 (MM/DD/YYYY)

Address: 4732 Whirlwind Dr. (Street)

San Antonio (City) TX (State) 78217 (Zip Code)

Phone: 512-947-8153 Email: ceason@sotx.org

Is your organization: ☑ Non-profit ☐ Private/For-Profit Tax ID# 74-1998367

Purpose of Organization:

The mission of Special Olympics is to provide year-round sports training & competition in a variety of Olympic-type sports for children & adults with intellectual disabilities, giving them continuing opportunities to develop physical fitness, demonstrate courage, experience joy & participate in a sharing of gifts, skills and friendship with their families.

Statutory Test: Part One

Does your Event/Expenditure pass the statutory test, defined specifically as directly enhancing and promoting tourism in Bee Cave AND directly promoting the overnight accommodation industry in Bee Cave by increasing overnight stays? ☑ **Yes** ☐ **No**

Statutory Test : Part Two

Does your Event/Expenditure pass the statutory test defined specifically as limiting the use of Hotel Occupancy Tax funds to one or more of the following categories? ☑ **Yes** ☐ **No**

1. Funding the establishment, improvement, or maintenance of a convention or visitor information center;
2. Paying the administrative costs for facilitating convention registration;
3. Paying for advertising, solicitations, and promotion that attract tourists and convention delegates to the city or its vicinity;
4. Expenditures that promote the arts;
5. Funding historical restoration or preservation programs;
6. Certain sporting event related expenses;
7. Certain tourist shuttles;
8. Signage directing tourists to attractions frequently visited by hotel guests.

If the answer to one of the two statutory tests is NO, you are NOT eligible for Hotel Occupancy Tax (HOT) funds.

Event and/or Expenditure Description

Name of event/expenditure: Special Olympics Texas Winter Games

Website address: www.sotx.org/winter-games

Date(s): February 16-18, 2024

Will there be an admission charge? ☐Yes ☑No

List any additional charges (i.e. parking, entry fees for contests, etc...)

Activity: _____ Cost: $_____
Activity: _____ Cost: $_____
Activity: _____ Cost: $_____

Primary location: HCI Sports & Fitness, Lake Travis ISD, Star Hill Ranch

What is specifically being marketed or promoted (i.e. facility, event, etc...)

SOTX will look to host our Winter Games in the Bee Cave/Lakeway area. This is a statewide competition where athletes with intellectual disabilities will come from all across Texas to compete in Floorball, Powerlifting, Volleyball and Golf. This event will bring volunteer opportunities and awareness to SOTX and the IDD community.

Purpose and goal of your organization and who benefits from your success:

It is our vision to become the premier provider of Special Olympics training and competition in the world. We approach each endeavor to improve the quality of life for our athletes. The challenges of the future are embraced with enthusiasm and commitment, ensuring that the changing face and needs of our athletes are met.

Impact

Number of people attending this event/expenditure from previous year:

Local: 650 Out of Town: 1,350

Number of people expected to attend this event/expenditure this year:

Local: 700 Out of Town: 1,750

Approximate number of people attending stay overnight in Bee Cave: 2,500

Do you reserve a room block for this event/expenditure? ☑Yes ☐No

List hotels you negotiated a special rate if this reimbursement request is being used for an event. DO NOT LIST RATES.

Sonesta Bee Cave Austin Hotel
Mountain Star Inn
Lakeway Resort & Spa

Funding Request

Total Amount Requested: $ 185,000

Does the proposed event plan to become self-supporting in the future? ☐ Yes ☒ No

Total advertising/promotion budget: $ 10,000

a) What is your organization's direct contribution to the above? $ 0

b) What other sources of funding are being applied for or have been received for the advertising/promotion of your organization?
City of Lakeway

c) How will the funds be used?
These funds will be used to provide our teams lodging, meals, transportation and competition venues. We will look to provide hotels at no charge for our athletes and teams who would not be able to attend without this assistance.

d) Please indicate all promotion efforts your organization is coordinating and the amount financially committed to each media outlet:

Paid Advertising	$
Radio	$ 1,000
Newspaper	$
Press Releases to Media	$
Television	$ 8,000
Direct Mailing	$
Distribution of Brochures	$ 1,000
Other (describe)	$

Along with the application, submit the following as attachments ***(required)***:

1. Itemized list of relevant expenditures;
2. Marketing plan including target audience and detailed media list;
3. Board of Directors and/or Event Committee with contact information;
4. Event planning timeline;
5. Schedule of all activities.

Please return completed application with attachments and signature to:

City of Bee Cave
4000 Galleria Parkway
Bee Cave, TX 78738
Attn: City Manager re: HOT Application

For additional questions, please contact the Bee Cave City Manager (512) 767-6600.

With my signature below, I understand the Hotel Occupancy Tax (HOT) Application, Process, Reimbursement, and all associated Rules Governing the Application established by the City of Bee Cave. I intend to use this funding for the event as described herein to promote the efforts of the City of Bee Cave in enhancing and promoting tourism and the convention and hotel industry by attracting visitors from outside Bee Cave.

I have read the Hotel Occupancy Tax (HOT) Application guidelines including the Rules Governing the Application and the Reimbursement Process.

I understand that if awarded, my request for Hotel Occupancy Tax (HOT) funding by the City of Bee Cave, any deviation from the approved event or the Rules Governing the Application may result in a partial or total withdrawal of the Local Hotel Occupancy Tax (HOT) funding.

Special Olympics Texas
Organization Name

Chad Eason
Applicant Signature

8/23/23
Date

City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**11.**
Agenda Title:	**Discuss and consider action on a contract with HOAR for Construction Manager-at-Risk (CMAR) services for the new Bee Cave Public Library Building and authorize the City Manager to execute.**
Council Action:	**Consideration & Approval**
Department:	**Administration**
Staff Contact:	**Chelsea Maldonado T&T Heery**

1. INTRODUCTION/PURPOSE

Discuss and consider action on a contract with HOAR for Construction Manager-at-Risk (CMAR) services for the new Bee Cave Public Library Building and authorize the City Manager to execute.

2. DESCRIPTION/JUSTIFICATION

a) Background

City of Bee Cave in collaboration with T&T Heery have negotiated the contract with Hoar Construction for Construction Manager-at-Risk (CMAR) services for the preconstruction and construction of the new public library building. Hoar Construction was selected through an open RFQ process and has since engaged in a successful contract negotiation and review.

b) Issues and Analysis

The CMAR agreement consists of (1) an A133 detailing preconstruction and construction fee, schedule, and preconstruction/construction management expectations. It also includes (2) an A201 outlining general conditions and administration of the contract, establishing the expectations by the owner, architect, and contractor (CMAR). Execution of these agreements would commence preconstruction efforts by Hoar through the design process, allowing them to provide valuable construction input and streamlining the procurement and mobilization process. At the conclusion of the preconstruction phase, Hoar shall bring forth GMP Amendment A, which outlines project costs, and critical path schedule. Construction/procurement shall commence after execution of the GMP.

3. FINANCIAL/BUDGET

Amount Requested	Fund/Account No.
Cert. Obligation	GO Funds
Other source	Grant title
Addtl tracking info	

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

Authorization for City Manager Clint Garza to sign

ATTACHMENTS:

Description	Type
BCPL_A201_GENERAL CONDITIONS_COBC	Backup Material
BCPL_A133_CMAR OWNER COST OF WORK+GMP AGREEMENT_COBC	Backup Material
BCPL_A`33_GMP AMENDMENT_COBC_EXAMPLE	Backup Material

DRAFT

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General Conditions of the Contract for Construction

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

«City of Bee Cave Public Library Building »
« 13308 State Hwy 71
Bee Cave, Texas 78738 »

THE OWNER:
(Name, legal status and address)

« City of Bee Cave »
« 4000 Galleria Parkway
Bee Cave, TX 78738
Phone: 512-767-6600 »

THE ARCHITECT:
(Name, legal status and address)

«Lake Flato Architects, Inc.»« »
« 311 Third Street
San Antonio, TX 78205
Phone: 210-227-3335 »

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2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

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9 PAYMENTS AND COMPLETION

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11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 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 including between the Owner's Designated Representative (ODR) 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. The Contractor shall, however, be entitled to performance and enforcement of the Architect's obligations under the Contract intended to facilitate performance of the Contractor'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 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

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§ 1.1.9 Owner's Designated Representative (ODR)
The Owner may use an ODR to carry out some of the functions of administration of the Owner's construction project. Should the Owner not use an ODR, then references to ODR in the General Conditions shall be deemed as references to Owner. The Contractor, Architect, and ODR (when applicable) shall cooperate with each other in the performance of their respective functions. The management and reporting systems used by the Owner and/or ODR, including the use of the ODR, may be changed by Owner during the Project; Owner shall promptly provide Contractor with written notice of any such change.

§ 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. In the event of conflict or discrepancies among the Contract Documents, the priorities amongst the various documents shall be as follows:

A. Change Orders
B. Contractor's Assumptions and Qualifications (Exhibit "5" to the Guaranteed Maximum Price Amendment, which is Exhibit "A" to the Agreement)
C. The Agreement;
D. Addenda;
E. General and Supplementary Conditions;
F. Drawings (those listed in Exhibit "8" to the Guaranteed Maximum Price Amendment, which is Exhibit "A" to the Agreement);
    a. Amongst drawings, larger scale shall control;
G. Specifications

§ 1.3 Capitalization
Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

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

§ 1.4.1 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.

§ 1.4.2 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.

§ 1.4.3 Optional Materials, Equipment and Processes. Contractor may submit for consideration proposed substitutions of materials, equipment, or processes from those set out in the Contract Documents. Submittals of proposed substitutions must be made in writing and should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal or better than the requirements of the Contract Documents. The Architect shall review proposed substitutions within a reasonable time, so long as that review does not take more than ten (10) calendar days, or such shorter amount of time as is necessary to prevent a delay in the Contractor's construction schedule for the Work. Contractor shall bear the risk of any delay in performance caused by submitting substitutions. The Owner may approve substitutions only when the substitution is clearly proven by the Contractor to be equal in performance characteristics to the requirements of the Contract Documents, equally compatible with existing installations and complimentary to the architectural design for the Work.

§ 1.4.4 Intentionally Deleted.

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§ 1.4.5 Should the Contractor request a substitution, the Architect shall identify and determine any potential effect the substitution may have on the Project's achievement of Austin Energy Green Building (AEGB) points. The Owner and Contractor shall be entitled to rely on any such representation.

§ 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.

§ 1.5.2.1 Forms and Format

The Owner requires that the Contractor shall use and/or respond to certain Owner-Furnished forms during the course of the Project. These forms, as presently constituted, are available from the City of Bee Cave office. From time to time, there may be future revisions, changes, additions, or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a Claim for additional time or compensation by the Contractor.

§ 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. Notwithstanding anything to the contrary, the Contractor may provide e-mail notice to the designated representative of the party to whom the notice is addressed if presented with delays under Section 8.3.1, sub-part (3) and/or delays, disruptions, suspensions, or other impacts under Section 8.3.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation 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.

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ARTICLE 2 OWNER

§ 2.1 General

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

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner, being a public body under the laws of the State of Texas, shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

Furthermore, no Contract exists between the Owner and the Contractor until the Contract is approved for signature by a majority of the Bee Cave City Council of the Owner in open session at a duly held Council Meeting, and the Contract is signed by the Owner's authorized representative. Owners authorized representative is identified in A133 Section 1.1.8.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, 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 in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 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.

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§ 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 (including x-y coordinate for building layout and elevation benchmark), 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, unless a reasonable visual inspection of the site would disclose variances between the site conditions and those clearly shown on Owner's survey. The survey shall not relieve Contractor from its obligations to examine the site.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness so as not to delay or hinder the progress of the Work. 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.

§ 2.4 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.

§ 2.5 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. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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.

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§ 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. The Contractor can rely on written instructions/directions/interpretations of the Architect as well as the Owner's testing firm in performing its work; however, this ability to rely shall not relieve the Contractor from its duties and responsibilities to perform a reasonable visual investigation of project conditions relative to the Contract Documents.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions (if practical without destructive methods) related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the ODR and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. 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. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and failed to report it to the Architect.

§ 3.2.2.1 The Contractor shall meet with the Owner and Architect to discuss alternatives in the event the Owner or Architect recognizes a condition that will affect the ability to achieve AGB requirements. If any condition is discovered by, or made known to, the Contractor that will adversely affect meeting AGB policy requirements for which the Contractor is responsible, the Contractor will promptly provide notice to the Architect and meet with the Owner and Architect to discuss the alternative to remedy the condition.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 3.2.5 The Contractor and each Subcontractor shall reasonably evaluate and have reasonably satisfied themselves as to the conditions and limitations under which the Work is to be performed, including:

1. the location, condition, layout and nature of the Project site and surrounding areas; generally prevailing climatic conditions,
2. anticipated labor supply and costs;
3. availability and cost of materials, tools, and equipment; and other similar issues.

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§ 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 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 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. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) to create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect to the Work shall relate to the results the Owner desires to obtain from the Work and shall in no way affect Contractor's independent contractor status described herein.

§ 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.

§ 3.4 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. In the event that any of the foregoing is directly impacted by any of the events set forth in Section 8.3.1 of this Contract, the Contractor shall be entitled to an equitable adjustment to the Contract Time and/or Contract Sum.

§ 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.

§ 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 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 and equipment. The Contractor's warranty shall be limited to one (1) year from Substantial Completion and any extended warranties shall be directed between Owner and the subcontractor or manufacturer.

§ 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.

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§ 3.5.3 Intentionally Deleted.

§ 3.5.4 The warranties of Contractor provided in Section 3.5.1 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties, or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

§ 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.

§ 3.6.1 The City of Bee Cave stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and as such is exempt from the payment of the sales tax on materials and supplies used in the performance of this Contract. The Contractor shall issue exemption certificates to its suppliers and subcontractors in lieu of said sales tax for all such materials and supplies and said exemption certificates must comply with current rulings of the Texas State Comptroller.

§ 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. Tap and impact fees, as well as utility (municipal or utility company), soils, and material inspection fees, are paid by the Owner.

§ 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 (together "Applicable Law"). If there is a change in Applicable Law after the Agreement has been signed by the parties, then the Contractor shall comply with that change; Contractor shall be provided extensions to the Contract Time and be compensated for the reasonable and verified additional costs of said compliance by Change Order, pursuant to Article 7. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish its surety with any required personal undertakings. The Owner shall obtain and pay all charges for all easements, license, access, or approvals for street closings, traffic control, parking meter removal, neighboring property, and other similar matters in accordance with the Contractor's site logistics plan and any other easements, licenses, access, or approvals as may be reasonably necessary or appropriate from time to time for the performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall, upon discovery, notify the Architect in writing, and necessary changes shall be accomplished by appropriate modifications. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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§ 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. Contractor shall be entitled to an equitable adjustment be made in the Contract Sum or Contract Time, or both, and Architect shall offer its recommendation. 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. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

§ 3.8 Allowances
§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances (coordinate with by the Architect and ODR) 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 Intentionally Deleted.

§ 3.8.4 The Contractor shall not commence any Work involving allowances until the Owner receives all pricing data and other information reasonably requested in connection with such allowance and authorizes the Contractor in writing to proceed with the Work covered by that allowance; such authorization by the Owner shall not be unreasonably withheld and shall be provided to Contractor with reasonable promptness so as not to delay the progress of the Project. The Contractor shall not exceed the amount for any allowance without prior written permission of the Owner. Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness so as not to delay the progress of the Project.

§ 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.

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§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner 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 (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 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 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.

§ 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 ODR's review and Architect's approval. The Architect's information 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 and ODR reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals so long as that review does not take more than ten (10) calendar days or such shorter amount of time as is necessary to prevent a delay in the Contractor's construction schedule for the Work.

§ 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 Float (calculated using the critical path method and determining the cumulative difference between the early finish dates and the late finish dates), slack time, contingency within the schedule (i.e., the difference in time between the project's early completion date and the required contract completion date), and total float within the overall project schedule, is for the sole use the Contractor. Use of float by anyone other than Contractor, or those for whom Contractor is responsible, shall constitute a day-for-day delay and entitle Contractor to a corresponding extension to the Contract Time; however, should the Owner use Contractor's float, and such use ultimately results in time being saved in Contractor's schedule, then Contractor's entitlement to any extension to the Contract Time shall be offset by the total amount of time saved by the Owner's total use of Contractor's float. Contractor shall not be entitled to receive a time extension or damages for delays until all of the Contractor's float has been depleted, and a Schedule Impact Analysis has been performed and reviewed by the Owner, ODR, and Architect to confirm the depletion of Contractor's float; such Schedule Impact Analysis and review shall be conducted and completed with reasonable promptness so as not to cause any additional delay to the Contractor's construction schedule.

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§ 3.10.5 The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and costs to a minimum. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:

1. provide a graphic representation of all major activities and events that will occur during performance of Work;
2. identify each phase of construction and occupancy; and
3. set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates").

If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and re-submitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to herein as progress reports) as set forth in Section 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.11 Documents and Samples at the Site

Upon request from the Owner, 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.

§ 3.12 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.

§ 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.

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§ 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 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. The Contractor, in making this representation, is relying on the Architect's having fully coordinated the design drawings and the Contract Documents.

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

§ 3.12.8 The Work shall be in accordance with reviewed and approved submittals (Architect has review the submittals and 'takes no exception') except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect's approval thereof.

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

§ 3.12.10.2 The Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer.

§ 3.12.10.3 Adequate copies of Shop Drawings for architectural, structural, mechanical, and electrical work shall be submitted to the Architect for review.

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§ 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.

§ 3.13.1 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor, provided such construction material and equipment is under the care, custody, or control of the Contractor, Subcontractor, or Sub-subcontractor.

§ 3.13.2 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner.

§ 3.13.3 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from unreasonable interferences from debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision in the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of:

1. any area and buildings adjacent to the site or the Work; or
2. the building in the event of partial occupancy.

§ 3.13.4 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrance, and parking areas other than those designated by the Owner. Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the building, as may be reasonably amended from time to time.

§ 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.

§ 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.

§ 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 caused as a result of the Contractor's work from and about the Project. The Contractor shall perform the following final cleaning at the completion of the Work:

1. Remove all temporary protections;
2. Remove marks, stains, fingerprints and other soil or dirt from all surfaces and other work;
3. Remove spots, mortar, plaster, soil and point from ceramic tile, marble and other finish materials from all surfaces and other work;
4. Clean fixtures, cabinet work, and equipment, removing stains, paint, dirt, and leave in an undamaged and new condition; and
5. Clean all surfaces and other work in accordance with recommendations of the manufacturer.

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§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so upon seventy-two (72) hours advance written notice to Contractor, and the Owner shall be entitled to reimbursement of reasonable costs from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, ODR 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 such loss unless such information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 THE CONTRACTOR SHALL, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS SET FORTH IN SECTION 3.18.2 BELOW, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE PROJECT AND THE OWNER AND THE OWNER'S CONSTITUENT PARTNERS, MEMBERS AND LENDERS, THE DEVELOPER AND ALL OF THE FOREGOING PARTIES' EMPLOYEES, PARTNERS, MEMBERS, STOCKHOLDERS, OFFICERS AND DIRECTORS AND THEIR RESPECTIVE HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "OWNER PARTIES") FROM AND AGAINST ANY CLAIMS, DEMANDS, DEBTS, CAUSES OF ACTION, LIABILITIES, LOSSES, DAMAGES, COSTS, EXPENSES, INCLUDING REASONABLE AND NECESSARY ATTORNEYS' FEES, AWARDS, COURT COSTS, PENALTIES, FINES OR JUDGMENTS (COLLECTIVELY, "CLAIMS"), RESULTING FROM OR ARISING OUT OF PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM IS ATTRIBUTABLE TO BODILY INJURY OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY (OTHER THAN THE WORK ITSELF), BUT ONLY TO THE EXTENT CAUSED BY (1) THE NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, ANY OF ITS SUBCONTRACTORS, ANY OF THEIR SUB-SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS SUCH THEY MAY BE LIABLE; (2) ACTUAL FAILURE OF

CONTRACTOR OR ITS SUBCONTRACTORS OR SUB-SUBCONTRACTORS TO COMPLY WITH APPLICABLE LAW, APPLICABLE CODES AND STANDARDS OR SAFETY REQUIREMENTS UNDER THIS AGREEMENT; (3) ACTUAL VIOLATION OR INFRINGEMENT OF ANY DOMESTIC OR FOREIGN PATENTS, COPYRIGHTS OR TRADEMARKS OR OTHER INTELLECTUAL PROPERTY, OR ANY IMPROPER USE OF CONFIDENTIAL INFORMATION OR OTHER PROPRIETARY RIGHTS BY CONTRACTOR OR ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR IN CONNECTION WITH THE WORK, EXCEPT TO THE EXTENT ANY SUCH ITEM IS SPECIFIED OR REQUIRED FOR USE BY OWNER OR THE CONTRACT DOCUMENTS OR ATTRIBUTABLE TO CONTRACTOR'S COMPLIANCE WITH OWNER PARTY DIRECTION; (4) ACTUAL CONTAMINATION OR POLLUTION ARISING SOLEY OUT OF THE NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR'S OR ANY SUBCONTRACTOR'S OR SUB-SUBCONTRACTOR'S USE, HANDLING OR DISPOSAL OF HAZARDEOUSS MATERIALS; (5) FAILURE OF CONTRACTOR TO MAKE PAYMENTS TO ANY SUBCONTRACTOR IN ACCORDANCE WITH THE RESPECTIVE SUBCONTRACT PROVIDED SUCH FAILURE IS NOT DUE TO A DEFAULT BY THE OWNER OF ANY OF ITS PAYMENT OBLIGATIONS UNDER THE CONTRACT DOCUMENTS; OR (6) ANY AND ALL LIENS WHICH MAY AT ANY TIME BE RECORDED AGAINST THE PROJECT, OR ANY PORTION THEREOF, BY SUBCONTRACTORS, SUB-SUBCONTRACTORS OR ANY OR ALL OF THEM PROVIDED SUCH CLAIMS ARE NOT DUE TO A DEFAULT BY THE OWNER OF ANY OF ITS PAYMENT OBLIGATIONS UNDER THE CONTRACT DOCUMENTS.

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§ 3.18.2 THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS SECTION 3.18 SHALL NOT BE CONSTRUED AS TO NEGATE, ABRIDGE OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY WHICH WOULD OTHERWISE EXIST UNDER THE CONTRACT DOCUMENTS AND/OR UNDER THE LAW AS TO ANY PARTY DESCRIBED IN THIS SECTION 3.18.2. NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER PARTIES FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM IS ATTRIBUTABLE TO BODILY INJURY,SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE OF THE CONTRACTOR, OR OF ANY AGENT OF THE CONTRACTOR, OR ANY OF ITS SUBCONTRACTORS, ANY OF THEIR SUB-SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS SUCH PARTIES MAY BE LIABLE (EMPLOYEE CLAIM(S)") EXCEPT TO THE EXTENT SUCH EMPLOYEE CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN PART BY THE NEGLIGENCE OF ANY OF THE OWNER PARTIES, BUT CONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY OWNER PARTIES FOR EMPLOYEE CLAIMS TO THE EXTENT CAUSED BY THE NEGLIGENCE, OR WILLFUL MISCONDUCT OF ANY OWNER PARTIES. THE INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION 3.18 SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE CONTRACTOR SHALL PROVIDE LIABILITY INSURANCE COVERING CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION 3.18.

§ 3.18.3 The Contractor warrants and covenants that the Work shall be free of all products, constituents, materials or processes containing asbestos, lead-based paint or any other Hazardous Materials (as defined below), except where such products, constituents, materials or processes are required by the Contract Documents or are otherwise commonly used in construction projects similar to the Work required by this Contract, and then, in either such event, only if such products, constituents, materials or processes are utilized in full compliance with all applicable laws. "**Hazardous Materials**" means substances, materials or waste the generation, handling, storage, treatment or disposal of which is regulated by any local or state government authority or laws, as a "hazardous waste", "hazardous material" or "hazardous substance", and including, without limitation, those designated as a "hazardous substance" under Section 31 l or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Scs. 1321, 1317), defined as a "hazardous waste" under Section 1004 of the Resources Conservation and Recovery Act (42 U.S.C. Sec. 6903), or defined as "hazardous substance" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 950 l) and including, without limitation, petroleum products and byproducts, PCBs and asbestos.

§ 3.18.4 The provisions of this Section 3.18 shall survive the termination or expiration of the Contract Documents and shall not be limited in any way by the amount or type of insurance obtained by the Owner, the Owner Parties, the Contractor or any Subcontractor, including, without limitation, benefits payable by or for the Contractor, or any Subcontractor under any workers' compensation act, disability benefit acts, or other employee benefit acts.

§ 3.18.5 If any Subcontractor or other person performing by, through or under the Contractor, records or files a claim of lien or a lis pendens against the Project, the Contractor shall promptly, and at its own expense, procure, furnish and record appropriate statutory release bonds which will extinguish or expunge said claim or lis pendens. Notwithstanding any provision of the Contract Documents to the contrary, the Contractor shall have no obligation to the Owner under the Contract Documents or otherwise with respect to any claim, lien or lis pendens resulting from the Owner's failure, if any, to pay the Contractor if required by and in accordance with the Contract Documents.

§ 3.18.6 The obligations of the Contractor under this Section 3. 18 shall not extend to the liability of the Architect, or the Architect's consultants, or the agents, servants or employees of any of them, arising out of: (i) defects in plans, designs, or specifications prepared, approved, or used by the Architect or its consultants; or (ii) negligence of the Architect or its consultants in the rendition or conduct of professional duties called for or arising out of the Contract Documents and the plans, designs, or specifications that are a part of the Contract Documents.

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ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

§ 4.1.3 Owner shall notify Contractor when the duties, responsibilities, or limitation of authority of the Architect have been modified.

§ 4. 1.4 In case of termination of employment of the Architect, the Owner may elect to appoint a replacement Architect, or at its option may elect to complete the Project using members of Owner's staff to perform the balance of the Architect's functions on the Work.

§ 4.1.5 Except as herein expressly provided, the Contractor shall not be relieved of its obligation to perform the Work in strict accordance with the Contract Documents by the activities or duties of the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 Designated portions of the administration of the Contract will be performed by the Architect and the ODR as representatives of the Owner. The Architect will be treated as the Owner's representative to the extent set out in the Contract Documents. The Architect shall not have the authority to act on behalf of Owner unless such authority is expressly granted in the Contract Documents, nor shall such authority be implied from any act or representation of the Architect.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. In no event shall Owner or any other party, aside from the Contractor, have control over, be in charge of, or be responsible for construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibility, except as provided in Section 3.3.1. Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Owner will not have control over, be in charge of, and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work, unless such acts or omissions were directed by Owner or in accordance with 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 and/or Owner shall submit copies of such reports to Contractor within three (3) days of Architect submitting such reports to Owner. 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.

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§ 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.

§ 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 13.4.2 and 13.4.3, 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, within ten (10) calendar days or such shorter time as is necessary to prevent a delay to Contractor's construction schedule. 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. The Architect shall properly report to Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the shop drawings, product data, and samples,

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The 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.

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§ 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 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 14 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 or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.2.5 The Contractor shall not sublet the Work as a whole. The approval of Subcontractors in no way relieves the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents.

§ 5.2.6 Intentionally Deleted.

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§ 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.

§ 5.4 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 30 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. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for obligations under such subcontract should Owner accept the assignment of such subcontract in accordance with Section 5.4.1 above so as to be afforded the rights of such subcontract agreement under this conditional assignment.

§ 5.5 RESPONSIBLITY

§ 5.5.1 Contractor shall be fully responsible for the performance of its Subcontractors, including those selected or approved by the Owner.

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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. To the extent the Owner chooses to perform construction or operations related to the Project, or to award separate contracts in connection with other portions of the Project or other construction or operations on the site, the Owner shall be required to secure a separate permit for that Work, if required by the authority having jurisdiction. Regardless, the Owner shall ensure that the Contractor is listed as an additional insured on the other contractor's general liability and excess liability policy. Further, the Owner agrees to defend, indemnify and hold harmless the Contractor from any claims made against the Contractor resulting from damage to property (other than the Work) or injury to, or death of, persons in or about the Project caused by, arising out of or in connection with the construction, services, labor, materials, and equipment which, on or after the date hereof, have been performed, provided or supplied to the Project by the Owner or its other Contractor.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement and shall be granted any necessary extensions to the deadline for Substantial Completion necessitated by revisions to the Contractor's construction schedule caused by other work. 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.

§ 6.1.5 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them in accordance with Article 6 herein. The Contractor shall participate with other Separate Contractors and the Owner in reviewing their construction schedules in accordance with Article 6 herein.

§ 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 or Architect 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 Architect 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.

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§ 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. The Owner or its separate contractor shall promptly remedy damage that the Owner or its separate contractor causes to the Contractor's completed or partially completed construction.

§ 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.

§ 6.3 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 after seventy-two (72) hours advanced written notice and opportunity to cure and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contract Sum and/or Contract Time shall be increased for changes in the Work if the provisions of Article 7 have been met.

§ 7.1.1.1 No change in the Contract Sum and/or Contract Time will be allowed for a change in the Work unless prior to performing the changed Work the Contractor has been issued a Construction Change Directive or has provided the Owner in writing with a proposal for any change in price and/or change in Contract Time caused by the change in Work, and a Change Order is subsequently executed. A field directive or field order shall net be recognized as having any impact upon the Contract Sum or the Contract Time, and Contractor shall have no Claim therefore, unless it shall, prior to complying with the directive and in any event within ten (10) business days of receiving the directive, submit a change proposal to the Owner, and a Construction Change Directive is issued, or a Change Order is subsequently executed, or Contractor satisfies the requirements of Article 15.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 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, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order.

§ 7.1.4 The Contractor, upon receipt of written notification by the Architect of a proposed item of change in the Work, shall prepare as soon as possible a Change Proposal in such form or forms as directed by the Architect.

§ 7.1.4.1 Each separate Change Proposal shall be numbered consecutively and shall include materials, costs, labor costs, fees, overhead and profit. The Proposal shall, to the extent reasonably possible, specify all costs related to the proposed change in the Work, including any currently foreseeable disruption or impact on performance.

§ 7.1.4.2 The Subcontractor's itemized accounting shall be included with the Change Proposal.

§ 7.1.4.3 If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Architect.

§ 7.1.4.4 A revised Change Proposal shall bear the original Change Proposal number sufficed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following die "R" suffix.

Init.

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§ 7.1.4.5 Upon written approval of a Change Proposal by the Owner, the Architect will prepare a Change Order authorizing such change in the Work.

§ 7.4.4.6 The Contractor shall request extensions of Contract Time and an adjustment in the Contract Sum due to changes in the Work at the time of submitting its Change Proposal.

§ 7.2 Change Orders

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

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

§ 7.2.2 Methods used in determining adjustment to the Contract Sum may include those listed below:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. Contractor's overhead and profit shall not exceed the Fee Percentage or XX%, whichever is less, of the Cost of the Work under any such proposal. Sufficient substantiating data shall include a proposal itemized for the various components of work added or deleted, segregated by labor, material, and equipment. Details to be submitted will include detailed line-item estimates showing detailed material quality take-offs, material prices by item and of related labor hour pricing information and extension (by true item by drawings as applicable);
2. unit prices stated in the Contract Documents or subsequently agreed upon and supported by sufficient substantiating data to permit evaluation;
3. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee not to exceed the Fee Percentage or XX%, whichever is less, of the Cost of the Work; or
4. as provided in Section 7.3.7.

§ 7.3 Construction Change Directives

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

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

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

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- **.1** Reasonable Costs of labor, including applicable Social Security, old age and unemployment insurance, payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner;

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.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others at rates that are no greater than market rates in the locale of the Work at the time of the Work. Unless otherwise established in the contract, the rental value of the contractor's own equipment shall not be more than normal local rental rates for Contractor-owned equipment;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the Work or change; and

.5 Costs of project management, supervision and field office personnel directly attributable to the Work or change, regardless of whether such personnel are located at the Project site.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of 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 Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

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

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

§ 7.4 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 Architect 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 Architect 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.

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 ~~established under~~ certified by the Architect in accordance with Section 9.8.

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Throughout the duration of the Project, the Contractor shall notify the Owner in writing, not less than five days (or some other agreed upon period) of any substantial change or upcoming expiration of an insurance policy required by Article 11 to be furnished by the Contractor.

§ 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 way of example, including but not limited to, (i) labor disputes, (ii) fire, (iii) unusual delay in deliveries, (iv) unavoidable casualties, (v) viruses, pandemics, or epidemics and associated quarantining or work/travel restrictions, shelter in place, stay at home, disaster declaration, public health emergency, or other employee, business, or jobsite restrictions or requirements ordered or otherwise required by any governing authority in response to such public health crisis, (vi) local, state or national government or civil actions, (vii) supply chain disruptions, (viii) civil unrest, (ix) terrorism, (x) adverse weather conditions documented in accordance with Section 15.1.6.2, (xi) or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then as a result of any the foregoing, then the Time(s) of Completion shall be extended for a period equal to the length of such delay and the Contract Sum shall be adjusted by Change Order, if, within twenty-one (21) days after recognizing the occurrence of such delay, Contractor requests in writing a time extension and/or an adjustment in the Contract Sum for such delay; however, as it relates to delays for adverse weather conditions, Contractor shall make such request within thirty-one (31) days of the month in which the adverse weather conditions occurred.

The Contract Time shall be extended for a reasonable time to reflect the impact of the delay on Work critical to achieve Substantial Completion within the Contract Time, to the extent that the performance of the Work was not delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. Adjustments in the Contract Time will be permitted for a delay only to the extent not caused by the Contractor, and only if Contractor satisfies the conditions of this Section 8.3. Contractor has the burden to prove that any of the foregoing alleged causes of delay impacted construction progress on the Critical Path, as a condition precedent to any extension of the Contract Time.

§ 8.3.1.1 The Contractor shall anticipate and include in the construction schedule the risk of lost time due to weather conditions as indicated below. Any documented loss of time in excess of the provisions include below will be grounds for an adjustment to the Contract Time and Sum, or alternatively justifiable grounds for the request for additional compensation to provide acceleration of the schedule to overcome the lost time. For purposes of assigning the risk associated with weather, this Agreement contemplates that the weather losses will be reconciled monthly against the data provided below with a Change Order issued to address any required adjustments to the contract time and sum. In the event that there are fewer lost days than scheduled below, there will be no credit given to be applied against future months.

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
3	3	4	3	4	4	3	2	3	4	3	3

A request for a time extension based on adverse weather conditions will not be granted unless the actual days of adverse weather conditions for the period when the critical path of the Project is subject to impact from adverse weather conditions exceeds the monthly allowance of Adverse Weather Days for the same period. Contractor will submit claimed adverse weather days in accordance with the submission times provided in Section 8.3.1.

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§ 8.3.2 Owner, after consultation with the ODR and Architect, may grant time extensions to the extent it believes them to be proper. Time extensions granted by the Owner may be incorporated into schedules for completion of the Work. In the event that Contractor believes that it is entitled to additional time extensions beyond those granted by the Owner, it may make a claim for them in accordance with Article 15.

§ 8.3.3 Intentionally Deleted

§ 8.3.4 In the event Contractor would like to request additional Contract Time, the method and manner by which it should do so as well as the limits and conditions are as set out in the Contract Documents. In the event a court of competent jurisdiction may find exception to or invalidate, in whole or in part Section 8.3, including but not limited to any determination that all or a portion of the section is unenforceable, then the remainder of the provisions of the contract relating to extensions of time and claims for delay shall remain in full force and effect. In the event this clause appears to conflict with any other contract provision, including any clauses which seemingly require the Owner to grant extensions of time or claims for delay, Section 8.3 shall supersede those provisions except as set forth herein.

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, before the first Application for Payment, the Contractor shall submit a schedule of values fairly allocating the various portions of the Work, to the Owner, ODR and Architect 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, as reasonably required by the Architect. This schedule, once approved by the Owner and Architect, and updated for the changes in the Work, shall be used as a basis for reviewing the Contractor's Applications for Payment.

The schedule of values shall be used only as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The schedule shall not overvalue early job activities. The schedule shall follow the trade divisions of the Specifications so far as practicable. Any changes to the schedule of values shall be submitted to the Owner, ODR and Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Owner, ODR and 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 (10) days before the date established for each progress payment, the Contractor shall submit to the Architect and ODR 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 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

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§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 Upon payment by the Owner of the invoiced cost, the Contractor warrants that title to all such work, materials and equipment 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, such title shall 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. No work, material or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained, or an encumbrance is attached by the seller, the Contractor, or other party beyond having received payment applicable payment from Owner.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, after reviewing a draft of the Contractor's Application for Payment submitted by the Contractor to the Architect and ODR, within seven (7) 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.

§ 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 and notify the Contractor in writing of the particular reasons why such representations to the Owner cannot be made as to the remaining amount. The Architect may also withhold a Certificate for Payment 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;

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.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, provided such claims are not due to Owner's failure to pay Contractor (assuming that all contractual requirements to receive payment has been met);

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

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

§ 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, in accordance with its subcontract and applicable law, 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. Owner is not obligated to monitor detailed payments to Subcontractors or Sub-subcontractors unless otherwise required by law, and nothing in this Section shall create any right on the part of a Subcontractor or Sub-subcontractor against Owner or Architect.

§ 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 fourteen (14) 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, Sub-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.

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§ 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.

§ 9.6.9 The Contractor shall not withhold as retainage a greater percentage on Subcontractors or materialmen than the percentage Owner withheld as retainage from payments to the Contractor.

§ 9.7 Failure of Payment

§ 9.7.1 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.

§ 9.8 Substantial Completion

§ 9.8.1 The Work or designated portions thereof as set out herein will not be considered Substantially Complete until (and the term "Substantial Completion" shall mean) the performance of the Work, or designated portion thereof, is to the point where 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. The only remaining work shall be minor in nature, so that the Owner or Owner's tenants could occupy the applicable portion of the Project on that date, and the completion of the Work by the Contractor would not materially interfere with or hamper the Owner or Owner's tenants' normal work operations or other intended use. As a further condition of Substantial Completion of the whole or designated portion thereof, the Contractor shall certify that all remaining Work with respect thereto will be completed within thirty (30) calendar days, unless another time period has been approved by Owner. The Contractor shall then promptly proceed to complete or correct the Work and otherwise render the Project suitable for Final Completion, including the submission of all AGB compliance documentation, Project record drawings, record specifications, record project data, original executed documents required for final payment, and other closeout documents specified herein, in the Project Manual, or as reasonably required by Owner, within thirty (30) calendar days after the date of Substantial Completion, unless another time period has been approved by Owner.

§ 9.8.1.1 Compliance for Substantial Completion Payment shall also be included in the following Exhibit(s):

1. Exhibit "P" – COBC Minimum Requirements for Substantial Completion

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. 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.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect (and his consultants) 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, as defined above in Section 9.8.1, 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. Upon Substantial Completion, the Owner shall become responsible for building security and for payment of all utilities associated with the Work.

§ 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 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued, and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. Acceptance by the Owner shall not be unreasonably withheld or delayed. The Contractor shall not be responsible for utility or insurance certificates in areas which have been accepted by the Owner.

§ 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. For any partial occupancy or use, the Owner shall reduce retainage proportionately to the Contractor at the time of partial occupancy or use.

§ 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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§ 9.9.4 The Owner shall provide reasonable notice to the Contractor of the Owner's intent to take early occupancy with a description of the area to be occupied, and the Contractor shall comply to the fullest extent reasonably practicable and shall cooperate with the Owner to obtain all certificates of occupancy and other approvals by public authorities necessary to permit such occupancy. The Contractor shall cooperate reasonably with the Owner in making building services available for the Owner's use, such as heating, ventilating, cooling, water, electrical, lighting, telephone, and elevator facilities (including operators, if necessary) for that portion of the Project to be occupied by Owner, and, if the equipment required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid portions of the Project, then the Contractor shall make every reasonable effort to complete same as soon as possible to the extent that the necessary equipment can be put into operation and use. Contractor shall be compensated if additional costs are required to satisfy Owner's requests. The date of all applicable warranties shall commence with respect to the portion of the Work the Owner intends to occupy.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and

belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. In no event shall the Architect unreasonably withhold the final Certificate of Payment.

§ 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.

§ 9.10.2.1 Prior to final payment to the Contractor, the Contractor shall furnish Owner an electronic set of the Drawings & Specifications accurately showing the Project as constructed in the format designated by the Owner, or when it is impractical to do so, one (1) complete set of marked-up copies of the Drawings and Specifications accurately showing the Project as constructed. Such Specifications and Drawings shall be marked to show all changes and modifications that have been incorporated into the Work as performed. Further, prior to final payment

Contractor shall submit all warranties, operations, and maintenance data and/or other data and "closeout" documents required under the Contract Documents or otherwise reasonably required by Owner.

Compliance for Final Payment shall also be included in the following Exhibit(s):

1. Exhibit L – CMAR Project Close-Out Status Guide Forms A & B
2. Exhibit M - CMAR Transfer Checklist Project Closeout Form A
3. Exhibit N - CMAR_ Financial Project Closeout Form B
4. Exhibit O - CMAR Final Completion Guidelines

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§ 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

§ 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.

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 erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures reasonably necessary to protect any property adjacent to the Project and improvements therein from the Work. Any liability associated with damage to such property or improvements shall be handled in accordance with Article 10.

§ 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.

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§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

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

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

§ 10.2.9 When all or a portion of the work is suspended for any reason, the Contractor shall do all things reasonably necessary to protect the Owner's premises and all persons from damage and injury

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

§ 10.2.11 The Contractor shall be responsible for the protection and security of the Work, until it receives written notification that the Substantial Completion of the work has been accepted by the Owner, which such acceptance shall not be unreasonably withheld or delayed.

§ 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) or mold, 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, ODR and Architect of the condition in writing.

§ 10.3.1.1 Contractor is responsible for reviewing all Asbestos Hazard Emergency Act Management Plans on file with Owner and for obtaining sign-off from the Owner prior to commencing the Work, utilizing Owner's approved form. Unless otherwise required by the Contract Documents, the Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in Section 10.3.5), except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not, unless otherwise required by the Contract Documents, cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course, or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Section 10.3.5). In the event Contractor wishes to conduct any inspection or testing at the Project, it shall ensure that Owner is properly notified, as well as any landlord in the event Owner is leasing the Project premises.

§ 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 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.

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§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, ODR, Subcontractors, Architect, Architect's consultants, their respective officers, directions, trustees board members, volunteers, invitees, and agents and employees of any of them from and against any and all claims, liabilities of every kind, damages, losses, and expenses, including but not limited to, expenses of litigations, court costs, punitive damages and attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 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. In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a manner violative of any applicable Environmental Laws, Contractor shall immediately stop work in the area affected and report the condition to Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed until such Hazardous Substance has been rendered harmless.

§ 10.3.4.1 In the event Contractor fails to stop the Work upon knowingly encountering a Hazardous Substance at the Project site, to the fullest extent permitted by law, Contractor hereby indemnifies and holds Owner, Architect, Owner's ODR and their respective officers (when applicable to the Project), directors, trustees, agents, board members, volunteers, invitees, and employees harmless from and against any and all claims damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, solely caused by Contractor's failure to stop the Work.

§ 10.3.4.2 Owner and Contractor may enter into a separate agreement and/or Change Order for Contractor to remediate and/or render harmless the Hazardous Substance, but Contractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless in accordance with Section 10.3.2 above.

§ 10.3.4.3 For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element, constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Toxic Substances Control Act ("TSCA"), the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), the Marine Protection Research and Sanctuaries Act ("MPRSA"), the Occupational Safety and Health Act ("OSHA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state super lien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Section 10.3 based on the law in effect at the time this Agreement is executed; however, Contractor shall comply with any amendments to those laws or enactment of new laws for all services rendered alter the effective date of this Agreement and shall be entitled to any equitable adjustment in the Contract Time and Contract Sum reasonably necessary to account for Contractor's compliance with such changes in those laws.

§ 10.3.4.4 In those instances in which the presence of a Hazardous Substance was set forth in the AHERA documents or in which Contractor has other written notice of such through information given to Contractor by Owner or its representative prior to execution of the Agreement, Contractor shall not be entitled to a Claim for any delays, disruption, or interference it encounters. In those instances of Work stoppage due to the existence of such Hazardous Substances which were not set forth in the AHERA plans and of which Contractor never received prior written notice of from Owner before execution of this Agreement, Contractor shall be entitled to a Claim for delay or Work stoppage if the requirement of Article 15 is met.

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§ 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, including without limitation, attorney's fees and legal costs.

§ 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.

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 this Article 11 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, ODR, 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. Such insurance will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's ongoing operations and completed operations under the Contract and for which the Contractor may be liable, whether such operations be by the Contractor or by a Subcontractor (or Sub-subcontractor) or by anyone directly or indirectly employed for any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation that are applicable to the Work to be performed;
2. Intentionally deleted;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. Claims for damages insured by usual personal injury liability coverage;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. Claims for bodily injury or property damage arising out of completed operations; and
8. Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

All insurance to be provided by the Contractor shall be written by companies acceptable to Owner. All insurance carriers must be rated by AM Best A-VII or better unless approved by Owner.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for the following limits of liability:

a. Workers' Compensation
   1) State Statutory
   2) Employer's Liability $1,000,000.00 per accident

b. Commercial General Liability (including Premises-Operations; Independent Contractor's Protective; Products and Completed Operation Broad Form Property Damage; Personal and Advertising Injury)

   Per Occurrence, per project $1,000,000.00
   Medical Payments, Per Occurrence $5,000
   Completed Operations and Products Liability shall be maintained for the full period of statutory limitations after final payment.

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c. Business Automobile Liability (on all owned, non-owned and hired vehicles)
Combined Single Limit Per Accident $1,000,000.00

d. **EXCESS LIABILITY** (Follow form)
Combined Single Limit $10,000,000

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter by request from Owner upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor within 10 days.

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

§ 11.1.5 Contractor's coverage is not permitted to include any of the following endorsements:

1. Contractual Liability Limitation, CG21 39 or its equivalent
2. Amendment Of Insured Contract Definition, CG 24 26 or its equivalent
3. Exclusion - Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43 or its equivalent
4. Limitation of Coverage to Designated Premises or Project, CG 21 44 07 98 or its equivalent.
5. Exclusion - Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95 or its equivalent
6. Any type of Classification or Business Description Limitation endorsement
7. Any type of Construction Defect Complete Operations exclusion endorsement
8. Any type of endorsement modifying the Employer's Liability exclusion
9. Any type of Habitational or Residential exclusion
10. Any type of Punitive, Exemplary or Multiplied Damages exclusion
11. Any type of Subsidence exclusion if the Contractor is engaged in any type of earth movement work, including but not limited to soil compaction, fill or installation of storm or sewer drains.

§ 11.1.6 Contractor shall add Owner as an additional insured to any policies of insurance purchased by Contractor required by this Section 11.1.2, using an endorsement form at least as broad as CG 2026 1185 or its equivalent, except workers' compensation, and such policies shall state that they shall be primary to any and all other available policies of insurance and shall be endorsed to waive subrogation, using an endorsement form at least as broad as CG 24 04 (Ed. 11-85] or its equivalent. Owner shall be added as an "alternate employer" on Contractor's workers' compensation insurance. Contractor shall furnish to Owner a Certificate of Insurance showing compliance with this obligation.

§ 11.1.7 Contractor must certify in writing to Owner that Contractor provided workers' compensation insurance coverage for each employee of the Contractor employed on the Project and Contractor shall provide a certificate from each Subcontractor certifying that the Subcontractor provides Workers' Compensation Insurance for each employee of the Subcontractor employed on the Project. The Contractor's certification must be received by Owner prior to Notice to Proceed. The certificate from each Subcontractor must be received by Contractor prior to each Subcontractor being allowed to work on the Project. In the event any Subcontractors' insurance coverage on any policy will expire prior to completion of the Project as a whole, Subcontractor shall provide to Contractor new certificates of insurance from the Subcontractor showing replacement coverage has been obtained prior to the expiration of the current policy period.

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§ 11.1.8 Additional Requirement for Worker's Compensation Insurance Coverage:

A. Definitions:

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

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

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

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

C. The Contractor must provide a certificate of coverage to the Owner prior to being awarded the Contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on the Project:

1. a certificate of coverage, prior to that person beginning work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
2. no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

F. The Contractor shall provide all required certificates of coverage set forth in Section 11.1.3 for the duration of the Project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

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I. The Contractor shall contractually require each person with whom it contracts to provide services on a project to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

(2) provide to the Contractor, prior to that person beginning work on the Project, a certificate showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the Project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period. If the coverage period shown on the current certificate of coverage ends during the duration of the Project;

(5) retain all required certificates of coverage on file for the duration of the Project;

(6) notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by Workers' Compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Worker's Compensation Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of Contract by the Contractor which entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

§ 11.1.11 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within thirty (30) 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 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.

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§ 11.1.12 Builder's Risk Insurance. Until the Work is completed and accepted by the Owner, the Contractor shall purchase and maintain property insurance upon the attire Work at the Project site to the full insurable value thereof. The property insurance shall also cover portions of the Work stored off site after written approval of the Owner of the value established in the approval, and also portions of the Work in transit. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of fire, wind, storm, hail, lightning, and extended coverage including flood and earthquake and shall include all risk insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief. The insurance shall cover reasonable compensation for Architect's services and expenses required as a result of an insured loss. This must be an all-risk policy.

Such insurance shall be evidenced by the kind of policy which does not have to be adjusted or reported upon periodically but provides constant insurance at full one hundred percent (100%) of all insurable values as they are created during construction by performance of the Contract. When permissible by law, the Certificate of Insurance must include the names of the insured Contractor and The City of Bee Cave.

§ 11.1.12.1 Loss under such All-Risk Builder's Risk Insurance shall be made payable to the Contractor. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.1.12.2 In the case of loss under the risks covered, and of collection by insured, the Contractor shall act as trustee for all parties concerned as their interests may appear.

§ 11.1.12.3 An All-Risk Builder's Risk Insurance Policy Certificate shall be delivered to the Owner, and the original being retained by the Contractor (and Certificates or copies being furnished the separate Subcontractors, if any).

§ 11.1.12.4 Builders Risk Property insurance shall be provided by the Contractor and shall be included in the Cost of the Work. Any changes in the builder's risk insurance cost shall constitute an increase in the Guaranteed Maximum Price.

§ 11.1.12.5 Deductible amounts applicable to insurance claims, and any insurance losses incurred by Contractor or Owner, shall be reimbursed as Cost of the Work, provided the loss is not due to the sole negligence of Contractor or its personnel. Such costs, to the extent incurred, shall constitute an increase in the Guaranteed Maximum Price. Notwithstanding anything to the contrary, in no event shall the Contractor 's deductible responsibility exceed $25,000; any remaining deductible costs shall be reimbursed as Cost of the Work and shall constitute an increase in the Guaranteed Maximum Price.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner 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 Owner 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. Should any of the Work of this Contract include renovation, rehabilitation, or addition to existing structure, the Owner shall purchase "all risk" property insurance for the replacement value of such existing structure and any of its contents. The Owner agrees that the insured value of the structure and any contents under the property insurance policy is the sole source of recovery to the Owner in the event of a loss, or loss exceeding the insured value of the existing structure. The Owner shall waive all rights for damages to such existing structures and its contents and shall waive subrogation rights in favor of Contractor, Subcontractor, Sub-subcontractors, agents and their respective employees.

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§ 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.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within thirty(30) 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.

§ 11.2. Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.2.9 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions, and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 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, (including without limitation permanent property insurance obtained by Owner after completion of the Work), 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 individuals and entities identified above from the Architect, Architect's consultants, ODR, ODR's consultants, Separate Contractors, subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.2 Intentionally Deleted.

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§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance
A loss insured under the Contractor's property insurance 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 11.3.

§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 Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay the Architect and Owner their just shares of insurance proceeds received by the Contractor, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Intentionally Deleted.

§ 11.4.1 PERFORMANCE BOND AND PAYMENT BOND
§ 11.4.1.1 The Contractor will furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as required by Chapter 2253, Texas Government Code, Title 10 (Vernon Supp. 1999), and as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

§ 11.4.1.3 If the Contract amount is $100,000.00 or more, the Contractor shall furnish an original Performance Bond equal to one hundred percent (100%) of the Contract Sum. If the Contract amount is $25,000.00 or more, the Contractor shall furnish an original Payment Bond equal to one hundred percent (100%) of the Contract Sum. There shall be separate bonds, the terms of which and the sureties of which are satisfactory to the Owner, and which comply with Chapter 2253, Texas Government Code, Title 10 (Vernon Supp. 1999), and all other applicable law. Contractor shall furnish a copy of the Payment Bond to each of its Subcontractors at the beginning of the Work. Contractor shall provide the original bonds to Owner prior to the commencement of the Work.

§ 11.4.1.4 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.

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 unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work
§ 12.2.1 Before Substantial Completion
§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, 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.

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§ 12.2.1.2 The Owner shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Architect, any engineer hired by the Owner, and any other contractor under contract with the Owner, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable.

§ 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.

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

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

§ 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.

§ 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 affected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 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. Except as provided in Section 13.2.2, 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 remain legally responsible for all obligations under the Contract.

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

§ 13.2.3 Assignment. This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in the Contract, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party, The benefits and burdens of this Agreement are, however, assignable by Owner to a lender providing construction financing for the Project in accordance with Section 13.2.2 above.

§ 13.2.4 Written Notice
Written notice shall be deemed to have been duly served only if the writing is delivered in person to the office of the party set out on the first page of the Standard Form of Agreement Between Owner and Contractor, or to such other address as has been previously clearly identified in writing by the addressee, or if delivered by mail or in form of electronic transmission to that office, or sent by registered or certified mail to that address, or sent in accordance with e-mail notice as set for in Section 1.6 above.

§ 13.3 Rights and Remedies
§ 13.3.1 Neither Contractor nor any of its materialmen, laborers or Subcontractors shall have any lien rights against the Owner's land, buildings or funds. No materialmen, laborers or Subcontractors of the Contractor shall have any enforceable rights against the Owner on this Contract. Materialmen, laborers and Subcontractors of the Contractor may have rights under any Payment Bond provided by the Contractor but cannot look to the Owner for any help in enforcement of those rights.

§ 13.3.2 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.

§ 13.3.3 Notwithstanding anything herein to the contrary, neither the execution of this Contract by Owner nor any other conduct of any representative of Owner relating to the Contract shall be considered a waiver of sovereign immunity to suit beyond what is provided for by Section 271.152 of the Texas Local Government Code.

§ 13.4 Tests and Inspections
§ 13.4.1 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 Owner, after timely notice to 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 Owner shall give the Contractor and Architect timely notice of when and where tests and inspections are to be made so that the Contractor and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals. The Contractor can rely and act upon such test results, inspection reports, and approvals procured by the Owner.

§ 13.4.2 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 13.4.1, 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 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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§ 13.4.4 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.

§ 13.4.5 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.

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

§ 13.5 Intentionally Deleted.

§ 13.6 Equal Opportunity

§ 13.6.1 During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or age.

2. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, national origin or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; Payoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the requirements of these non-discrimination provisions

§ 13.6.2 CERTIFICATION OF NONSEGREGATED FACILITY

§ 13.6.3 This Section is applicable to Contracts and Subcontracts exceeding $10,000.00 which are not exempt from the provisions of the Equal Opportunity Clause.

§ 13.6.4 By the signing of this Contract, the Contractor signifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that ii does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The undersigned agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are degraded on the bases or race, creed, color, or national origin because of habit, local custom, or otherwise. It further agrees that (except where it obtained identical certifications from proposed consultants for specific time period) it will obtain identical certification from proposed Subcontractors prior to the award of a Contract exceeding $10,000.00 which are not exempt from the provisions of the Equal Opportunity Clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods): **Notice to Prospective Subcontractors of requirement for certification of nonsegregated facilities.** A certification of nonsegregated facilities, as required by the May 19, 1967 Order (32 FR. 7439, May 19, 1967) on elimination of segregated facilities, by the Secretary of Labor, must be submitted prior to the award of a Contract exceeding **$10,000.00** which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually),

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.11.

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§ 13.6.5 PREVAILING WAGE RATES

§ 13.6.5.1 In compliance with laws of the State of Texas relating to labor (Acts 1933, 43 Leg. p. 91, Chapter 45) the building construction wage rates listed in the Contract Documents have been ascertained and determined by the Owner as the general prevailing rates in the locality of The City of Bee Cave for the classifications listed. The Contractor and each Subcontractor shall pay to all laborers, workers and mechanics employed by them in the execution of this Contract not less than such rates for each craft or type of worker or mechanic needed to execute the Contract. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than after hourly rate fairly comparable to the rates shown hereinafter.

§ 13.6.5.2 This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates named.

§ 13.6.5.3 The attention of the Contractor and all Subcontractors is called to the following laws of the State of Texas relating to labor: Texas Governmental Code § 2258.021 et seq. In compliance with the above cited code, the Contractor shall forfeit, as a penalty to the Owner, sixty dollars ($60.00) for each laborer, worker or mechanic employed, for each calendar day, or portion thereof, such laborer, worker or mechanic is paid less than the rates stipulated hereinafter for any Work done under this Contract by him or by any Subcontractor under him**.**

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination or Suspension by the Contractor

§ 14.1.1 The Contractor may stop the Work, and may subsequently 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** Intentionally Deleted;
- **.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2;
- **.5** if the Owner suspends the Work for convenience in accordance with paragraph 14.3 herein; or
- **.6** if Owner is responsible for providing the property insurance coverage required in Exhibit A or elsewhere within the Contract Documents and Contractor becomes aware that Owner did not procure, or has failed to maintain, coverage of the nature and quality set forth in Exhibit A or elsewhere within the Contract Documents.
- **.7** Causes beyond the Contractor's control arising out of or related to events described in Section 8.3.1(3)(v)-(ix), inclusive.

§ 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 under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' 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.

§ 14.1.5 Notwithstanding anything to the contrary contained herein or in the other Contract Documents, neither the Owner nor any other party shall be responsible for damages for loss of anticipated profits on Work not performed on account of any termination for cause described in Section 14.2.1.

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§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers, provided such non-payment is not due to the Owner's failure to pay the Contractor for work performed;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.
- **.5** fails to furnish the Owner within a reasonable amount of time, after receipt of written request from Owner, with assurances reasonably satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents, or
- **.6** repeatedly fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, fourteen (14) days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

§ 14.2.5 If a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, the Surety shall promptly remedy the default by completing the Contract in accordance with its terms and conditions, or by obtaining a bid or bids in accordance with its terms and conditions. At Owner's election, upon determination by the Owner and the Surety of the lowest responsible bidder, the Surety will complete the Work or will arrange for a Contract between such bidder and the Owner, and make available as Work progresses sufficient funds to pay the cost of completion less the balance of the Contract Sum, but not exceeding the Penal Sum of the bond and other costs and damages for which the Surety may be liable under the bond. The phrase "balance of the Contract Sum" as used herein shall mean the total amount properly payable by the Owner to the Contractor under the Contract and amendments thereto less the amount previously paid by the Owner to the Contractor.

§ 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.

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§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, upon thirty (30) days written notice to Contractor, terminate the Contract for the Owner's convenience and without cause.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for (i) Work properly executed; and (ii) costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the reasonable overhead and profit on items (i) and (ii) in this section as well as on the Work not executed.

§ 14.4.4 Intentionally Deleted.

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.

§ 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. 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 ODR and 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 twenty-one (21) days after occurrence of the event, except as it relates to Claims related to adverse weather conditions, which shall be initiated within thirty-one (31) days of the month in which the adverse weather conditions occurred, giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 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.

§ 15.1.3.3 To the extent it is necessary and within a reasonable period of time after Contractor has initiated a Claim in accordance with Section 15.1.3 above, , the Contractor shall further set out the specific matter of the Claim, and the impact or damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the notice. If the impact or damages cannot be assessed as of the date of the notice, the notice shall be amended at the earliest date that is reasonably possible.

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§ 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 Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 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.

§ 15.1.6 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.

§ 15.1.6.1.1 Claims Handling During Construction
After receipt of a Notice of Claim, the Owner may elect to refer the matter to the Architect or another party for review. Contractor will attend meetings scheduled at a mutually agreeable time and place that are called to review and discuss the Claims and mitigation of the problem and shall furnish any reasonable factual backup for the Claim requested.

§ 15.1.6.1.2 Claims Handling Following Construction
The acceptance of final payment shall constitute a waiver of Claims by the Contractor which have not previously been identified in a Notice of Claim.

§ 15.1.6.1.2.1 If a Claim has not been resolved within three (3) months of the date of the final Application for Payment through Claim review procedures, mediation, or other Claim settlement negotiations, then Contractor at that time, but not before, shall be entitled to institute binding arbitration in accordance with Article 15 herein.

§ 15.1.6.2 Adverse Weather Conditions Lost days include days in which weather prevents critical path work from being performed. This includes days in which critical path work cannot continue in the aftermath of weather events. For example, if the day after a rain or ice event, the critical path work cannot commence because of the need for drying, this is considered a lost work day due to weather.

Extended periods with temperatures not rising above 40 degrees are not normal for this location. If concrete pours have to be pushed more than 2 days due to cold weather which prevents critical path concrete placement in accordance with ACI standards, then the temperature shall be the grounds for a weather delay starting on the 3rth day. For purposes of determining reasonableness of precautionary or preventative measures, this Agreement does not include the use of extraordinary measures such as the addition of hot water, tenting, or temporary heating unless specifically included within the GMP.

When the use of a crane or any aerial lift is required to advance critical path work, sustained winds in excess of the stated safe operating limits of the crane or aerial list and/or lightning strikes within a safety radius will cause the crane or aerial lift to be shut down. When these event result in more than 2 hours of down time for the crane or aerial lift, this shall be considered a lost day due to weather.

§ 15.1.6.3 The Contractor will not be allowed time extensions that are due to

.1 when the principal units of work and task on the critical path are not in progress or are not delayed by the event of the delay, interference, disruption, or hindrance;
.2 while materials are drying and it is possible for the Contractor to enclose the area and use drying devices provided Owner compensates Contractor for costs incurred for such devices;
.3 when an event of delay, interference, disruption, or hindrance occurs in a day other than a working day or other day when the Contractor had not originally planned to work;

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.4 when events of concurrent delay overlap the claimed delay; and/or when an extension of time is precluded by any other provision of the contract documents.

§ 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

.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.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those 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 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will respond in one of the forms listed above in 15.2.2.

§ 15.2.5 The initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation or arbitration as selected by the Parties in the Agreement. The initial decision shall be admissible in any subsequent proceeding but shall not be deemed binding on either party.

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§ 15.2.6 Executive Meetings

§ 15.2.6.1 If requested by either party within ten (10) days of receipt of the initial decision, the parties shall attempt in good faith to resolve the Claim by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. These executives shall meet within thirty (30) days of such request at a mutually acceptable time and place.

§ 15.2.6.2 Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above ("First Meeting"). Such closure shall not preclude continuing or later negotiations, if desired.

§ 15.2.6.3 All offers, promises, conduct and statements, whether oral or written, made in course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

§ 15.2.6.4 At no time prior to the First Meeting shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by AAA Rules by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of 15.2.6.1 and 15.2.6.3 above.

§ 15.2.6.5 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in 15.2.6.1 above are pending and for fifteen (15) days thereafter. The parties will take such action, if any, required to effectuate such tolling.

§ 15.2.6.6 Either party may, within 30 days of (a) the expiration of the ten-day period set forth in 15.2.6.1 above without a request by either party for a meeting of executives; or (b) the expiration of the fifteen-day period specified in 15.2.6.5 above. If both parties fail to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 15.3 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.

§ 15.3.2 The parties shall endeavor to resolve their Claims 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. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then the party receiving the demand waives its right to binding dispute resolution proceedings with respect to the initial decision.

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§ 15.3.4 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.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.3.1 The Parties expressly agree that the Arbitration Rules are modified so that those cases falling under the regular track will result in an award no more than six (6) months from the date of the confirmation of appointment of the arbitrators. In all cases in which less than $1,000,000 in total is at issue, there shall be a sole arbitrator and the Parties shall each have three preemptory strikes in selection of the arbitrator, plus all strikes for cause that can be justified. In all cases in which $1,000,000 or more in total is at issue, there shall be three arbitrators and the Parties shall each have five preemptory strikes plus all strikes for cause that can be justified. The place of mediation and arbitration shall be in Travis County, Texas, USA. The Parties understand and agree that the arbitration award shall be binding upon, and shall include, any and all agents, employees, successors, and assigns of either party this Contract.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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§ 17 BUSINESS ETHICS

During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the ODR, the Owner or its Architects, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors or vendors at any time to disclose all things of value passing from Contractor, its Subcontractnts or vendors to Owner's personnel and its Architects.

ARTICLE 18 SOVEREIGN IMMUNITY

§ 18.1 No Waiver of Immunity. Owner does not waive or relinquish any immunity or defense on behalf of itself and its officers, trustees, employees, and agents as a result of their execution of this Contract and performance of the functions or obligations described herein. Nothing herein shall be construed as creating any personal liability on the part of any officer, trustee, director, employee, or representative of the Owner.

§ 18.2 Nothing in this Contract shall be construed to create a claim or cause of action against Owner for which it is not otherwise liable, nor to waive any immunity or defense to which Owner may be entitled, nor to create an impermissible deficiency debt of Owner.

ARTICLE 19 ~~BACKGROUND CHECKS,~~ CERTIFICATES AND TAXES

§ 19.1 Failure to comply with the provisions of Section 19 and its subsections constitutes a default under this Contract, entitling Owner to terminate this Contract for cause.

§ 19.2 All individuals or entities entering into a contract with Owner must adhere to the following applicable Texas laws as they pertain to their individual type of ownership:

§ 19.3 Corporations (domestic [formed under Texas law] or foreign [formed under laws of another state]) Shall be properly registered with the Texas Secretary of State and the Comptroller of Public Accounts as required by TITLE 34, Part 1, Chapter 5, Subchapter V, Rule 3.546 of the Texas Administrative Code. A current "Certificate of Good Standing" from the Texas Comptroller of Public Accounts shall be made available upon request stating that tire corporation charter is current, and all Texas Franchise Reports and Taxes are paid.

§ 19.4 Partnership and Joint Stock Companies, and Limited Liability Partnerships (domestic [formed under Texas law] or foreign [formed under laws of another stated) shall be properly registered with the Texas Secretary of State in accordance with Texas law. All partners in a partnership must file a "Certificate of Limited Partnership" with the Texas Secretary of State, which shall be made available for inspection upon request.

§ 19.5 Contractor, whether Corporate, Partnership, or Sole Owner, must be current on its City of Bee Cave Property Taxes. If commercial personal property is located in the jurisdiction, current renditions of these properties must be filed with the Chief Appraiser, as required by Chapter 22, Section 22.01, of the "TEXAS PROPERTY TAX CODE", and Contractor must be current on all applicable ad valorem taxes owing to Owner.

§ 19.6 Contractor certifies, to the best of its knowledge and belief, that it is not presently debarred, suspended for debarment, declared ineligible, or voluntary excluded from covered transactions by any federal department or agency.

§ 19.7 Contractor agrees to comply with all applicable requirements of all federal laws, executive orders, regulations, applicable guidelines, and policies governing this program, particularly relating to nondiscrimination. These include but are not limited to: (i) Title VI of the Civil Rights Act of 1964, as amended; (ii) Title IX of the Education Amendments of 1972, as amended; (iii) Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and (iv) the Americans with Disabilities Act, as amended.

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ARTICLE 20 REFORMATION

§ 20.1 If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be reformed to provide as close to the original intent of the provision as possible while still being enforceable. However, in the event such a reformation is not possible then (i) such provision shall be fully severable; (ii) this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been comprised a part of this Contract; and (iii) the remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Contract. In the event any law, ordinance, standard, specification, rule of authority is referenced and/or incorporated herein, such reference shall be construed to be the law, ordinance, rule, or authority in effect at the time this Contract was executed. A contract provision that requires the Contractor to satisfy a higher level of performance or standard than a law, ordinance, rule, or authority shall be given precedence in interpreting the obligations of the Contractor.

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Standard Form of Agreement Between Owner and Construction Manager as Constructor *where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

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.

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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AGREEMENT made as of the « 25th » day of « October » in the year « 2023 »
(In words, indicate day, month, and year.)

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

« City of Bee Cave »
« 4000 Galleria Parkway
Bee Cave, Texas 78738
Phone: 512-767-6600 »

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

« Hoar Construction, LLC »« »
« 7320 N Mopac Expressway
Austin, Texas 78731 »
« Phone: 512-490-6540 »
« »

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

«City of Bee Cave Public Library Building »
« 13308 State Hwy 71
Bee Cave, Texas 78738 »

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

«Lake Flato Architects, Inc.»
« 311 Third Street
San Antonio, Texas 78205
Phone: 210-227-3335 »

The Owner and Construction Manager agree as follows.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« The City of Bee Cave Preliminary Program document is attached as (Exhibit D) and will be verified under the Architect's Agreement with the Owner. »

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

«The City of Bee Cave Library is located at 13308 West State Highway 71, Bee Cave (Travis County), TX 78738. The proposed building is approximately 24, 000 GSF of a new (2) story construction with interior spaces for art, community

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gatherings, exhibits, books, electronic media, instruction/ training spaces and onsite surface parking. As part of the overall Master Plan (and the CIP - Capital Improvement Plan), scope provisions will be made for a Pedestrian Bridge that will connect to the Library or its adjacent site. »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

« Budget shall be identified in Exhibit "A" – Guaranteed Maximum Price Amendment »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Discovery & Program Verification - January 2023 — August 2023
Concept Design — September 27, 2023 — December 4, 2023
Schematic Design — December 11, 2023 — February 19, 2024
Design Development — February 26, 2024 — May 27, 2024
Construction Documents —June 3, 2024 —September 16, 2024
Permit / Bid Review — September 23, 2024 — November 18, 2024

.2 Construction commencement date:

November 28, 2024

.3 Substantial Completion date or dates:

March 16, 2026

.4 Other milestone dates:

Staff Occupancy Date, TBD
1" Day Open to the Public, TBD

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

« Any such requirements will be fully developed during the Construction Document Phase in consultation with the ODR and Construction Manager and must be approved by the Owner. The Architect and Construction Manager should anticipate, at a minimum, early release bid packages for: Site Development Permit, TXDOT Driveway Permit, TCEQ Permit, Franchise Utility Coordination, and Electrical Switchgear.
»

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

- « Austin Energy Green Building (AEGB) »

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

« »

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§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

« Mr. Clint Garza – City Manager
City of Bee Cave
4000 Galleria Parkway
Bee Cave, Texas 78738»

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

Chelsea Maldonado
Owner's Designated Representative (ODR)

Turner & Townsend Heery, LLC.
500 West 2nd Street, Suite 1700
Austin, Texas 78701

Brian Jorgensen
Owner's Designated Representative (ODR)

Turner & Townsend Heery, LLC.
500 West 2nd Street, Suite 1700
Austin, Texas 78701
»

« Tenna Florian, AIA, LEED AP BD+C
Partner

Lake | Flato Architects, Inc.
311 Third Street
San Antonio, Texas 78205

AND

1224 East 12th Street, Suite 430
Austin, Texas 78702 »

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

~~**.1** Geotechnical Engineer:~~

~~« To be selected by The City of Bee Cave »~~

~~**.2** Civil Engineer:~~

~~« To be selected by Lake | Flato Architects »~~

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.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

Owners Designated Representative
Turner & Townsend Heery, Inc.
500 West 2nd Street, Suite 1700
Austin, TX 78701

Mechanical Engineer, Structural Engineer, Electrical Engineer, Plumbing Engineer, Civil Engineer, Fire Protection Engineer, Landscape Architect, AV/Telecom Consultant, Sustainability Consultant, Lighting Designer, Specifications Consultant, Envelope Consultant, Acoustic Engineer, Cost Estimator, FFE Consultant, to be selected by Architect.

Survey Services, Geotechnical Services, Construction Materials Testing, Traffic Engineering, Hazardous Materials Testing, Air Quality Testing, Roof Inspections Consultant, HVAC test and balancing Consultant, Commissioning Agent, and Building Enclosure Commissioning Agent to be selected by Owner.

The Architect shall ensure that all such consultants and the those listed in 1.1.14.2 below produce all services and deliverables within their respective disciplines necessary for the Architect to provide a complete and buildable design for the project. »

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

« Tenna Florian, AIA, LEED AP BD+C
Partner

Lake | Flato Architects, Inc.
311 Third Street
San Antonio, Texas 78205

AND

1224 East 12th Street, Suite 430
Austin, Texas 78702 »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

« George Zakar – Project Executive
Hoar Construction
7320 North MoPac Expressway, Suite 205
Austin, Texas 78731 »
« »
« »
« »
« »
« »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

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«The Construction Manager shall assemble a constructability review team comprised of the Construction Manager's selected staff and advisors. The Construction Manager's personnel, and the Construction Manager's associated sub-consultants, to be employed in the Project, to the extent they perform Construction Manager's duties, shall be identified in Exhibit "I". The personnel and entities identified in Exhibit "I" shall not be changed except with the Owner's prior written agreement (to include personnel full-time and part-time timelines), which shall not be unreasonably withheld.»

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

«The Construction Manager's personnel, and the Construction Manager's associated sub- consultants, to be employed in the Project, to the extent they perform Construction Manager's duties, shall be identified in Exhibit "I". The personnel and entities identified in Exhibit "I" shall not be changed except with the Owner's prior written agreement, which shall not be unreasonably withheld.

All subcontracts shall be awarded in accordance with the applicable provisions of Texas Government Code Sections 2267.255, 2267.256 and 2267.257. Construction Manager shall notify Owner in advance in writing of the identities of all Subcontractors with which it intends to subcontract. Construction Manager shall not subcontract with any Subcontractor to which Owner has a reasonable objection. Construction Manager shall not be required to subcontract with any Subcontractor to which it has reasonable objection, except as otherwise allowed by the applicable provisions of Texas Government Code Section 2267.256. The Construction Manager may not submit a proposal for subcontract work. When Construction Manager's Subcontractors for constructing the Work have been identified, they shall not be changed without Owner's prior written approval, which shall not be unreasonably withheld. Construction Manager shall not incur any Subcontract costs prior to issuance by Owner of Notice to Proceed for such Work.

Should Construction Manager propose the deletion of a classified/certified sub- consultant or Subcontractor firm from its employ, the Construction Manager shall substitute a sub-consultant or Subcontractor firm of like classification/certification, and if Construction Manager is unable to substitute a sub-consultant or Subcontractor firm of like classification, Construction Manager shall provide Owner with documentation of its efforts to acquire the services of a replacement firm. »

§ 1.1.15 Other Initial Information on which this Agreement is based:

« »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change, and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information. The Owner shall adjust the Contract Sum and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, the AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by the parties and attached hereto as Exhibit "C" (hereinafter "AIA Document A201-2017"), Drawings, Specifications, Addenda issued prior to execution of this Agreement, collectively referred to as Owner's Project Criteria and attached hereto as Exhibit "D", other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the

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Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification or the Construction Manager's clarifications and assumptions referenced in Section 3.2.3.2, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the ODR and Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner, ODR, and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, collectively referred to as the Owner's Project Criteria and attached hereto as Exhibit "D", each in terms of the other.

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§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect, ODR and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the ODR's review, Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services, which such approval shall not be unreasonably withheld. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

Attend regular meetings (including key Public Meetings) with other members of the Project Team during the development of the design of the Project to advise them on site usage and site improvements, selection of materials, building systems and equipment, and methods of delivery of materials, systems, and equipment and the development of a project program. The development shall also include achievement of Austin Energy Green Building requirements (AEGB). Attend and participate in Owner's "Partnering" Program for all phases of the Project, if requested by Owner.

§ 3.1.3.2 The Construction Manager shall provide recommendations to the Owner, ODR and Architect, consistent with the Project requirements, on construction feasibility; availability of materials and labor; time requirements for procurement, installation and construction, assignment of responsibilities for safety precautions and programs, temporary Project facilities; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials , preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the ODR, Architect regarding professional services to be provided by the Construction Manager during the Construction Phase, methods of verification for determining that the requirements and assignment of responsibilities are included in the proposed Contract Documents, and any other matters necessary to accomplish the Project in accordance with the Schedule (as defined in Article 3.1.4 Project Schedule) and Project Construction Budget. Creation and continuous updating of a decision tracking system in a format acceptable to Owner and/or provided by the Owner.

§ 3.1.3.3 The Construction Manager shall assist the Owner, ODR and Architect in establishing building information modeling and digital data protocols for the Project, which the Architect shall provide at (BIM) Level of Design (LOD 300), the parties shall jointly establish the protocols for the development, use, transmission, and exchange of digital data. Use Building Information Modeling (BIM) to analyze the design of the building and identify any potential construction problems. Collaborate with the Architect to relocate any conflicting building systems or elements.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall develop a Critical Path Project Schedule ("Schedule") attached hereto as Exhibit "G", for the other Project Team members' review and the Owner's approval, that coordinates and integrates the Construction Manager's services, the Design Consultant's design, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other contractors. A separate Schedule shall be prepared for each Stage and each set of bidding documents.

Update the Schedule as is reasonably required but at least monthly to incorporate an updated, detailed listing for all activities of the Project, including, without limitation:

- commencement, milestone and completion dates for Facility Program Phase, Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding/Proposals Phase, construction phasing and Project Stages;

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- times of commencement and completion for each Subcontractor;
- required activity sequences and durations;
- contract document packages, completion dates, Owner contract document package review periods, Project building permits acquisition time requirements, construction contract bid dates;
- processing of shop drawings and samples; and
- a recommended schedule for the Owner's purchase of materials and equipment requiring long lead time procurement, delivery dates of products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead time procurements including coordination of the Schedule with the early preparation of relevant portions of the Contract Documents by the Design Consultant.

Provide the necessary Schedule control with a goal to attain the Substantial Completion (and Beneficial Occupancy if applicable) of the Project on or before the date set forth hereinabove, so that the Owner can occupy and utilize the entire project facility on such date; and

Create and maintain the Schedule using the latest available version (approved by the Owner, similar to Primavera or Microsoft Project Schedule) of the scheduling software program (the license and training for which shall be at Construction Manager's sole expense).

Scheduling
Perform Project scheduling in compliance with the Contract Documents and provide regular monitoring, updating, and reissuing of all the Project Schedules as construction progresses, including, without limitation, master Project schedules, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules; identify potential and actual variances between scheduled and probable completion dates, review the schedules for Work not started or incomplete and recommend to the Owner adjustments in the schedules to conform with the probable completion dates and provide summary reports to the Owner of each schedule update and document all changes in construction schedules. Incorporate activities of the Subcontractors and other Construction Manager-related parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials, processing of shop drawings, data, and samples, delivery of long lead—time items. Evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule. Recommend action to Owner when any Subcontract requirements are not met or appear unlikely to be met.

§ 3.1.5 Phased Construction
The Construction Manager, in consultation with the ODR and Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates
§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the ODR and Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems to the Owner and ODR for review, comment and approval.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's and ODR's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget and make recommendations for corrective action.

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§ 3.1.6.2.1 Construction Manager will prepare and update a Project budget at conclusion of the Schematic Design Phase, Design Development Phase, and during Construction Documents Phase at Sixty percent (60%) and Ninety-Five percent (95%) completion (for each Stage), for written approval by the Owner, such budget to include estimating, updating and reporting of all Project costs including, without limitation, constriction, Design Consultant fees, fixtures, furnishings and equipment, special consultants and contractors, and moving/relocation expenses. The Design Development Phase and Construction Documents Phase estimates shall also be detailed estimates derived from cost quantity surveys and from Building Information Modeling (BIM). Such cost quantity surveys shall be based upon unit prices for labor, materials, and overhead and profit, in Construction Specifications Institute Division 1-49 format for each portion of the Work.

Provide, throughout the duration of the Project, a system of cost control for the Work including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Project Team at regular intervals and, if the actual and projected costs for the Project are anticipated to exceed the Guaranteed Maximum Price, make recommendations to the Project Team for corrective action.

At the completion of the Construction Contract Documents (for any Stage of the Project), update the variance report actual and projected costs for the Project, and in the event such actual and projected costs exceed the Guaranteed Maximum Price, develop and implement reasonable strategies to be approved by the Owner to reduce the costs projected to be incurred during all phases of the Project. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, and should value engineering be required or pursued at any point in the Project, it is understood that it has its commonly accepted meaning within the construction industry and does not imply the practice of architecture or professional engineering without a license. Construction Manager is not required, in connection with value engineering, to render services that would constitute the professional practice of architecture or engineering, and any value engineering activities of Construction Manager shall be reviewed and approved, within the timeframe necessary to allow for final pricing, material procurement, and installation in accordance with the proposed overall schedule, by an architect or engineer licensed in Texas for or on behalf of Owner. Construction Manager assumes no responsibility or liability for value engineering in terms of adherence to design intent, performance, coordination/interaction with other design components, or code compliance. Value engineering pricing does not include any design fees unless expressly stated otherwise.

§ 3.1.6.2.2 Coordination of Design and Construction Contract Documents

Review all plans, specifications, and other design documents during the schematic design phase, design development phase, and construction documents phase, and advise Owner on site use, foundations, systems, materials, equipment, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs, and provide recommendations to Owner without assuming any Design Consultants' professional responsibility or liability. Use Building Information Modeling (BIM) to visualize and understand the Project.

At specified times required by the Owner, review the drawings and Project Manual as they are being prepared, advise Owner of any error, inconsistency, or omission discovered and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules (without assuming any of the Design Consultants' professional responsibility or liability) and potential impact on following AEGB provisions.
Coordinate with the Owner to ensure that the Construction Contract Documents comply with all applicable Owner's procurement requirements (without assuming any of the Owner's responsibility or liability therefor).

Consult with Owner and Design Consultant to help determine what materials, equipment, component systems, and construction types should be included in the Contract Documents; suggest reasonable adjustments in the scope of the Project; and suggest alternate bids in the Construction Documents to adjust the Construction Cost to the Guaranteed Maximum Price (as defined herein).

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§ 3.1.6.2.3 Construction Planning

Make recommendations to the other members of the Project Team regarding the division of the Construction Contract Documents and Project Manual to facilitate the bidding and awarding of construction contracts, to allow for phased or staged construction, or multiple separate contracts, and to take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, the Owner's goals for subcontractor participation, and other constraints.

Review the Drawings and the Project Manual with the other members of the Project Team to help eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's Separate Contractors.

Schedule and conduct pre-bid conferences with interested bidders, subcontractors, material suppliers, and equipment suppliers, and record minutes of same.

Coordinate and develop with Design Consultant bid packages and work scope descriptions for each separate bid category that represent the entirety of the scope of the Work for each phase and stage of the Project.

In accordance with Texas Government Code Sections 2267.255 and 2267.256 Construction Manager shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions Work. Construction Manager may not seek to perform portions of the work itself other than the minor work that may be included in General Conditions Work. Criteria for determination of best value shall be provided by Owner. Construction Manager shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal to a person not employed by the Construction Manager, the Owner, the Owner's Representative, the Engineer, or the Architect during the selection process. All bids and proposals shall be made available to the public within seven (7) days after the date of final selection. If Construction Manager reviews, evaluates, and recommends to Owner a bid or proposal from a trade contractor or subcontractor, but Owner requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Contract, Owner shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk, which has been demonstrated to Owner's satisfaction and as required by the Contract, which Construction Manager may incur because of Owner's requirement that another trade contractor or subcontractor bid or proposal be accepted.

Assist the Owner, the appropriate separate Owner's contractor, the appropriate Design Consultant or other consultant, in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof, without limitation.

Advise Owner of any tests to be performed, and assist, if requested, Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

Construction Manager shall review the Contract Documents to ensure that they contain adequate provision for all temporary facilities necessary to enable the Subcontractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

In accordance with Owner's General and/or Supplemental Conditions, Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Construction Manager shall provide recommendations and information to Owner and Design Consultant with respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Construction Manager shall verify that such assignments with respect to the Subcontractors are included in the Contract Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall in no way lessen or reduce the foregoing responsibilities set forth in this subparagraph of Construction Manager.

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Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations for actions, which will minimize adverse effects of labor shortages.

Reasonably assist the Design Consultant's efforts to design the project to meet Owner's AEGB goals and other considerations including but not limited to, providing input on alternatives and changes, and helping the Design Consultant to assess impact of AEGB's driven efforts on cost and constructability.

Furniture Fixtures and Equipment. Consult with the ODR and Architect and make recommendations to the Owner on the acquisition schedule for fixtures, furniture, and equipment, and coordinate the Owner's purchase and installation of such items with the Owner as may be required to meet the Project Schedule.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the ODR, Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the ODR, Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. Such procurement schedule shall identify for and recommend to the Owner the need for purchase of items requiring extended delivery times ("long lead items"). The Construction Manager shall expedite and coordinate the ordering and delivery of long-lead items that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

The Construction Manager shall participate with Design Consultant, as requested by Owner and subject to Owner's prior approval, in the preparation of performance specifications and request for technical proposals for the procurement and installation of systems, components, and for the procurement of long lead time equipment and materials. If requested by Owner, and subject to Owner's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

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§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document.

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

« In accordance with Section 3.1.15, the Owner reserves the right to request, in writing, that the Construction Manager aids and assists with pre-construction services for work that is outside of the Construction Manager's current scope of Work for this Project. After receipt of such written request from Owner, the Construction Manager and Owner shall mutually determine all additional costs and fees associated with such requested services. However, it is expressly understood and agreed that any such pre-construction services shall not involve any design-related tasks. Further, any requested pre-construction services for work that is outside of the Construction Manager's current scope of Work for this Project may be handled in a separate agreement between the Owner and Construction Manager. »

§ 3.1.15 Additional Services

1. From time-to-time Owner may request that Construction Manager perform services in addition to those Pre-Construction Phase Services required herein (such services in addition are hereinafter called "Additional Services")*; however, any such Additional Services requested by Owner shall not include design-related services. Further, for the sake of clarity, any request for pre-construction services pertaining to work that is outside of the Construction Manager's current scope of Work for this Project shall not be considered "Additional Services" and shall instead be handled in accordance with Section 3.1.14 above.* Each time that Construction Manager is requested to perform services which Construction Manager deems to be Additional Services, and prior to performing such Additional Services, Construction Manager shall complete and forward to Owner for acceptance by Owner an Additional Services Requisition in the form of Exhibit "K" attached hereto, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Construction Manager has determined that the requested services are Additional Services, a proposal for the addition to the lump sum fee for preconstruction services which Construction Manager believes is proper for the additional services, together with a proposed schedule for the performances of such Additional Services. Construction Manager shall proceed only after written acceptance by Owner of the Additional Services Requisition and written approval from Owner to proceed.

2. If Owner reasonably concludes that all or part of the services described in the Additional Services Requisition are Services already required to be performed by Construction Manager pursuant to this Agreement, then Owner shall notify Construction Manager of Owner's determination and Owner and Construction Manager shall attempt, in good faith, to resolve by negotiation their differences. If within seven (7) business days Owner and Construction Manager are unable to resolve their differences, then Construction Manager shall nevertheless perform the services requested by Owner as if the services were Services required to be performed pursuant to this Agreement, without prejudice, however, to Construction Manager's right to pursue a claim for compensation for such disputed services in accordance with Article 15 of A201-2017.

3. Upon acceptance by Owner of Construction Manager's Additional Services Requisition(s), each Additional Services Requisition and the services performed by Construction Manager pursuant to such Additional Services Requisition shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a required Service at the original execution of this Agreement.

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§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the ODR, the Architect, Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the ODR's, Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents and specifications are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. Correction of errors and omissions in the design documents is not to be interpreted as reasonably inferable.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- **.1** How the Guaranteed Maximum Price was derived and prepared, which shall include, at a minimum, a list of the Drawings and Specifications (including all addenda), and Owner's General and/or Supplemental Conditions which were used in the preparation of the Guaranteed Maximum Price Proposal
- **.2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- **.3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances, insurances, bonds, and other items and the fee that comprises the Guaranteed Maximum Price; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- **.4** The Guaranteed Maximum Price proposal must be prepared in the format specified by Owner which shall require a breakdown of estimated costs organized by trade, allowances, contingencies, clarifications, assumptions, insurance, bonds, Construction Manager's General Conditions Work, and Construction Manager's Construction Phase Fee as to when the Documents will be issued.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order or allocated to another line item. Further, any variances between estimated and actual costs realized through the course of buyout and management of the Project shall effectively increase or decrease the Construction Manager's contingency amount. The Construction Manager's contingency amount shall be calculated as set forth in Exhibit "A" (Guaranteed Maximum Price Amendment).

Any single use of Construction Manager's contingency funds ~~that is in excess of ten thousand dollars ($10,000)~~ shall be subject to the Owner's approval, and such approval shall not be unreasonably withheld. The Contractor shall provide the lump sum contingency use for approval, properly itemized and supported by sufficient substantiating data to permit evaluation. Details to be submitted may include material take-off and pricing, and related labor hour pricing. If Contractor requests approval from the Owner to use contingency funds, the Owner shall respond within two (2) business days. During this two (2) business day period, the Owner may request ~~reasonable~~ additional documentation from the Contractor to support their request to use contingency funds. If the Owner fails to accept or deny Contractor's request within the two (2) business day period, the Contractor's request will be deemed accepted.

The Guaranteed Maximum Price proposal shall also include a separate Project contingency and design contingency, which such amounts shall be calculated as set forth in Exhibit "A" (Guaranteed Maximum Price Amendment). Further, the scope of use for the Project contingency and design contingency funds shall be developed in consultation with the Owner and set forth in Exhibit "A" (Guaranteed Maximum Price Amendment).

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§ 3.2.4.1 In formulating the Guaranteed Maximum Price Proposal, Construction Manager shall be entitled to add no more than

Three and Nine Tenths Percent (3.9%)

to the total of all costs by trade, allowances, and contingencies to cover Construction Manager's General Conditions Work, provided that this markup shall not be allowed to the extent that Construction Manager has provided for the cost of any of its General Conditions Work, as defined in Exhibit "J" within another category of its cost. Upon the determination of the Guaranteed Maximum Price for the entire Project, there will be no line item Guaranteed Maximum Price for General Conditions Work, or for any other item in the Schedule of Values.

§ 3.2.4.2 When the words "Contract Sum" are used in the Owner's General and/or Supplemental Conditions, they shall be deemed to mean "Guaranteed Maximum Price".

§ 3.2.4.3 Partial Guaranteed Maximum Price

It is anticipated that there will be some phases of the Work ready for construction before it is appropriate to arrive at an overall Guaranteed Maximum Price for the entire Project. If the Owner elects to proceed with any packages of the Work before the parties arrive at an overall Guaranteed Maximum Price, the Construction Manager shall develop Guaranteed Maximum Price proposals for any phases of the Work identified by the Owner.

If a Guaranteed Maximum Price proposal for any phase of the Work is agreed upon by the parties, and if other proposals for other phases, or the entire Work, are subsequently agreed upon by the parties, the Guaranteed Maximum Price amounts, including the Guaranteed Maximum Price for General Conditions Work shall be combined and all other Guaranteed Maximum Price proposals previously agreed to by the parties shall be of no further force and effect. There is no line item Guaranteed Maximum Price for General Conditions Work in the Schedule of Values, or for any other item in the Schedule of Values.

§ 3.2.4.4 Cost Accounting

Maintain cost accounting records in good form on expenditures and materials, or for any other expenditures requiring accounting records during the Pre-Construction Phase; and afford the Owner access to these records and preserve them for a period of three (3) years after final payment is made by the Owner to the Construction Manager.

§ 3.2.5 The Construction Manager shall meet with the ODR, Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect and ODR. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of either a Partial Guaranteed Maximum Price or the Guaranteed Maximum Price Amendment for the entire Project, unless the Owner provides prior written authorization for such costs or if said costs are a result of early release procurement packages, Building Information Modeling ("BIM") coordination for construction, or other costs directly associated with the management of the Construction Phase.

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§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager, in an organized drawing set update. The Construction Manager shall notify the ODR, Owner, and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes, except to the extent Owner is exempt from any such tax (e.g., sales and use tax) for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

The Construction Phase shall commence upon the completion of the following requirements:

1. The Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal;
2. The Owner's issuance of a Notice to Proceed in accordance with Section 3.3.1.2 below;
3. The Construction Manager's receipt of all applicable permits, including such building permits; and
4. Construction Manager's receipt of evidence of financing in accordance with Section 2.2 of A201–2017.

§ 3.3.1.2 The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment. The Construction Phase shall be deemed to commence upon the date of commencement specified in a Notice to Proceed which shall not be issued by Owner until Owner has provided sufficient information to the Construction Manager, the property is ready for construction, all permits have been secured. Pre-Construction Phase Services may overlap Construction Phase Services. In implementation of the responsibilities and duties of the Construction Manager for the Construction Phase, the Construction Manager shall provide the following services:

1. Project Control
   Construction Manager shall construct the Work in strict accordance with the Contract Documents within the time required by the Schedule approved by Owner and as required by the Contract and the Owner's General and/or Supplemental Conditions and Division I Specifications. Construction Manager shall award and enter into, as a general contractor, all Subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project. Construction Manager shall self-perform only General Conditions Work and other Work which has been awarded to Construction Manager in accordance with the requirements of Texas Government Code section 2267.255 and this Contract. Subject to and in accordance with Article 6 of A201–2017, the Owner reserves the right to perform Work related to the Project and to award separate contracts for Work related to the Project.

2. Monitor the Work of the Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain completion of the Project at a cost not-to-exceed the Project.

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3. Construction Budget and Guaranteed Maximum Price, as may be adjusted by Changes in the Work, and to attain Substantial Completion by the date set forth in Exhibit "A" herein, which may be adjusted by Change Order, when executed.

4. Attend all Owner's Project progress meetings scheduled by Owner no less often than once per month, and fully advise the Project Team at such meetings as to Project status.

5. Schedule, direct and attend regular meetings with other members of the Project Team during the construction of the Project to discuss jointly such matters as procedures, progress, problems, and scheduling. Prior to each meeting, the Construction Manager shall prepare and distribute to the other Project Team members a written agenda for the meeting. Prepare and distribute at each Project Team meeting a memorandum setting forth the list of critical activities, which require immediate action and the date(s) by when the activity must be completed, and record and distribute the minutes of each meeting.

6. Maintain a competent, full-time staff at the Project site to coordinate and provide general direction over the Work and progress of the Subcontractors of the Project.

7. Establish on-site organization of personnel and clearly defined lines of authority in order to effectuate the overall plans of the Project Team. At a minimum, Construction Manager's site personnel shall include a project manager, project superintendent, project engineer, and appropriate administrative support personnel.

8. In consultation with Owner, establish procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Consultants, and other consultants with respect to all aspects of the construction of the Project, and implement such procedures.

9. Expedite and coordinate delivery and installation of Owner-procured material and equipment.

10. Construction Manager shall supervise and direct the Work and shall be solely responsible for construction means, methods, techniques, sequences, and procedures for the Work, subject to Section 3.3.1 of the Owner's General Conditions.

11. In accordance with Owner's General and/or Supplemental Conditions, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents. Assist Owner in securing building permits and special permits for permanent improvements as required by law or the Contract Documents. Assist Owner or Design Consultant in obtaining all approvals required from authorities having jurisdiction over the Project.

12. Inspect the Work of Subcontractors to ensure conformance with the Contract Documents.

13. Support COBC's efforts to obtain AEGB requirements for certification in areas over which Construction Manager has control.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. These Owner/Architect/Contractor ("OAC") meetings will be held once monthly with the entire project team, but more frequent meetings shall be held as deemed necessary by the Construction Manager. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report
The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the ODR, Architect, Owner, the Construction Manager shall submit written progress reports to the ODR, Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs
The Construction Manager shall keep, and make available to the ODR, Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control
The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

1. Cost Control

    a. Maintain cost accounting records in good form on expenditures and materials, or for any other expenditures requiring accounting records; and afford the Owner access to these records and preserve them for a period of three (3) years after final payment is made by the Owner to the Construction Manager.
    b. Prepare and administer, and provide to Owner, Subcontractors' schedule of values. Subcontractors' sworn statements and waivers of lien as required by applicable law, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as required by Owner.
    c. Construction Manager shall promptly identify all variances between estimated costs and actual costs and shall promptly report such variances to the Project Team along with recommendations for action, but in any event, within a reasonable period of time of having discovered any such variances.

2. Change Orders
   Develop and implement a system acceptable to the Owner, such acceptance not to be unreasonably withheld, for the preparation, review and processing of Change Orders, change order requests, and requests for information, in accordance with Owner's General and/or Supplemental Conditions, and Contract Documents. Construction Manager shall use Construction Project Management software or other software, or as agreed by the Owner and Construction Manager. If Owner directs Construction Manager to use Prolog software, Owner shall provide access to Owner's Financial Records system or Enterprise Resource Planning Software (ERP).

3. Wage Rates
   Maintain strict enforcement of Owner's prevailing wage laws in accordance with Owner's General and/or Supplemental Conditions. Cooperate with Owner in monitoring the submission to the Owner of payroll records by the various Subcontractors when requested.

4. Special Consultants
   Upon written request by Owner, Construction Manager shall reasonably assist the Owner in selecting and retaining professional services that are reasonably necessary for proper construction of the Project and are not otherwise described in this Agreement for the Project and coordinate these services at the Owner's request in order to meet the Schedule, without, however, assuming any liability or responsibility for the work of these consultants.

5. Documents, Shop Drawings, and Submissions

    a. The Design Consultant shall be the interpreter of the design intent of the Construction Contract Documents, subject to the terms and conditions of the agreement between the Design Consultant and the Owner, further, the Construction Manager shall be also be immediately provided with a

copy of any such interpretations from the Design Consultant so as to facilitate the Construction Manager's accomplishment of its duties under this Agreement.

b. In collaboration with the other members of the Project Team, the Construction Manager shall establish and implement procedures for expediting the processing and Design Consultants' approval of shop drawings and other submissions; receive from the Subcontractors, and review, all shop drawings and other submissions for conformance with the Contract Documents; and coordinate shop drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.

c. The Construction Manager shall record the progress of the Project, submit written progress reports to the other members of the Project Team, including information on the Subcontractor's Work and the percentage of completion available to the other members of the Project Team in accordance with Owner's General and/or Supplemental Conditions.

d. The Construction Manager shall maintain at the Project site and make available to Owner, updated records of subcontracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, instructions from Owner; and shall obtain data from Subcontractors, and maintain a current set of record drawings and project manual.

e. Construction Manager shall coordinate and facilitate the creation of record and as-built drawings, and the procurement of warranties and guarantees that are required by the Contract Documents.

f. Construction Manager shall provide Owner with complete, unaltered copies of all Subcontracts, and all amendments thereto.

g. Construction Manager shall document and submit to the Owner all documents reasonably required to support Owner's efforts to obtain AEGB points and/or certification.

6. Safety
Except to the extent set forth under Article 6 of the A201-2017, the Construction Manager is solely responsible for all safety precautions and programs in connection with the Work. Construction Manager shall review the safety programs developed by each of the Subcontractors and prepare and submit to Owner a comprehensive safety program which complies with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations. Construction Manager shall ensure compliance by the Subcontractors with their contractual safety requirements.

7. Bonds
Payment and Performance Bonds in the form prescribed in Exhibit "H" shall be required within ten (10) days of execution of Exhibit "H".

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements. The Owner shall provide all such information set forth in this Section 4.1.1 to the Construction Manager and other members (and representatives of the Owner) of the Project Team.

§ 4.1.1.1 If the Owner has actual knowledge of any fault or defect in the Project or non-conformance with the Drawings and Project Manual, Owner shall give prompt written notice thereof to the Construction Manager.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner will provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After

execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the ODR, Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner and its Consultants shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6.1 Owner shall furnish Construction Manager with the number of copies of the Contract Documents requested by Construction Manager, not to exceed five (5), each time an estimate is required while Construction Manager is rendering Preconstruction Services and the number of copies of Contract Documents and cost proposal request documents issued during bidding and construction requested by Construction Manager, not to exceed five (5). Owner, at its sole discretion, may provide additional copies to Construction Manager at Construction Manager's request. Should Owner elect to not provide additional copies, Construction Manager shall not seek reimbursement from Owner for any reproduction expenses incurred by Construction Manager related to the Contract Documents.

§ 4.2 Owner's Designated Representative

The ODR shall be authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the

Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

100% SD's $5,000
100% DD's $15,000
100% CD's $10,000
»

§ 5.1.2 If the Preconstruction Phase services covered by this Agreement have not been completed within « twelve » (« 12 ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

Construction Manager shall not be entitled to any increase in the Pre-Construction Phase Fee because of Schedule extensions or delays, or changes in the scope of the proposed Project including changes necessitated by Owner's AEGB requirements, unless such extensions, delays, or changes are material or significant.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « thirty » (« 30 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

« Current prime rate as published by Regions Bank plus two percent (2%) per annum. »

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« Three and nine tenths percent (3.9%) of the estimated Cost of Work »

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« To compensate the Construction Manager for Change Orders which increase the scope of work, the Construction Manager's Fee shall be increased by three and nine tenths percent (3.9%) of the estimated Cost of the Work stipulated within the executed Change Order(s). For Change Orders which decrease the Cost of the Work, the Construction Manager's Fee shall not change.»

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

«Five and 0/100 percent (5.0%) of the estimated Subcontractor Cost of the Work and five and 0/100 percent (5.0%) on the second tier Subcontractor Cost of Work.»

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the standard rental rate paid at the place of the Project.

Unit Prices, if any: Set forth in Exhibit "A" (Guaranteed Maximum Price Amendment)

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

« See Article A.5 of Exhibit "A" (Guaranteed Maximum Price Amendment)»

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

Change Order documents shall be generated by the Construction Manager. The Owner and Architect shall endeavor to review and approve all change order requests and Change Orders within a reasonable timeframe. It is understood that delays in the processing of Change Orders will impact the timely performance of the Work.

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

§ 6.1.9 The Owner and Construction Manager may agree to multiple, separate Guaranteed Maximum Price Amendments or Work Package Authorizations for the Project in order to accommodate phasing or early release packages for the project.

§ 6.1.10 The Owner is a tax-exempt entity, therefore no sales tax or other tax from which the Owner is exempt shall be included in the Guaranteed Maximum Price proposal or any portion of the Cost of Work, except where required by law.

§ 6.1.11 Owner shall compensate Construction Manager for Construction Phase services on the basis of the sum of the Cost of the Work as defined herein plus the Constriction Manager's Construction Phase Fee (such sum is referred to as the "Contract Sum") as set forth below. The Contract Sum shall not exceed the Guaranteed Maximum Price set forth in Exhibit "A" hereto, subject to changes authorized by the terms and conditions of the Contract Documents. Any cost which is not authorized by the terms and conditions of the Contract Documents, but which would cause the Guaranteed Maximum Price to be exceeded shall be paid by Construction Manager without reimbursement by Owner. In the event that the Contractor is required to pay or bear the burden of any new federal, state, or local tax, or of any rate increase of an existing tax (except a tax on income) with respect to its forces and/or its performance of the Work as a result of any statute, court decision, written ruling, or regulation taking effect after the effective date of this Agreement, the Guaranteed Maximum Price shall be increased by the amount of the new tax or tax increase which is actually paid by Construction Manager.

§ 6.1.12 The Owner has afforded the Construction Manager with reasonable access to the existing improvements and conditions on the site and has given the Construction Manager the opportunity to conduct a visual investigation of the existing conditions, which the Construction Manager represents it has done. The results of Construction Manager's investigation have been considered in establishing the Guaranteed Maximum Price of the Work. Construction Manager shall not be entitled to a claim for an adjustment in time or price under Owner's General and/or Supplemental Conditions for conditions which Construction Manager discovered in Construction Manager's visual investigation. Before proceeding with the Work, the Construction Manager shall review the Drawings and Specifications and notify the Design Consultant and Owner of any errors, omissions, or discrepancies in the Drawings and Specifications it discovers with respect to the existing conditions. The Construction Manager shall not proceed with the Work if any defect, defined as any error, omission, conflict, inconsistency, or lack of clarity, is known by Construction Manager to exist in the Drawings or Specifications or other Contract Documents. If Construction Manager nevertheless proceeds to perform the Work with such knowledge, then Construction Manager shall be responsible for all foreseeable resulting cost, including the cost of redoing or remedying the Work and time delays resulting therefrom unless and to the extent such costs result from design or concealed conditions. Upon discovering a defect in the Drawings or Specifications, the Construction Manager shall promptly submit a written notice to Owner and Design Consultant.

§ 6.1.13 For items in the Contract Documents that are noted as "Allowances", 100% of any savings shall go to Owner's contingency. The Cost of the Work included in the Allowances shall be determined in accordance with Owner's General and/or Supplemental Conditions, except that any claim by the Contractor for an adjustment to the Guaranteed

Maximum Price based on the cost for Allowance work shall be made within a reasonable time after the issuance of the Drawings and Specifications for the Allowance items.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing via a Proposal Request. The Construction Manager may be entitled to an equitable adjustment in the Contract Time and Contract Sum as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded (except those awarded with the Owner's prior consent on the basis of cost plus a fee), on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.8 and the items identified within Section 1 of Exhibit "B" (Allowable General Condition Line Items).

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.1.4 Costs, as defined herein, with the exception of contractually stipulated rates, shall be actual costs paid or incurred by the Construction Manager, less all discounts, rebates and salvages that are obtained by the Contractor, subject to Article 8 of this Agreement. All payments made by the Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of this Agreement, are included within the Guaranteed Maximum Price specified in Section 6.2 above. Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of reimbursable categories.

§ 7.1.5 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 7.2 Labor Costs
§ 7.2.1 Intentionally Deleted.

§ 7.2.2 Compensation, wages or salaries of the Construction Manager's personnel when stationed at the site in whatever capacity employed. Personnel engaged, at shops or on the road, in expediting the production or transportation of materials or equipment shall be considered as stationed at the field office and their compensation paid for that portion of their time spent in connection with this Project. This includes the compensation cost of the regional or general superintendent and MIS staff when performing services for this job. Cost of compensation of project management and its support, for actual hours worked on this Project. Personnel rates are listed in and attached hereto as Exhibit "E". (If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in either Exhibit "E" or Section 14.6, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 7.2.3 Reasonable and customary wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops while traveling, or in regional offices in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. Personnel rates are listed in Exhibit "E".

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

Compensation for the Construction Manager's supervisory and administrative personnel are stipulated rates attached hereto as Exhibit "E". These rates shall remain unchanged throughout the duration of this Agreement unless the parties execute a Modification. The stipulated rates identified in Exhibit "E" shall be inclusive of labor burden attributable to the rates. The labor burden rate shall be set forth in Exhibit "E".

§ 7.3 Subcontract Costs
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8,

shall be set forth in Exhibit "E", Schedule of Rates. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications and data services, electronic equipment, and software, directly related to the Work and located at the site or principal office, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions, scanning and delivery charges.

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.6.12 Costs listed in Exhibit "E" to be reimbursed at the fixed rates set forth therein.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.9 Costs Not To Be Reimbursed

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

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- **.2** Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- **.3** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- **.9** Costs for services incurred during the Preconstruction Phase.

10. Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.8 or Article 11,
11. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
12. Intentionally Deleted
13. Fees paid to recruiters to hire initial or replacement staff.
14. Replacement or payment for lost or stolen machinery or equipment.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. Construction Manager shall notify the Owner of any discounts, rebates or refunds from subcontractors or vendors for early payment at the beginning of the Project. Unless Owner elects to make payment early to take advantage of said discounts, the Construction Manager may choose to make payments and then accrue the discounts to the Construction Manager.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction

Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection based on the Construction Manager's subcontractor/vendor qualification process, including, but not limited to, financial strength, insurance limits, reference checks, and subcontractor/vendor's acceptance of the Construction Manager's standard form of agreement.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

§ 9.2.1 Related Party Transactions

§ 9.2.1.1 The term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership or management with the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; (3) or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" also includes any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 9.2.1.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 9.

ARTICLE 10 ACCOUNTING RECORDS

§ 10.1 The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Construction Manager shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law.

§ 10.2 Throughout the course of construction, the Owner's Designated Representative (ODR) may audit each Application for Payment submitted by the Contractor per the Contract Documents. Should ODR, in accordance with the Contract Documents, reasonably concludes that the Cost of the Work as substantiated by the Contractor's supporting documentation is less than the amount previously billed by the Contractor, then ODR shall withhold such amount from subsequent Applications for Payment. If the Contractor disputes the results of ODR's audit, then Contractor shall, without seeking an initial decision, be entitled to submit a Claim in accordance with Article 15.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the « last » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « last » day of the « following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « thirty » (« 30 ») days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and ODR.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017, as modified by the parties and attached hereto as Exhibit "C" and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values. Pending final determination of the total cost of a Construction Change Directive to the Owner for changes in the Work, amounts that the Architect

determines, in the Architect's professional judgment, to be reasonably justified; such amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201—2017;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in **Section 6.1.2 of the Agreement** or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of five percent (5%) from that portion of the Work that the Construction Manager self-performs;

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by **Section 11.1.4** to substantiate prior Applications for Payment; and

.7 Subtract amounts, if any, for Work that remains uncorrected and for which the Architect has withheld or nullified a Certificate for Payment as provided in **Article 9** of AIA Document A201—2017.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

.1 Intentionally Deleted;

.2 Intentionally Deleted;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Owner or Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

.5 Intentionally Deleted; and

.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.7.3 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

«5%»

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« Notwithstanding anything in the Contract Documents to the contrary, no retainage shall be withheld on the Construction Manager's general conditions costs, insurance and bond costs or the Construction Manager's Fee. »

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

« The Owner may release retainage held for a scope completed by a Subcontractor once the Subcontractor's Work has been accepted by the Owner, provided that (i) the Owner is satisfied with the Work of such Subcontractor, and (ii) the

Owner has received lien release documentation, and other reasonably required documentation from the Subcontractor and all of its sub-subcontractors and material suppliers in a form and substance satisfactory to the Owner. »

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

« »

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Intentionally Deleted.

§ 11.1.11 Once the Work and Final Closeout Requirements are one hundred (100%) complete as noted by the Architect, Owner, ODR, and as evidenced by billings, no further retainage shall be withheld and all remaining payments shall be made in full.

§ 11.1.11.1 Upon Substantial Completion of the work, the Construction Manager will be paid a reasonable value or estimate of the "punch list" work the Contractor designates to have been completed.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's ODR acting in the sole interest of the Owner.

§ 11.2 Final Payment
§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- **.1** the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- **.2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- **.3** a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Intentionally Deleted.

§ 11.2.2.1 Intentionally Deleted.

§ 11.2.2.2 The final request for payment shall not be made until Construction Manager delivers to Owner a complete release of all claims arising out of this Agreement, subject to any claims reserved in accordance with the terms of the Owner's General and/or Supplemental Conditions, and an affidavit that so far as Construction Manager has knowledge or information, the release includes and covers all materials and services over which Construction Manager has control for which a claim could be filed, subject to any claims reserved in accordance with the terms of the Owner's General and/or Supplemental Conditions.

§ 11.2.2.3 In addition to the procedures contained in Owner's General and/or Supplemental Conditions, Owner shall have no obligation to make final payment until a final accounting of the Cost of the Work has been submitted by Construction Manager and has been verified by Owner or Owner's representatives. The aggregate total of payments to Construction Manager shall not exceed the total of the actual Cost of the Work as verified by Owner or Owner's representative from Construction Manager's final accounting plus the applicable Construction Manager's Construction Phase Fee, as certified for payment in accordance with the Contract, but in no event more than the Guaranteed

Maximum Price. If payments made to Construction Manager exceed that which is due and owing pursuant to this Article 11.2, then Construction Manager shall promptly refund such excess to Owner.

§ 11.2.2.4 Intentionally Deleted.

§ 11.2.2.5 No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the services to which such partial payment relates, or a release of Construction Manager of any of Construction Manager's obligations hereunder or liabilities with respect to such services.

§ 11.2.2.6 Any Constriction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance of the Pre-Constriction Phase Services and the construction of the Work in accordance with the terms of the Construction Manager's applicable agreement with such party.

§ 11.2.2.7 The acceptance by Construction Manager or Construction Manager's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which Construction Manager or Construction Manager's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by Construction Manager as unsettled at the time of the final request for payment.

§ 11.2.2.8 Intentionally Deleted.

§ 11.2.2.9 The Architect is not responsible for verifying the accuracy of the Construction Manager's final Application for Payment, and all previously approved Applications for Payment.

§ 11.2.2.10 Intentionally Deleted.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

« »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.2.5 Payment Instructions. Upon execution of this Agreement, Contractor shall provide Owner with written payment instructions and all necessary forms required by Owner to effectuate payments to Contractor by wire transfer (the "Payment Information". Contractor shall submit the initial Payment Information to Owner by certified mail or hand delivery only. If Owner receives a request to change such Payment Information, Owner agrees that it will not modify or make a change to this Payment Information without oral confirmation from Contractor's Chief Financial Officer or Controller followed by receipt of a written confirmation executed by both Contractor's Controller and its Chief Financial Officer. Owner shall make no changes to the Payment Information if it does not receive the oral and written confirmations as stated herein. If Owner makes any change to the Payment Information without first receiving the confirmations stated herein, it shall be solely responsible for any monies lost or stolen and not paid to Construction Manager as required under the terms of this Agreement.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

« Current prime rate as published by Regions Bank plus two percent (2%) per annum. »

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

« »
« »
« »
« »

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[« X »] Arbitration pursuant to Article 15 of AIA Document A201–2017

[« »] Litigation in a court of competent jurisdiction

[« »] Other: *(Specify)*

« »

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven (7) days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven (7) days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the

Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.2.3 Termination by the Owner for Convenience

« If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment (Exhibit "A"), the amount payable to the Construction Manager shall be pursuant to Section 14. 4.3 of A201—2017. »

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, 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.

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of « five million dollars » ($ « 5,000,000 ») for each occurrence and « five million dollars » ($ « 5,000,000 ») in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of « one million dollars » ($ « $1,000,000 ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
Excess: $5,000,000	Liability limited to the amount of insurance provided herein

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase
After execution of the Guaranteed Maximum Price Amendment (Exhibit "A"), the Owner and the Construction Manager shall purchase and maintain insurance as set forth in Article 11 of the AIA Document A201–2017, as modified by the parties.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« *This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties and delivered to the other parties. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement bearing an original manual or electronic signature, or through the use of electronic signature software, will have the same effect as physical delivery of the paper document bearing an original signature.* »

§ 14.5 Other provisions:

« »

§ 14.6 Role Utilizations.

§ 14.7 Intentionally Deleted.

§ 14.8 Intentionally Deleted.

§ 14.9 Intentionally Deleted.

§ 14.10 If the Work is not in compliance with the Schedule, the Owner may direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- **.1** AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- **.2** AIA Document A133™-2019, as modified by the parties and attached hereto as "Exhibit A", Guaranteed Maximum Price Amendment, if executed
- **.3** Intentionally Deleted.
- **.4** AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the parties and attached hereto as Exhibit "C"
- **.5** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
  (Insert the date of the E203-2013 incorporated into this Agreement.)

  « »

- **.6** Other Exhibits:
  (Check all boxes that apply.)

[« »] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

« »

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« Exhibit "C" – AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by the parties
Exhibit "D" – Owner's Preliminary Program, dated « » (« » pages)
Exhibit "E" – Schedule of Rates, dated « » (« » pages)
Exhibit "F" – Construction Manager's Certificate of Insurance
Exhibit "G" – Project Schedule, dated « To be issued at GMP »
Exhibit "H" – Performance and Payment Bond Forms
Exhibit "I" – Staffing Plan
Exhibit "J" – Allowable General Conditions
Exhibit "K" – Additional Services Requisition
Exhibit "L" – CMAR Project Close-Out Status Guide Forms A & B
Exhibit "M" – CMAR Transfer Checklist Project Closeout Form A
Exhibit "N" – Financial Project Closeout Form B
Exhibit "O" – CMAR Final Completion Guidelines
Exhibit "P" – COBC Minimum Requirements for Substantial Completion

»

§ 15.3 In the event of any conflict between any provisions of this Agreement and the provisions of the General Conditions attached as Exhibit "C" to this Agreement, this Agreement shall govern. In the event of any conflict between any provisions of the Contractor's Assumptions and Clarifications referenced in Section 3.2.3.2 of this Agreement and the provisions of the other Contract Documents, the provisions of the Contractor's Assumptions and Clarifications shall govern.

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

DRAFT

AIA® Document A133™ – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the "Agreement")
(In words, indicate day, month, and year.)

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

« »

THE OWNER:
(Name, legal status, and address)

« »

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

« »« »
« »

TABLE OF ARTICLES

A.1 GUARANTEED MAXIMUM PRICE

A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed « » ($ « »), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories,

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.

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

« See **Exhibit 1** which shall serve as the initial Schedule of Values for this GMP Amendment

See **Exhibit 2** for the Contingency Amount, if any, for this GMP Amendment. The Contingency Amount shall not be part of the Guaranteed Maximum Price established in this Amendment until utilized as provided in the Contract Documents »

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates
§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
See Exhibit 3, if any	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ A.1.1.6 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[« »] The date of execution of this Amendment.

[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion
§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

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[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See Exhibit 6, if any			

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

« See Exhibit 7, if any »

Section	Title	Date	Pages
See Exhibit 7, if any			

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

« See Exhibit 8, if any »

Number	Title	Date
See Exhibit 8, if any		

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

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Item	Price
See Exhibit 4, if any	

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

« See Exhibit 5, if any »

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

« See Exhibit 9, if any »

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:
(List name, discipline, address, and other information.)

« »

ARTICLE A.5

§ A.5.1 The Construction Manager acknowledges that the Work is urgently needed by the Owner. Construction Manager further acknowledges that its failure to meet the date set for Substantial Completion set forth above, as may be adjusted by Change Order, will result in damages to Owner, which damages are extremely difficult or impractical to ascertain or compute. Therefore, Owner and Construction Manager hereby stipulate to the following liquidated damages as Owner's sole and exclusive remedy for damages sustained by Owner as a result of Construction Manager's failure to achieve Substantial Completion of the Work by the date set forth above, after a thirty day grace period:

- Days 1-14 beyond grace period, Construction Manager shall pay Owner $100 per day;
- Days 15-30 beyond grace period, Construction Manager shall pay Owner $500 per day;
- Beyond day 30 until Substantial Completion achieved, Construction Manager shall pay Owner $1,~~05~~000 per day;

The parties agree and acknowledge that it no event shall the liquidated damages assessed under this Contract exceed the amount of Construction Manager's Fee for the Project.F

ARTICLE A.6

§ A.6.1 In addition to the terms and conditions of the Agreement set forth in the AIA A133-2009 Document and the General Conditions set forth in the AIA A201-2007 Document, both in the as-modified form executed by the Parties, the following exhibits are incorporated into the Contract Documents as part of this Amendment:

Exhibit 1	GMP Price with Initial Schedule of Values dated _____ « » pages
Exhibit 2	Contingency Amount, if any, for Schedule of Values dated _____ « » pages
Exhibit 3	Accepted Alternates, if any, dated_____ « » pages
Exhibit 4	Allowances if any, dated _____ « » pages
Exhibit 5	Assumptions and Clarifications if any, dated _____ « » pages
Exhibit 6	Supplementary and other Conditions of the Contract, if any, dated _____ « » pages
Exhibit 7	Specifications dated _____ « » pages
Exhibit 8	Drawings dated _____ « » pages
Exhibit 9	Other documents if any re design
Exhibit 10	Schedule for Work under GMP Amendment dated _____ « » pages

This Amendment to the Agreement entered into as of the day and year first written above.

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OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

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City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**12.**
Agenda Title:	**Discuss and consider action on a contract with CSHV HCG Retail LLC. for the holiday ice rink.**
Council Action:	**Discussion and possible action**
Department:	**Administration**
Staff Contact:	**Clint Garza**

1. INTRODUCTION/PURPOSE

Hill Country Galleria and City of Bee Cave are in partnership with Bee Cave on Ice, our cities open-air ice skating rink. The build out for Bee Cave on Ice will begin on Monday, October 30th. The season will open Friday, November 10th through Monday, January 15th.

2. DESCRIPTION/JUSTIFICATION

a) Background

The contract in discussion is the arrangement between Hill Country Galleria and City of Bee Cave and the logistics and build-out of the rink.

b) Issues and Analysis

3. FINANCIAL/BUDGET

Amount Requested	Fund/Account No.
Cert. Obligation	GO Funds
Other source	Grant title
Addtl tracking info	

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

Staff recommends council approves the contract.

ATTACHMENTS:

	Description	Type
🗋	Agreement	Backup Material
🗋	Staging	Backup Material

ICE RINK AGREEMENT

THIS ICE RINK AGREEMENT (the "Agreement") is made as of this _____ day of _____, 2023 (the "Effective Date") between **CSHV HCG RETAIL, LLC**, a Delaware limited liability company ("HCG") and the **CITY OF BEE CAVE, TEXAS**, a home rule municipality located in Travis County, Texas (the "City"). HCG and City are sometimes referred to hereinafter individually as a "Party" or collectively as the "Parties" as the context may require.

A. HCG is the owner of certain property in the City of Bee Cave, Texas that is commonly known as the Hill Country Galleria (the "HCG Property").

B. The City is the owner of certain property in the City of Bee Cave, Texas, which abuts the HCG Property (the "City Property") (the HCG Property and the City Property are hereinafter sometimes collectively referred to as the "Property").

C. The Parties desire to cooperate with each other to establish, on a temporary basis, a holiday ice rink, incidental improvements in support of the ice rink, and other ancillary entertainment and recreational activities (the "Project") in and around the Property in a location mutually agreeable to the Parties for the period of October 27, 2023 through approximately January 31, 2024 (inclusive of set up, break down and restoration of the Property to its prior condition).

D. The Parties anticipate that the Project will attract City residents and tourists to the area, support local businesses, increase demand for hotel and other hospitality services, offer increased recreational activities in the City and otherwise will promote the health, safety and welfare of the City and its residents.

E. The City has entered into a service agreement (the "Service Agreement") with IRE Crown Rinks, LLC, a Texas limited liability company ("Supplier") for the installation, operation, and removal of the ice rink and its incidental improvements.

F. The Parties anticipate the HCG will contribute a one-time payment of $100,000.00 which will be reimbursed from net revenues received by the City

G. The Parties anticipate that the Project will benefit the City and HCG and therefore wish to cooperate and coordinate on establishment of the Project, including, but not limited to, cost and revenue sharing.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Incorporation of Recitals. The recitals set forth above are hereby incorporated into the terms of this Agreement by reference as if fully set forth herein.

Section 2. License for the HCG Property.

Section 2.1 License for the HCG Property. HCG hereby grants the City, the Supplier, their respective employees and invitees a license (the "License") on, over, through and across that portion of the HCG Property to be used for the Project (the "HCG License Parcel"). HCG will cooperate and coordinate with the City and the Supplier as to the approximate location of the HCG License Parcel. Upon the expiration of the term of this Agreement or the earlier termination of this Agreement, the License shall automatically expire without further action by either Party. Prior to the Supplier, any of its contractors, subcontractors or employees coming upon the HCG Property, the City shall deliver evidence to HCG that the Supplier has named HCG (and such other HCG related entities as HCG may request) as an additional insured under all of the insurance policies that the Supplier is required to carry pursuant to the Service Agreement. To the extent permitted by the laws and Constitution of the State of Texas, the City shall be responsible for the prompt and complete removal, at its cost and expense, of any liens or other encumbrances filed against the HCG Property and arising out of the Project.

Section 2.2 Maintenance and Restoration of HCG License Parcel. During the term of this Agreement, the City shall maintain, or shall cause the Supplier to maintain, the HCG License Parcel, and those portions of the HCG Property immediately adjacent thereto, in good condition, reasonable wear and tear excepted. Upon the termination of the Service Agreement and removal of the Project improvements, the City shall restore, or cause the Supplier to restore, the HCG License Parcel, and those portions of the HCG Property immediately adjacent thereto, to the approximate condition that existed prior to the execution of this Agreement. This restoration obligation shall survive the term of this Agreement.

Section 3. Project Monetary Contribution and Reimbursement.

Section 3.1 HCG Project Contribution. HCG shall remit a one-time payment of $100,000.00 (the "HCG Payment") to the Supplier for costs and expenses related to the Project (the "HCG Payment") within five business days of receipt of a written notice of direction from the City, but in no event later than November 1, 2023. The City shall be solely responsible for, and shall promptly pay, all other costs and provide all other services arising out of the Service Agreement and the Project.

Section 3.2 HCG Obligations. The Parties acknowledge that HCG's sole obligations under this Agreement shall be the grant of the License as referenced in Section 2, the remittance of the HCG Payment as provided in Section 3.1, performance of mutual assurances as referenced in Section 6 and mutual cooperation as referenced in Section 7.8. The City shall otherwise be solely responsible for the implementation of the Project, performance under the Service Agreement, including all "customer responsibility" items set forth in the Service Agreement, and payment of all costs and expenses.

Section 3.3 Reimbursement. HCG shall be reimbursed for the HCG Payment by the City. HCG shall receive $100,000.00 in net revenues, from the operations of the ice rink. The reimbursement payment from the City to HCG shall be a one-time payment and shall be made between January 16, 2024 and January 19, 2024. In addition, the City shall provide HCG with copies of all Project financial reports provided to the City by the Supplier. After HCG has been fully reimbursed for the HCG Payment, the City shall receive all additional revenues generated from the operations of the ice rink. The City's reimbursement obligation shall survive the term of this Agreement.

Section 4. Entire Agreement, Amendments, Waivers and Termination. This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof. This Agreement and the rights granted hereunder shall be perpetual and are effective from and after the date hereof. This Agreement and the rights granted hereunder may be terminated, modified, or amended only by a written document signed by HCG and the City.

Section 5. Further Assurances. The Parties agree to execute, acknowledge and deliver all instruments and assurances and to take all such further action as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby; provided, however, that any further act, instrument or assurance does not adversely affect the economic position, or create any potential liability on the part of the Party requested to furnish such further act, installment or assurance.

Section 6. Miscellaneous.

Section 6.1 Term of the Agreement. The term of this Agreement will commence on the Effective Date and continue until January 31, 2024, unless earlier terminated by written agreement between HCG and the City.

Section 6.2 Headings/Recitals. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

Section 6.3 Construction. The rule of strict construction does not apply to the matters set forth in this Agreement. This Agreement shall be given a reasonable construction to carry out the intention of the Parties hereto to confer a commercially usable right of enjoyment on each Party.

Section 6.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be in the district courts of Travis County, Texas.

Section 6.5 Notices. Any notices required, pursuant to the provisions of this Agreement, shall be in writing and shall be sent by personal delivery, certified mail or overnight courier to the following addresses until notice of change of address is given:

If to HCG:

CSHV HCG Retail, LLC
c/o Hill Country Galleria Management Office
Attn: Property Manager
12700 Hill Country Boulevard
Suite T-100
Bee Cave, TX 78738

with copies to:

Andrew P. Scott
Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, IL 60606

And

CSHV HCG Retail, LLC
c/o Invesco Advisers, Inc.
Attn: Asset Manager
2001 Ross Avenue
Suite 3400
Dallas, TX 75201

If to City:

City of Bee Cave
Attn: City Manager
4000 Galleria Parkway
Bee Cave, TX 78738

with a copy to:

Ryan S. Henry
Law Offices of Ryan Henry
1019 Central Parkway North
Suite 108
San Antonio, TX 78232

Notice given to the address of a Party or its attorney designated in this Agreement, or in a Notice given in accordance with this Agreement: (i) by personal delivery shall be deemed received the day of delivery; (ii) by certified mail shall be deemed received on the third business day following deposit with the U.S. Postal Service; and (iii) by overnight courier shall be deemed received on the business day following deposit with the courier service, provided the courier service receives a signed receipt from the addressee.

Section 6.6 Remedies. The parties shall have all rights and remedies at law and in equity to enforce the terms of this Agreement. Prior to a declaration of default, the non-defaulting Party shall give notice of the alleged default to the other Party. Such Party shall have 30 days to cure the alleged default (or such period as may reasonably be necessary). In the event the alleged default is not cured within the applicable cure period, the non-defaulting Party may exercise any and all rights granted pursuant to this Agreement.

Section 6.7 Severability. Invalidation by judgment or court order of any one or more of the covenants or restrictions contained herein shall in no way affect any other provisions which shall remain in full force and effect.

Section 6.8 Mutual Cooperation. It is understood and agreed that the successful consummation of this Agreement and the implementation of the Project is in the best interests of HCG and the City. Subject to the terms of this Agreement, HCG hereby evidences its intention to fully comply with all the City requirements and its willingness to discuss any matters of mutual interest that may arise, as well as its willingness to assist the City to the fullest commercially reasonable extent. The City does hereby evidence its willingness to, when reasonably requested, cooperate in the resolution of mutual problems, and its willingness to facilitate the development of the ice rink as contemplated by the provisions of this Agreement. The City and HCG shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and objectives of this Agreement.

Section 6.9 HCG Representation and Warranties.

(a) HCG is a limited liability company duly formed under the laws of Delaware and validly existing and in good standing under the laws of the State of Texas.

(b) The execution, delivery and performance by HCG of this Agreement are within HCG's limited liability company powers, have been duly authorized by all necessary limited liability company action, require no action by or in respect of, or filing with, any governmental body, agency or official except as required by law and do not contravene any provision of applicable law or regulation or of HCG's articles of organization or operating agreement.

(c) The individual executing this Agreement on behalf of HCG is authorized to bind HCG, execute this Agreement and deliver it on behalf of HCG.

(d) This Agreement constitutes a valid and binding agreement of HCG.

Section 6.10 City Representation and Warranties.

(a) City is a home rule municipality of the State of Texas.

(b) The execution, delivery and performance by the City of this Agreement are within the City's powers, have been duly authorized by the City Council of Bee Cave, Texas, require no action by or in respect of, or filing with, any governmental body, agency or official except as required by law and do not contravene any applicable laws or regulations.

(c) The individual executing this Agreement on behalf of the City is authorized to bind the City, execute this Agreement and deliver it on behalf of the City.

(d) This Agreement constitutes a valid and binding agreement of the City.

Section 7. Counterparts. This Agreement may be executed in multiple counterparts which, taken together, shall constitute a single instrument.

Section 8. Email Signatures. Scanned signature pages, delivered via electronic mail, shall be accepted as originals.

Section 9. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 10. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. HCG represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code and Chapter 2252 of the Texas Government Code.

Section 11. Texas Government Code Mandatory Provision. The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it: (i) does not boycott Israel; (ii) will not boycott Israel during the term of the contract; (iii) does not boycott energy companies; (iv) will not boycott energy companies during the term of the contract; (v) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (vi) will not discriminate during the term of the contract against a firearm entity or firearm trade association (Texas Government Code, Chapter 2271.002; 2274.002).

HCG hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as this term is defined in the Texas Government Code, Section 808.001, as amended. HCG hereby verifies that it does not boycott energy companies, and agrees that, during the term of this agreement, will not boycott energy companies as this term is defined in Texas Government Code, Section 809.001, as amended. HCG hereby verifies that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and agrees that, during the term of this agreement, will not discriminate against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Section 2274.001, as amended.

Further, HCG hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organizations.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, on behalf of the Parties, have affixed their signatures to this Agreement on the day and year written above.

HCG:

CSHV HCG RETAIL, LLC,
a Delaware limited liability company

By: Invesco Advisers, Inc.,
a Delaware corporation,
its investment adviser

By: _____
Name: _____
Title: _____

CITY:

CITY OF BEE CAVE, TEXAS,
A home rule municipality

By: _____
Name: _____
Title: _____

ATTEST:

_____
Kaylynn Holloway, City Secretary

STATE OF _____)
) SS
COUNTY OF _____)

I, the undersigned, a notary public in and for said County in the State aforesaid, do hereby certify that _____, as _____ of CSHV HCG Retail, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this _____ day of _____, 2023.

_____
Notary Public

Commission expires: _____

STATE OF _____)
) SS
COUNTY OF _____)

I, the undersigned, a notary public in and for said County in the State aforesaid, do hereby certify that that _____, as _____ of the City of Bee Cave, Texas, a home rule municipality, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this _____ day of _____, 2023.

_____
Notary Public

Commission expires: _____

Document comparison by Workshare Compare on Monday, August 28, 2023 11:25:44 AM

Input:	
Document 1 ID	netdocuments://4886-6531-1534/4
Description	HCG -- Bee Cave Ice Rink Agreement
Document 2 ID	netdocuments://4893-2278-1551/2
Description	HCG -- Bee Cave Ice Rink Agreement (2023)
Rendering set	Standard

Legend:	
Insertion	
Moved to	
Style change	
Format change	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	18
Deletions	17
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	35

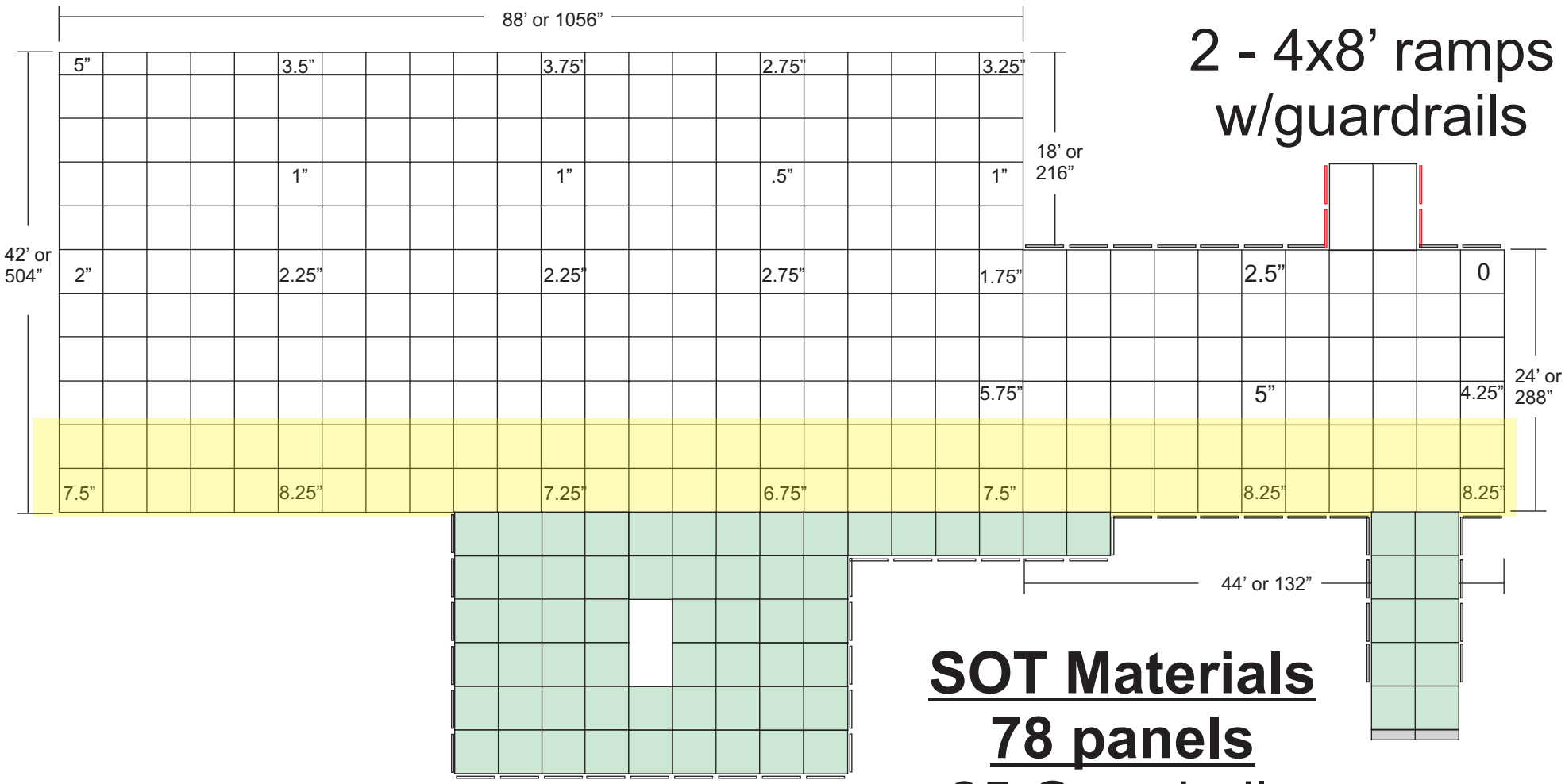
242 panels

286 - 4’x4’ & 22 - 4’x2’

(353 legs)

102 - 10” legs in
251 - 5” legs

2 - 4x8’ ramps
w/guardrails



SOT Materials

78 panels

25 Guardrails

(76 legs)

City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**13.A.**
Agenda Title:	**Consultation with Attorney regarding pending litigation styled Citizens for Preservation of The Brown Property v. City of Bee Cave.**
Council Action:	
Department:	**City Manager**
Staff Contact:	**Clint Garza, City Manager**

1. INTRODUCTION/PURPOSE

2. DESCRIPTION/JUSTIFICATION

a) Background

b) Issues and Analysis

3. FINANCIAL/BUDGET

Amount Requested	Fund/Account No.
Cert. Obligation	GO Funds
Other source	Grant title
Addtl tracking info	

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**13.B.**
Agenda Title:	**Deliberation regarding the potential acquisition of real property for public purposes**
Council Action:	
Department:	**City Manager**
Staff Contact:	**Clint Garza**

1. INTRODUCTION/PURPOSE

2. DESCRIPTION/JUSTIFICATION

a) Background

b) Issues and Analysis

3. FINANCIAL/BUDGET

Amount Requested	Fund/Account No.
Cert. Obligation	GO Funds
Other source	Grant title
Addtl tracking info	

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

City Council Meeting
10/24/2023
Agenda Item Transmittal

Agenda Item:	**13.C.**
Agenda Title:	**Consultation with attorney regarding legal issues associated with city's intellectual property rights, marketing campaigns, promotional product distribution and updates in state law.**
Council Action:	
Department:	**City Manager**
Staff Contact:	**Clint Garza, City Manager**

1. INTRODUCTION/PURPOSE

2. DESCRIPTION/JUSTIFICATION

a) Background

b) Issues and Analysis

3. FINANCIAL/BUDGET

Amount Requested	Fund/Account No.
Cert. Obligation	GO Funds
Other source	Grant title
Addtl tracking info	

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

City Council Meeting
10/24/2023
Agenda Item Transmittal