

**MEETING OF THE BOARD OF
DIRECTORS OF THE
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**

**AGENDA
DECEMBER 11, 2024, AT 4:30 p.m.
CVB AUDITORIUM – 2ND FLOOR
1717 E. Randol Mill Road
ARLINGTON, TX 76011**

Members of the public who wish to speak on a listed agenda item for action will be asked for their comments at the appropriate time.

- I. Call to Order
- II. Consideration of Minutes
 - A. November 13, 2024, Meeting
- III. Standing Reports
 - A. Real Estate Report
 - B. Industry Spotlight Report
- IV. Items for Action:
 - A. A resolution of the Board of Directors authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Construction Manager – at – Risk contract for pre-construction services for the E-Space North American headquarters and manufacturing facility at Arlington Municipal Airport with Moss & Associates, LLC of Fort Lauderdale, Florida, in an amount not to exceed \$57,996.
 - B. A resolution of the Board of Directors authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Modification of the Professional Service contract for the E-Space Architect with M. Arthur Gensler Jr. & Associates, Inc., of San Francisco, California, in an amount not to exceed \$4,035,250 for Phase II design development of the E-Space project.
 - C. A resolution of the Board of Directors authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Modification of the Professional Service Contract for the project manager with Hill Building Group, LLC, of Arlington, Tx, in an amount not to exceed \$360,000 for Phase II design development of the E-Space project.
 - D. A resolution of the Board of Directors authorizing the Executive Director of the Arlington Economic Development Corporation to execute a First Amendment to Performance Agreement with Eden Cooper LP relative to developing land on South Cooper Street in Arlington, Tx, into commercial properties.
- V. Executive Session

Discussion of matters permitted by the following sections of V.T.C.A, Government Code, Chapter 551:

- A. Section 551.087, Deliberation Regarding Economic Development Negotiations
 - 1. Offers of Incentives to Business Prospects

- B. Section 551.072, Deliberation Regarding Real Property
 - 1. Discussion regarding the possible purchase, exchange, lease, or value of real property for eligible projects of the Arlington Economic Development Corporation.

- VI. Executive Director's Report
 - A. Staffing Update
 - B. Office Construction Update
 - C. FY 24 Year End Financials
 - D. 2024 Annual Report & 2025 Marketing Strategy
 - E. Upcoming Presentations

- VII. Future Agenda Items

- VIII. Adjourn

**MEETING OF THE BOARD
OF DIRECTORS OF THE
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**

**MINUTES OF THE
ARLINGTON ECONOMIC DEVELOPMENT
CORPORATION
BOARD OF DIRECTORS**

November 13, 2024

The Board of Directors of the Arlington Economic Development Corporation of the City of Arlington, Texas, convened in Regular Session on November 13, 2024, at 4:00 p.m., in the 1st Floor Board Room of the Arlington Convention and Visitor's Bureau, 1717 E. Randol Mill Rd., with the meeting being open to the public and notice of said meeting, giving the date, place and subject thereof, having been posted as prescribed by V.T.C.A., Government Code, Chapter 551, with the following members present, to-wit:

Board Members:

Michael Jacobson	§	President
Mojoy Haddad	§	Vice President
John Whiteley	§	Treasurer
Gerald Alley	§	Board Member
Paul Corson	§	Board Member

Absent:

Jollyn Mwisongo	§	Secretary
Carmenza Moreno	§	Board Member

And

Marty Wieder	Executive Director
Gus Garcia	Economic Development Director
Jonathan Moss	Senior Attorney
Raja Saravanan	Business Intelligence and Marketing Analyst
Kay Brown-Patrick	Assistant Executive Director
Stephanie Dimas	Senior Public Finance Analyst
Marcus Young	Economic Development Specialist
Stephanie Dimas	Sr. Public Finance Analyst
Stephanie Hall	Operations and Events Administrator
Lyndsay Mitchell	Director of Office of Strategic Initiatives
Kevin McGlaun	Real Estate Consultant
Jack Hill	Project Manager, Hill Building Group
Estela Bush	Economic Development Coordinator
Keri Parker Berry	Director of Convention Event Services

I. Call to Order

President M. Jacobson called the meeting to order at 4:00 p.m.

II. Consideration of Minutes -October 15, 2024 Meeting

Vice President M. Haddad made a motion to approve the minutes of the October 15, 2024, Board meeting. Seconded by Board Member P. Corson. The motion carried with 5 ayes and 0 nays.

Approved

III. Standing Reports

A. Financials – Completion of construction and cost of maintenance and repairs were discussed.

B. Real Estate Report – Vacancy rates industry wide were discussed. Data requested regarding absorption and loss of tenants.

C. Industry Spotlight Report – State of Industrial and pros and cons of bringing data centers discussed. Vice President M. Haddad asks for more data be presented in the December meeting.

IV. Items for Action:

A. A resolution of the Board of Directors authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Third Amendment to the Master Agreement with E-space, Inc., and the City of Arlington, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

Lyndsay Mitchell, Director of Office of Strategic Initiatives, presented the resolution for consideration.

Vice President M. Haddad made a motion to approve the resolution. Seconded by Treasurer John Whiteley. The motion carried with 5 ayes and 0 nays.

AEDC RESOLUTION NO. 24-025

B. A resolution authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Construction Manager -at - Risk contract for the pre-construction services for the E-space, In, North American headquarters and manufacturing facility with Moss & Associates, LLC, of Fort Lauderdale, Florida, in an amount not to exceed \$57,996.

Lyndsay Mitchell, Director of Office of Strategic Initiatives, presented the resolution.

Board Member P. Corson made a motion to table the resolution. Seconded by Vice President M. Haddad. The motion carried with 5 ayes and 0 nays.

President M. Jacobson announced that the Arlington Economic Development Corporation Board of Directors was going into closed session at 4:22 p.m. on November 13, 2024, in accordance with the following sections of V.T.C.A. Government Codes, Chapter 551:

EXECUTIVE SESSION

- **Section 551.087, Deliberation Regarding Economic Development Negotiations**

- **Section 551.072, Deliberation Regarding Real Property**
 1. Discussion regarding the possible purchase, exchange, lease, or value of real property for eligible projects of the Arlington Economic Development Corporation.

President M. Jacobson announced it was 4:51 p.m. on November 13, 2024, and the closed meeting was ending. The Arlington Economic Development Corporation Board of Directors reconvened in open session at 5:07 p.m.

V. Executive Director's Reports

A. Staffing Update

Marty Wieder, Executive Director, presented the Staffing Update announcing the hiring of Estela Bush who will serve as Economic Development Coordinator. She starts on November 18th. Mr. Wieder has completed interviews for the two Project Manager positions. Mr. Wieder plans to hold forthcoming interviews for the remaining positions,

Director of Innovation and Entrepreneurship and Director of Targeted Attraction and State Affairs.

B. New Office Construction Update

Marty Wieder reported that the construction completion timeline has been shifted to early or mid-January due to delays in shipping. Glass for doors will not ship until approximately December 10th.

C. Explanation of Monthly & Year End Financials

Marty Wieder updates the board that this will be discussed in the December meeting.

D. FY25 Marketing Plan

Marty Wieder discussed future marketing plans for FY25. The EDC will work on a plan detailing sponsored events and efforts being made for print and internet ad content such as the Book of Lists and Dallas Business Journal. A strategic marketing plan will be brought forward for review in the coming weeks.

E. Upcoming Presentations

Kay Brown-Patrick will be paneling a board for the Economics of Entrepreneurship on November 20, 2024, at 11:30am at 8376 Davis Blvd., North Richland Hills, Tx. Marty Wieder, Kay Brown-Patrick and Gus Garcia will be presenting at the Fidelity Lunch Series on November 22, 2024, at 5956 Sherry Lane, Ste., 1700 Dallas, Tx. The Bisnow Hospitality event being held at Loew's Arlington Hotel and Convention Center on December 3, 2024, was also announced.

Marty Wieder discussed the regular AEDC Board of Directors meeting for December would need to be moved due to the tabled item. This item must be voted on approved by the AEDC board before going to City Council on December 17, 2024. After discussion the board tentatively decided to hold the AEDC Board of Directors meeting on December 11, 2024, in the auditorium of the Convention and Visitor's Bureau located at 1717 E. Randol Mill Rd. at 4:30 pm.

VI. Future Agenda Items

No discussion.

VII. Adjourn

There being no further business, the meeting was adjourned at 5:30 p.m.

I, President M. Jacobson, of the Arlington Economic Development Corporation Board of Directors, do hereby certify that the foregoing certified agenda, as required by V.T.C.A.,

Government Code, Chapter 551, is a true and correct copy of the record of the Executive Session Meeting, held on November 13, 2024.

City of Arlington Office Overview

December 2024 Report



ARLINGTON/MANSFIELD SUBMARKET

The Arlington/Mansfield Submarket is centered on distribution and manufacturing, making it ideal for warehouses and industrial parks, while also supporting a range of office facilities. Arlington boasts one of Texas's most educated labor forces, ranking second in the state for the percentage of adults with a bachelor's degree or higher due to its concentration of higher education institutions. The submarket has a vacancy rate of 11.0%, well below the Dallas-Fort Worth average of 18%. The primary office area is along I-30 near Highway 360, housing tenants such as D.R. Horton and Lockheed Martin, alongside healthcare businesses, call centers, and municipal organizations.

12 Mo Deliveries in SF

10.2K

12 Mo Net Absorption in SF

(108K)

Vacancy Rate

11.0%

Market Asking Rent Growth

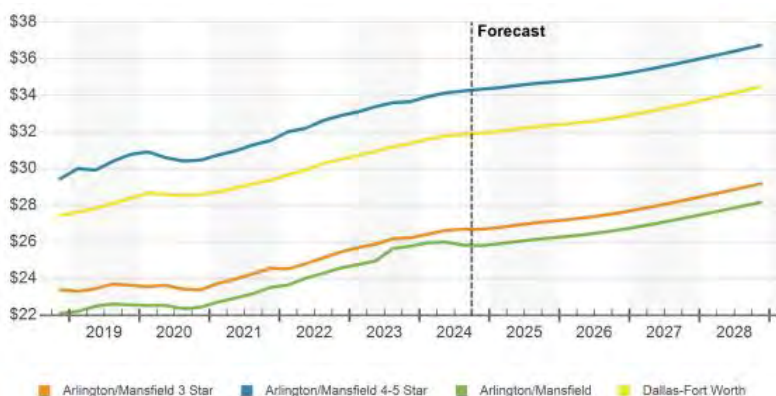
0.3%

KEY INDICATORS

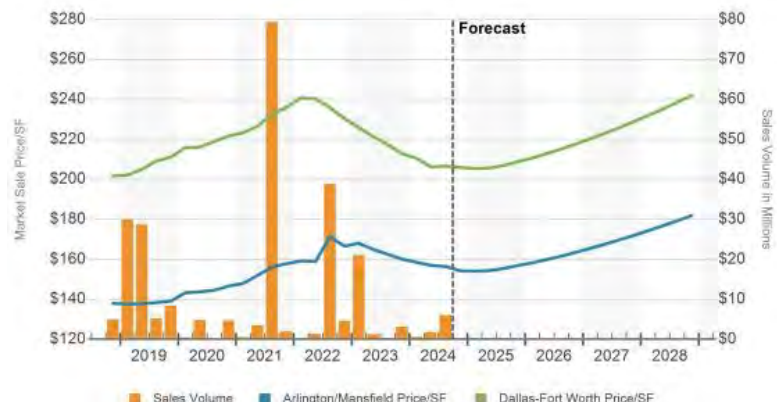
Current Quarter	RBA	Vacancy Rate	Market Asking Rent	Availability Rate	Net Absorption SF	Deliveries SF	Under Construction
4 & 5 Star	1,752,168	22.3%	\$34.30	27.3%	(7,004)	0	0
3 Star	8,175,440	10.7%	\$26.68	12.8%	38,641	0	33,190
1 & 2 Star	5,161,235	7.8%	\$21.51	8.6%	(17,594)	0	0
Submarket	15,088,843	11.0%	\$25.80	13.1%	14,043	0	33,190

Annual Trends	12 Month	Historical Average	Forecast Average	Peak	When	Trough	When
Vacancy	0.8% (YOY)	12.3%	12.4%	21.3%	1989 Q1	7.4%	1998 Q2
Net Absorption SF	(108K)	215,335	(64,065)	1,139,605	1985 Q1	(258,889)	2010 Q1
Deliveries SF	10.2K	248,618	11,774	1,196,442	1985 Q1	3,236	1991 Q3
Market Asking Rent Growth	0.3%	1.8%	1.9%	17.5%	1997 Q1	-19.5%	1988 Q2
Sales Volume	\$10.3M	\$22.7M	N/A	\$89.5M	2014 Q1	\$0	1995 Q3

MARKET ASKING RENT PER SF



SALES VOLUME & PRICE PER SF



City of Arlington Office Overview

December 2024 Report



ARLINGTON/MANSFIELD SUBMARKET

PROPERTIES UNDER CONSTRUCTION

All-Time Annual Avg. Square Feet	Delivered Square Feet Past 8 Qtrs	Delivered Square Feet Next 8 Qtrs	Proposed Square Feet Next 8 Qtrs
245,916	29,784	33,190	12,000

PAST 8 QUARTERS DELIVERIES, UNDER CONSTRUCTION, & PROPOSED



PROPERTIES SOLD (PAST 12 MOS)

Sale Comparables	Avg. Cap Rate	Avg. Price/SF	Avg. Vacancy At Sale
53	7.2%	\$176	24.3%

SALE COMPARABLE LOCATIONS





AEDC Eligible Industries Snapshot

FY2024Q1 Eligible NAICS Codes Industry Summary for Arlington, Texas

December 11, 2024

INDUSTRY		CURRENT SNAPSHOT			5-YEAR HISTORY		1-YEAR FORECAST			
		EMPLOYEES	AVG. ANN. WAGES	LQ*	EMP. CHANGE	ANN. % CHANGE	TOTAL DEMAND	EXITS	EMP. GROWTH	ANN. % GROWTH
CROPS, ANIMAL PRODUCTION, FORESTRY	NAICS 111-115	69	\$49,916	0.06	-19	-3.2%	9	3	0	0.8%
MINING, OIL, & GAS EXTRACTION	NAICS 211-213	72	\$128,787	0.19	2	-1.1%	6	2	0	1.1%
UTILITIES	NAICS 221	2,012	\$108,889	2.12	439	-1.9%	194	74	14	0.2%
MANUFACTURING	NAICS 331-339	16,000	\$71,575	1.10	2,437	6.6%	1,764	624	134	0.7%
WHOLESALE TRADE, TRANSPORTATION, & WAREHOUSING	NAICS 42, 48-49	14,249	\$77,572	0.86	2,254	1.4%	1,691	621	171	0.9%
INFORMATION	NAICS 51	1,238	\$79,040	0.38	-297	-5.5%	122	40	16	1.2%
SECURITIES, COMMODITY CONTRACTS, & FINANCIAL INVESTMENT ACTIVITIES	NAICS 523	637	\$110,413	0.75	252	10.4%	59	20	10	1.7%
INSURANCE CARRIERS & RELATED ACTIVITIES	NAICS 524	2,732	\$88,073	0.66	162	-8.1%	276	103	40	1.4%
FUNDS, TRUSTS, AND FINANCIAL VEHICLES	NAICS 525	23	\$63,536	1.08	5	6.4%	2	1	0	2.2%
ARCHITECTURAL & ENGINEERING SERVICES	NAICS 5413	1,771	\$82,229	1.07	313	7.3%	160	57	22	1.2%
COMPUTER SYSTEM DESIGN SERVICES	NAICS 5415	1,535	\$125,041	0.54	596	10.3%	146	40	38	2.5%
MANAGEMENT, SCIENTIFIC, & TECHNICAL CONSULTING SERVICES	NAICS 5416	1,895	\$103,841	1.08	757	10.0%	195	64	33	1.8%
SCIENTIFIC RESEARCH AND DEVELOPMENT	NAICS 5417	446	\$85,012	0.94	267	34.2%	42	13	6	1.4%
OTHER PROFESSIONAL, SCIENTIFIC, & TECHNICAL SERVICES	NAICS 5419	1,250	\$63,208	1.07	16	-1.1%	152	51	24	1.6%
MANAGEMENT OF COMPANIES & ENTERPRISES	NAICS 551	1,121	\$92,787	0.40	69	1.3%	116	39	20	1.8%
TELEPHONE CALL CENTERS	NAICS 56142	560	\$91,987	1.27	-239	-6.9%	69	27	5	0.9%

*LQ = Location Quotient compares the concentration of the employment of an industry to the nation. An LQ of 1.00 indicates Arlington has the same concentration of an industry as the U.S. , while a LQ of 2.00 means that Arlington has twice the expected employment compared to the nation.



Staff Report

Arlington Economic Development Corporation –Construction Manager-at-Risk (CMAR) Contract for Pre-Construction Services for E-Space Manufacturing Facility, Project 25-0015	
AEDC Meeting Date: 12-11-2024	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Construction Manager-at-Risk contract for pre-construction services for the E-Space North American headquarters and manufacturing facility at Arlington Municipal Airport with Moss & Associates, LLC, of Fort Lauderdale, Florida, in an amount not to exceed \$57,996.

PRIOR BOARD OR COUNCIL ACTION

On April 16, 2024, following a public hearing, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-005 authorizing the execution of a Master Agreement with espace Inc. and the City of Arlington, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On April 23, 2024, City Council approved Resolution No. 24-108 authorizing the execution of a Master Agreement with espace Inc. and the Arlington Economic Development Corporation, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On June 5, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-007 authorizing the execution of a professional services contract for the E-Space project manager with Hill Building Group, LLC, of Arlington, Texas, in an amount not to exceed \$226,800.

On June 11, 2024, City Council approved Resolution No. 24-143 accepting and approving the Arlington Economic Development Corporation Resolution No. 24-007 authorizing the negotiation and execution of a professional services contract for the E-Space project manager with Hill Building Group, LLC, of Arlington, Texas, in an amount not to exceed \$226,800.

On July 30, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-012 authorizing the use of the Construction Manager-at-Risk procurement method of construction for E-Space manufacturing facility.

On July 30, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-011 authorizing the execution of a professional services contract for the E-Space architect and engineering team with M. Arthur Gensler Jr. & Associates, Inc., dba Gensler, of San Francisco, California, in an amount not to exceed \$691,170.

On August 6, 2024, City Council approved Resolution No. 24-202 accepting and approving the Arlington Economic Development Corporation Resolution No. No. 24-011 authorizing the execution of a professional services contract for the E-Space architect and engineering team with M. Arthur Gensler Jr. & Associates, Inc., of San Francisco, California, in an amount not to exceed \$691,170.

ANALYSIS

In a public-private partnership with E-Space, the City of Arlington (City) and the Arlington Economic Development Corporation (AEDC) are developing a manufacturing facility and office space to house E-Space’s North American headquarters at Arlington Municipal Airport.

This Construction Manager-at-Risk (“CMAR”) contract is for pre-construction services for the E-Space North American headquarters and manufacturing facility. The construction manager-at-risk will work with the project management team (Hill Building Group, LLC) and the architecture team (M. Arthur Gensler Jr. & Associates – “Gensler”) to determine best methods for carrying out the work and to provide value engineering and constructability reviews of the design documents prior to providing a guaranteed maximum price, thus reducing the likelihood of design errors and costly change orders during construction. The CMAR will also be responsible for providing construction services for the planned E-Space North American headquarters and manufacturing facility, if approved by the AEDC.

The facilities covered under the proposed design contract are on the west side of the Airport and include an approximately 250,000 square foot manufacturing and office facility, an approximately 40,000 square foot hangar, an airport access road, and an aircraft parking apron. Once design is complete and cost estimates have been developed, the AEDC and E-Space will determine whether to move into the construction phase.

An evaluation team comprised of Office of Strategic Initiatives, AEDC, Hill Building Group, LLC, and Office of Business Diversity personnel evaluated the submittals based on weighted criteria which included team organization, service execution, qualifications of staff, response time, and project experience. The evaluation team evaluated the following firms.

Vendor	Classification
Moss & Associates, LLC Fort Lauderdale, Florida	None
Structure Tone Southwest, LLC Dallas, Texas	None
Swinerton Builders Dallas, Texas	None
JE Dunn Construction Dallas, Texas	None
Hensel Phelps Construction Co. Austin, Texas	None
GMA Construction Group of Texas (Griggs Mitchell & Alma of IL LLC)	AI
Guardian Engineering Enterprises, LLC Cypress, Texas	BL
Evans General Contractors Dallas, Texas	None

The Beck Group Dallas, Texas	None
---------------------------------	------

After the initial round of scoring, the City invited the top five vendors (Moss & Associates, LLC, Hensel Phelps Construction Co., JE Dunn Construction, Swinerton Builders, and Structure Tone Southwest, LLC) for interviews and presentations to the evaluation committee. Upon interview completion and scoring finalization, the evaluation committee determined that Moss & Associates, LLC, had the best overall quality, proposed schedule, project experience, and qualifications.

RFQ closed: September 12, 2024 at 2:00 p.m.
 Vendors notified through IonWave: 2333
 MWBE Vendors notified through IonWave: 694
 Vendors responding to RFP request: 9
 MWBE vendors responding to RFP request: 2
 MWBE: No
 Procurement Method: Request for Qualifications

Name of Prime Vendor (1)	Moss & Associates, LLC
Total Contract Value	\$57,996
Prime Vendor's MWBE Status	None
Percentage Amount of Prime Vendor's Self-Performance	70%
Name of Subcontractor (1)	C1S Group, Inc.
Subcontractors MWBE Status & Trade	WO / Preconstruction Services
Percentage Amount of Subcontractor's Performance	30%
Total Anticipated MWBE Participation	30%

Moss & Associates, LLC, anticipates utilizing 30% of the total contract value for MWBE participation.

FINANCIAL IMPACT

To allow for flexibility, this pre-construction services contract is proposed with a twelve-month term and a not-to-exceed amount of \$57,996. However, the pre-construction phase of the project is expected to last only through March of 2025. Therefore, the estimated total expense for Moss & Associates, LLC's services for this phase is only \$15,332. Once design of the project is complete and final cost estimates have been developed, the AEDC and E-Space will determine whether to move into the construction phase. At that time, the AEDC will request a proposal from Moss & Associates, LLC for construction manager-at-risk services for the construction phase of the project.

The projected financial impact for this contract is as follows:

<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
Not to exceed \$57,996	\$0	\$0

Funding is available in the AEDC Professional Service Account No. CC973005-SC0574.

ADDITIONAL INFORMATION

Attached: Resolution and Agreement
 Under separate cover: None
 Available in the Purchasing Division: Contract File

Form 1295:
MWBE:

Requested
None

STAFF CONTACT(S)

Lyndsay Mitchell, AICP, CPM
Director of Strategic Initiatives
817-459-6653
Lyndsay.Mitchell@arlingtontx.gov

Marty Wieder, AICP
AEDC Executive Director
817-459-6432
Marty.Wieder@arlingtontx.gov

Vanessa Canela
Sr. Purchasing Agent
817-459-6321
Vanessa.Canela@arlingtontx.gov

April Nixon
Director of Finance
817-456-6345
April.Nixon@arlingtontx.gov

ARLINGTON ECONOMIC DEVELOPMENT CORPORATION
Resolution No. _____

A resolution of the Board of Directors authorizing the Executive Director to execute a Construction Manager-at-Risk Contract for pre-construction services for the E-Space North America Headquarters and Manufacturing Facility at Arlington Municipal Airport with Moss & Associates, LLC of Fort Lauderdale, Florida, in an amount not to exceed \$57,996

WHEREAS, the Arlington Economic Development Corporation (“AEDC”) is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, espace Inc., AEDC, and the City of Arlington (“City”) entered into a certain Master Agreement dated May 1, 2024, pertaining to the establishment of a North America headquarters and manufacturing facility at the Arlington Municipal Airport; and

WHEREAS, Chapter 2269 of the Texas Government Code authorizes governmental entities to use certain alternative project delivery methods, including Construction Manager-at-Risk (“CMAR”), when entering into a contract for the construction of a facility; and

WHEREAS, on July 30, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-012 authorizing the use of the Construction Manager-at-Risk procurement method of construction for E-Space manufacturing facility at Arlington Municipal Airport.

WHEREAS, Moss & Associates, LLC (the “Contractor”) is a construction management company qualified to provide such services and the AEDC and the Contractor desire to enter into a CMAR contract for pre-construction services for the E-space North American headquarters and manufacturing facility in an amount not to exceed \$57,996; NOW THEREFORE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON ECONOMIC DEVELOPMENT CORPORATION:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this body and as part of its official record.

II.

That the Board of Directors of the Arlington Economic Development Corporation authorizes the Executive Director to execute a Construction Manager-at-Risk Contract for pre-construction services for the E-Space North America headquarters and manufacturing facility at Arlington Municipal Airport with Moss & Associates, LLC of Fort Lauderdale, Florida in an amount not to exceed \$57,996.

III.

A substantial copy of the Construction Manager-at-Risk Contract is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the ____ day of _____, 2024, by a vote of ____ ayes and ____ nays at a regular meeting of the Board of Directors of the Arlington Economic Development Corporation.

Michael Jacobson, President

ATTEST:

Alex Busken, Assistant Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, Counsel for the
Arlington Economic Development
Corporation

BY Beth Miller Atkinson

Construction Manager-at-Risk Contract



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

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

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

Arlington Economic Development Corporation
101 W. Abram Street
Arlington, Texas 76004

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

Moss & Associates, LLC
6050 TPC Drive, Suite 650
McKinney, Texas 75070

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

E-Space Facilities
At the Arlington Municipal Airport

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

Gensler Architects
5005 Greenville Ave.
Dallas, Texas 75206

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–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.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

- EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
- EXHIBIT B INSURANCE AND BONDS

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 project program will be developed during the pre-construction services phase of the project.

§ 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 project will consist of a customized 250,000 square foot manufacturing facility; an approximately 40,000 square foot hangar; an access road; and aircraft apron and employee parking at the Arlington Municipal Airport.

§ 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.)

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

- .1 Design phase milestone dates, if any:

- .2 Construction commencement date:
Second quarter of 2025
- .3 Substantial Completion date or dates:
Fourth quarter of 2026
- .4 Other milestone dates:

§ 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.)

§ 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.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

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

Jack Hill, Jr.
Jack Hill, Sr.
Hill Building Group
1901 Stadium Oaks Ct.
Arlington, TX 76011
Phone: 817-881-5072
Email: jack.hill@hillbuildinggroup.com
jack@hillsportsandentertainment.com

§ 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:

(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:

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

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

Rick Ferrara
Gensler Architects
5005 Greenville Avenue
Dallas, TX 75206

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

Jim Cuddihee
Moss & Associates, LLC
6050 TPC Drive, Suite 650
McKinney, TX 75070
Phone: 469-625-9032
Email: jcuddihee@mosscm.com

§ 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.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

§ 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.

§ 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, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. 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, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.1.1 In the event of any conflict among the Contract Documents, the documents shall be construed according to the following priorities:

Highest Priority: Change Orders and Construction Change Directives

Second Priority: Addenda with later date having the greater priority (including GMP amendments, if any)

Third Priority: Agreement, as modified by the parties

Fourth Priority: General Conditions, as modified by the parties

Fifth Priority: Specifications and Drawings, with detailed drawings taking precedence over large scale

Sixth Priority: Other Contract Documents enumerated in Section 15.2 of this A133 Agreement

§ 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 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 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, each in terms of the other.

§ 3.1.3 Consultation

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

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; 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 Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using 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.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule in accordance with Section 3.10.1 of the A201-2017 General Conditions (the "Construction Schedule" for Owner and Architect's review and the Owner's acceptance. The Owner shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall reasonably coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' and separate contractors' services, and the Owner's responsibilities – all as made known to Construction Manager; and identify items that affect the Project's timely completion as made known to Construction Manager. 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 in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the 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 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.

§ 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 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.

§ 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 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.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 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 Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials 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.

§ 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. **Compliance shall be as a Contractor and not as a design professional.**

§ 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

Init.

(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.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the 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 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.

§ 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 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .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; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 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 that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the 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. 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 the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 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. The Construction Manager shall notify the 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 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.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. 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.

§ 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. 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 Owner, the Construction Manager shall submit written progress reports to the 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 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.

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.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. 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 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 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 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative 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.)

Refer to Exhibit "A", CMAR Pre-Construction Services Proposal.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Refer to Exhibit "A", CMAR Pre-Construction Services Proposal.

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be 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, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 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.

§ 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.)

Interest on any late payment will be paid in accordance with the Texas Prompt Payment Act.

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.)

Refer to Exhibit "A", Guaranteed Maximum Price Amendment.

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

Refer to Exhibit "A", Guaranteed Maximum Price Amendment.

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

Refer to Exhibit "A", Guaranteed Maximum Price Amendment.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed **Eight** percent (**8 %**) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The Owner may retain the sum of Five Hundred Dollars (\$500.00) for each calendar day after the agreed Date of Substantial Completion that the Work remains not substantially complete, which sum is agreed upon as the

proper measure of liquidated damages which the Owner will sustain per diem by the failure of the Undersigned to complete the work at the time stipulated in the Contract. This sum is not to be construed in any sense a penalty.

§ 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.)

Refer to Exhibit "A", Guaranteed Maximum Price Amendment.

§ 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. The Construction Manager may be entitled to an equitable adjustment in the Contract Time 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 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 written 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.

§ 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.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

Refer to Exhibit "A", CMAR Staff Rate Exhibit.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, 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.

§ 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.

§ 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 or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost 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 subject to the Owner's prior approval. 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 services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions 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.

§ 7.7 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.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 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 in writing, 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 in writing, 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.

§ 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.

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.

§ 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.

§ 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.

ARTICLE 10 ACCOUNTING RECORDS

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 Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Once agreed upon at the time of GMP Amendment and except as required under the Texas Public Information Act or other applicable law, fixed rates and lump sum amounts are not subject to auditing except in application of those fixed rates and lump sums (i.e. not the composition of the same).

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.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the **25th** day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the **25th** 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.

§ 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 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 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;
- .2 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 completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 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 included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .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 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 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 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.)

Five (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.)

Pre-Construction Services.

§ 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.)

Upon request from Contractor and approval from 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 any additional amounts in accordance with Article 9 of AIA Document A201-2017.

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 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 auditors 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

Init.

- .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 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the Owner receives properly completed Close-Out documents including but not limited to:

Punch List

Certificate of Substantial Completion, AIA Document G704

Final Change Order, AIA Document G701

Certificate of Occupancy

Final Application and Certification for Payment, AIA Document G702, G703

Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706

Contractor's Affidavit of Release of Liens, AIA Document G706A

Consent of Surety Company to Final Payment, AIA Document G707

Contractor's Affidavit of Target Arlington Compliance

Lien Releases: Subcontractors/Suppliers

Record Drawings

Maintenance Bonds

Operation/Maintenance Instructions and Parts List

Submittal Log and Submittal Data

HVAC Test/Adjust/Balance Report with Statement of Consultant review/Acceptance

Subcontractor List

Warranty Letters

Asbestos-Containing Materials Affidavit

TDLR/TAS Accessibility – Final Inspection and Letter

§ 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.

§ 11.3 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.)

Interest on any late payment will be paid in accordance with the Texas Prompt Payment Act.

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.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: *(Specify)* **MEDIATION**

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 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 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 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 a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, 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.

§ 13.1.6.1 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'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;
- .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 a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, 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.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

Owner will compensate Construction Manager for work performed prior to receipt of the termination notice at the rates included in this Contract.

§ 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 not less than **One Million Dollars (\$ 1,000,000)** for each occurrence and **Two Million Dollars (\$ 2,000,000)** 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 not less than **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 and Employers Liability with policy limits not less than **One Million Dollars (\$ 1,000,000)** each accident, **One Million Dollars (\$ 1,000,000)** each employee, and **One Million Dollars (\$ 1,000,000)** policy limit.

§ 14.3.1.5 Professional Liability – **Not Required.**

§ 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

§ 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 policies 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, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in 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, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere 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.)

§ 14.5 Other provisions:

Pursuant to Chapter 2270 of the Texas Government Code, the Construction Manager verifies by signing this Agreement that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

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, Exhibit B, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit C, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .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
AIA Document A201-2017			

.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.)

- a. Form 1295.
- b. CMAR Pre-Construction Services Proposal
- c. AIA Document A133 Exhibit "A" Guaranteed Maximum Price Amendment (To be added with the GMP)
- d. AIA Document A133 Exhibit "B" Insurance and Bonds (Bonds to be added with GMP)
- e. CMAR GMP Proposal, Refer to Exhibit "C"
- f. The Specifications, Refer to Exhibit "D" (To be added with the GMP)
- g. The Drawings, Refer to Exhibit "E" (To be added with the GMP)
- h. The Addenda, Refer to Exhibit "F" (To be added with the GMP)
- i. And the following documents listed below
 - 1) Section 00 2020 Performance Bond (To be added with the GMP)
 - 2) Section 00 2030 Payment Bond (To be added with the GMP)
 - 3) Section 00 2040 Maintenance Bond (To be added with the GMP)
 - 4) Section 00 3010 Contractor's Status Information Form
 - 5) Section 00 3020 Affidavit Against Prohibited Acts
 - 6) Section 00 3030 Contractor Residency Statement
 - 7) Section 00 3040 Wage Rate Affidavit and Prevailing Wage Rates
 - 8) Verification Against Boycotting Energy Companies
 - 9) Verification Regarding the Prohibition on Discriminating Against Firearm and Ammunition Industries

Init.

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)

Init.

/



PROPOSAL FOR PRECONSTRUCTION SERVICES

Attachment A

This Preconstruction Agreement (the "Agreement") is made to be effective as of the 6th day of November 2024 by and between City of Arlington ("Owner") and Moss & Associates, LLC, ("Contractor").

The Work. The work and services to be provided by Contractor to Owner pursuant to this Agreement are set forth on the attached Exhibit "A" (the "Work"). No change to the Work shall be performed or provided unless it is expressly authorized by Owner and agreed to by Contractor.

Time Period and Termination. Time period for preconstruction services shall be 12 months. This Agreement may be extended by an amendment signed by both parties. This Agreement automatically shall terminate upon execution of a construction contract ("Construction Contract") or five (5) business days written notice from Owner or Contractor to the other party with intent to terminate this Agreement. Owner shall pay Contractor all compensation and expenses due Contractor under this Agreement through the date of termination. Thereafter, neither party shall have any continuing obligations under this Agreement.

Contractor's Compensation. As consideration for the Work to be provided by Contractor pursuant to this Agreement, Owner shall pay Contractor a monthly stipend of \$3,833 per month. Contemporaneously, Contractor shall track actual preconstruction expenses. Upon ascension to the Construction Contract, total cost of preconstruction costs shall be reconciled with the Contractor's first progress payment billing. In addition to Contractor's monthly stipend, Contractor shall also be entitled to reimbursement prior to Construction Contract for:

- a. Fees paid by the Contractor in retaining and coordinating the professional services of outside consultants, surveyors, special contractors, and testing laboratories.
- b. Expenses of transportation and living expenses in connection with out-of-town travel.
- c. Fees paid by the Contractor for securing approvals, permits, and special permits.
- d. Actual cost of out-of-town travel, travel incidentals, reimbursables and miscellaneous direct project-related expenses.

Invoices. Contractor shall invoice Owner monthly for Preconstruction Services stipend and any additional reimbursable fees with supporting documentation as Owner may reasonably require. Owner shall pay Contractor all amounts due Contractor within thirty (30) days after Owner's receipt of Contractor's monthly invoice.

Miscellaneous Provisions.

The Contractor and Owner waive claims against each other for all consequential damages arising out of or relating to this Contract including, but not limited to, damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation and 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. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination hereof.

Each party signing this Agreement represents it has authority to enter into this Agreement and bind itself to the terms herein.

EXHIBIT "A"

IN WITNESS WHEREOF, the parties hereto executed this Agreement the day and year first above written.

OWNER: City of Arlington

Moss & Associates, LLC

Signature



Signature

Printed Name



Printed Name

Title



Title

Date



Date

EXHIBIT "A"

Exhibit A

Pre-Construction Services

Contractor's Services shall consist of, but not limited to, budgeting, estimating, constructability analysis, scheduling, value engineering, and the application of Contractor's design and construction expertise to Project-related problems. These services have an end date of November 5, 2025, or execution of construction contract.

Specifically, Contractor's Services may include the following:

1. Assist the Project in developing and facilitating a system of communication, control, and coordination between and among the members of the Project Team.
2. Attend meetings and work sessions with Owner and/or members of the Project Team (collectively and/or individually) during the Term of this Agreement.
3. Monitor the Preconstruction Project Schedule and maintain the same with regular updates which identify and accommodate any potential deviation, delay or other impact on the progress of the Project that may result from the performance or failure in the performance of any member of the Project Team, the performance or failure in the performance of Owner, and/or changes to the requirements of the Project.
4. Prepare estimates of the Cost of the Work described in the current design documents, including the assumptions upon which such estimates are based. These estimates shall be prepared as often as is reasonably requested by and in a form acceptable to Owner during the term of the Contract. Each estimate shall reflect the full anticipated Scope of Work for the Project (including building, parking facilities, site amenities and sitework) as may be described in any drawing, specification, proposal, meeting minutes, correspondence and other document made available to Contractor on the date such estimates are due. Each estimate will include line-item detailing of all major building components and shall be based on quantity surveys of the then-current construction documents and/or other materials prepared during the term of the Contract. During the term of the Contract, Owner may develop various alternative building schemes, site schemes, construction assemblies, interior layouts and/or other designs, each of which Owner may request that Contractor prepare estimate the Cost of the Work associated therewith. Contractor acknowledges the changing nature of the design of the Project and agrees to perform, as Contractor's Services, all cost estimating services reasonably requested by Owner.
5. Based on Contractor's experience and expertise in design and construction, provide recommendations and consultation regarding means, methods, sequences, and techniques for as to how to construction of the Project, considering the Owner's operational needs and the Preconstruction Schedule.
6. Provide recommendations and consultation regarding value engineering and life cycle cost estimating for alternative systems and equipment and endeavor to achieve best possible value for the Owner.
7. Review and analyze the drawings and specifications as they are being prepared by the Project Team for any portion of the Project and recommend alternative solutions if, based on Contractor's best professional judgment, such alternatives may improve the value, quality time for delivery, constructability

EXHIBIT "A"

and/or performance of the completed Project; provided however, Contractor shall not assume responsibilities which are delegated to members of the Project Team.

8. Assist the Owner and Project Team, as necessary, communicate with and respond to issues raised by representatives of the governing authorities with jurisdiction over the Project Site including, without limitation, code and permit analysts, inspectors, and other officials.

9. Review estimates of the Cost of the Work for any portion of the Project which are not prepared by Contractor and advise and consult with Owner regarding such review. Contractor shall notify Owner, in writing, in the event such estimate exceeds Owner's budget. Contractor shall further provide recommendations for reconciling the any differences between the estimated Cost of the Work and the Owner's budget as they occur.

10. Provide recommendations and consultation regarding the division of the Work as set forth in the drawings and specifications in a manner that facilitates the bidding and awarding of subcontracts and supplier contracts for all portions of the Project.

11. Review all Contract Documents prepared by the Project Team and assist the Project Team to (a) identify and eliminate areas of conflict, redundancy and overlap in the allocation of subcontractor responsibility for performance of the Work; (b) identify and describe all portions of the Project in the Construction Documents with detail sufficient to enable Owner to obtain (i) competitive estimates of the Cost of the Work, (ii) required building permits in a timely manner, and (iii) timely use of the Project; and (c) sequence and prepare Construction Documents in a manner that enables Owner to estimate, bid, permit and construct the Project in such phase or phases as the Owner may determine.

12. Receive and assist in submitting Construction Documents to the appropriate governing authority, monitor and expedite the approval processes, and obtain and deliver to Owner all building permits on a timely basis, prior to commencement of construction of the Project.

13. Prepare a list of long lead time items that may need to be procured prior to commencement of the Project. The list shall include expected delivery date(s) and the probably impact such date(s) may have on the progress of the Project. Contractor shall ensure all items identified as long lead time items shall be ordered, paid for, and delivered on or before the expected date of delivery.

14. Review all documents and information provided by Owner, and if Contractor requires additional information to properly complete its services, notify Owner promptly in writing. Further, Contractor shall promptly notify Owner in writing if Contractor, based on Contractor's best professional judgment, determines any member of the Project Team requires additional information to properly complete its services.

15. As often as Contractor may determine, based on Contractor's best professional judgment, Contractor shall visit proposed manufacturing, fabrication, and testing facilities to investigate production capabilities, quality of work and ability to deliver critical products to the Project on time.

16. Review list of subcontractors, suppliers and vendors and advise Owner accordingly.

17. Stimulate the interest of qualified subcontractors and vendors to prepare bids for the Project.

EXHIBIT "A"

18. Conduct all subcontractor pre-bid conference(s) as the Project may require.
19. Manage the issuance of drawings, specifications, and addenda for bidding by the Owner's design professionals.
20. Receive bids on behalf of Owner and provide recommendations accordingly for early release subcontractors.

EXHIBIT "A"

Exhibit B

Precon Staff and Hours Matrix

**City of Arlington
E-Space
Preconstruction Agreement - Exhibit B 'Staff Costs'
11/6/2024**

Description	Unit	Unit Cost
Operations Staff		
Project Executive	hrs	\$170.00
Sr. Project Manager	hrs	\$125.00
Preconstruction Staff		
Chief Preconstruction Manager	hrs	\$150.00
Sr. Precon Mgr	hrs	\$90.00
Support Staff		
C1S	hrs	\$260.00
Cost of Services Subtotal		

ATTEST:

ALEX BUSKEN
City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY _____

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

**E-Space Facilities
At the Arlington Municipal Airport**

THE OWNER:

(Name, legal status and address)

**Arlington Economic Development Corporation
101 W. Abram Street
Arlington, Texas 76004-3231**

THE ARCHITECT:

(Name, legal status and address)

**Gensler Architects
5005 Greenville Avenue
Dallas, Texas 75206**

TABLE OF ARTICLES

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

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,
9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 16:19:19 ET on 12/05/2024 under Order No.4104245307 which expires on 12/08/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1365397828)

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of
7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of
15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4
Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5

Commencement of the Work, Definition of
8.1.2

Communications

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND
9

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts
5.4, 14.2.2.2

Continuing Contract Performance
15.1.4

Contract, Definition of
1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of
1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors
and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7,
9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2,
7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3,
11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the
Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,
9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,
7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, 3.17

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3,
15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.4

Costs

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2,
12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate
Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,
11.3, 14.2.4, 15.1.7

Damages for Delay

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,
14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance,
Rejection and Correction of

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,
9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Digital Data Use and Transmission

1.7

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2

Emergencies

10.4, 14.1.1.2, 15.1.5

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, 15.2.5

Failure of Payment
9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, 9.10, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1
Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, 10.3
Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner
2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4

Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of
1.1.7

Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, 11

Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1
Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS

11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Insured loss, Adjustment and Settlement of
11.5
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest
13.5

Interpretation
1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12
Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes
8.3.1

Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4

Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1

Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, 10.3

Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1,
15.4.1.1

Minor Changes in the Work
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of

2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

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

1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, 9.9

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

Payments, Progress

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

Permits, Fees, Notices and Compliance with Laws

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 16:19:19 ET on 12/05/2024 under Order No.4104245307 which expires on 12/08/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1365397828)

Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, 11.2
Proposal Requirements
1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Rejection of Work
4.2.6, 12.2.1
Releases and Waivers of Liens
9.3.1, 9.10.2
Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field
Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and
Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples
by Contractor
3.12
Rights and Remedies
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
12.2.4, 13.3, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, 3.12, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
15.1.2, 15.4.1.1
Stopping the Work
2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,
9.9.1, 9.10.2, 9.10.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, 11.3
Substances, Hazardous
10.3
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,
15.1.2
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
2.3.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2

Subsurface Conditions
3.7.4

Successors and Assigns
13.2

Superintendent
3.9, 10.2.6

Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of
9.8.5, 9.10.2, 9.10.3

Surveys
1.1.7, 2.3.4

Suspension by the Owner for Convenience
14.3

Suspension of the Work
3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract
5.4.1.1, 14

Taxes
3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor
14.1, 15.1.7

Termination by the Owner for Cause
5.4.1.1, 14.2, 15.1.7

Termination by the Owner for Convenience
14.4

Termination of the Architect
2.3.3

Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, 15.1.7

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.3

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,

15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,

13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 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.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

§ 1.3 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 Where any portion of the Contract Documents is contradicted by another, the more specific shall prevail. Upon receiving a written request, the Architect shall issue a written clarification for the matter in question. Where any discrepancy or conflict may occur between the General Conditions and the Supplementary Conditions, the Supplementary Conditions shall have priority.

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

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

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

DELETED

§ 1.8 Building Information Models Use and Reliance
DELETED

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.

(Paragraph deleted)

§ 2.2 DELETED

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.4.1 Failure of the Contractor to comply with the Owner's order to stop the Work may be considered a substantial violation of the Contract. When the Owner has stopped the Work as provided in this subparagraph, the Contractor shall not be entitled to any extension of the Contract Time, or damages for delay, related to the stoppage.

§ 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.

§ 2.5.1 If, in the opinion of the Owner, there is an emergency for the furnishing of certain material, or the performance of certain work, in order to ensure compliance with the terms of the Contract, and if the Contractor fails to furnish such material or to perform such work within a reasonable time fixed by written notice from the Architect to the Contractor, then the Owner shall have the power to and it may at its election furnish such material and/or perform such work at the expense of the Contractor and/or the Contractor's surety, who shall be liable therefore. In the determination of the question whether there has been such non-compliance with the Contract as to warrant its suspension or the furnishing of material, or the performance of work by the Owner as herein provided, the decision of the Owner shall be final. The enumeration of the options and privileges of the Owner as hereinbefore set forth is not and shall never be considered as the only rights, options or remedies of the Owner, and it is expressly agreed that Owner may pursue any other and further option, right and remedy accorded to it at law and in equity.

§ 2.5.2 Any cost, damage and expense to the Owner above the contract price arising out of the happening of any or all of the contingencies specified and contemplated in Paragraph 2.4 shall be charged to and paid in full by the Contractor and/or the Contractor's surety. Any other loss, of any nature, occasioned to the Owner by reason of default or failure of the Contractor and/or by any breach of this Contract shall also be borne and paid by the Contractor and/or the Contractor's surety. In the event that the Owner shall suspend the Contract or take over the Work in whole or in part, such action shall not relieve either the Contractor or the Contractor's surety from any of the covenants, conditions, obligations or liabilities imposed upon them by this Contract and/or by the Contractor's bond.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 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

Init.

conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the 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.

§ 3.2.2.1 All site grade elevations shown on the Drawings shall be checked from established bench marks and shall be confirmed by the contractor. Discrepancies discovered shall be reported to the Architect for adjustment before any work begins. The Contractor's commencement of the Work shall constitute his acceptance of all existing site grade elevations as correct or otherwise workable. The Contractor shall be owed additional compensation for grade variation or discrepancies except by written agreement before construction begins.

§ 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. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Written measurements and dimensions shall be followed at all times. Except where directed by the Architect, dimensions shall not be determined by scale or rule. The Contractor shall verify all dimensions by measurements at the jobsite, and shall take any and all other measurements necessary to verify the Drawings and to properly lay out the Work. Any discrepancy affecting the layout of the Work shall immediately be reported to the Architect for interpretation.

§ 3.2.6 The Contractor signifies by the fact of submitting his bid: that he has, to his full satisfaction, examined the site of the Work in the bid documents, including drawings and reports describing the surface and subsurface nature of the site; that he has determined the general and local conditions, the type and extent of equipment and facilities needed in preparation for and prosecution of the Work, and all other such matters which will in any way affect the Work under the Contract; and that he considers the site suitable for the Work intended and has provided in his bid for all equipment, facilities, labor and expertise necessary to properly fit the work to the site.

§ 3.2.7 Contractor agrees that Owner shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of Contractor involving transactions relating to this contract. Contractor agrees that Owner shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Owner shall give Contractor reasonable advance notice of intended audits.

§ 3.2.8 Contractor further agrees to include in subcontract(s), if any, a provision that any subcontractor agrees that Owner shall have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor involving transactions to the subcontract, and further, that Owner shall have access during normal working hours to all subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph.

Init.

§ 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.

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

§ 3.3.4 The Contractor shall determine that project requirements expressed in specified procedures, instructions, manufacturer's recommendations or referenced standards are reasonable and appropriate. Where the Contractor considers any such requirement to be unreasonable or inappropriate, the Contractor shall, prior to performing that portion of the Work, identify to the Architect whether the requirement appears to conflict with accepted construction practice, or will invalidate any required warranty, or may be acceptably achieved with an alternative procedure or installation. The Contractor shall propose an alternative procedure or installation only if he warrants the end result to be equal or superior to the original requirement. Provided, however, the provision of any services required by this Section 3.3.4 or elsewhere in the Agreement, unless specifically required (i.e. delegated design), shall not be construed to require Contractor to provide design professional or professional engineering services or be construed as Contractor providing design professional or professional engineering services.

§ 3.3.5 Cement, lime and other materials subject to deterioration by the weather shall be stored in weather-tight sheds with tight floors at least six inches off the ground. Upon completion of the Work, the sheds shall be removed from the premises.

§ 3.3.6 The Contractor shall provide a telephone in the job office. The telephone shall be in use from the commencement of operation at the site until final acceptance of the Project. The telephone shall be available for the use of the Owner and the Architect and their representatives.

§ 3.3.7 The Contractor shall secure and pay for all temporary light and power required for the Work, including any necessary wiring and setting of poles. All work shall conform to the requirements of the National Board of Fire Underwriters, whose certificate of approval shall be obtained and filed with the Architect before the temporary light and power are used.

§ 3.3.8 From the commencement to the completion of the Work, approved sanitary facilities shall be provided by the Contractor. All sanitary facilities shall be acceptable to the public authorities having jurisdiction.

§ 3.3.9 Any excavation and upper floors shall be kept dry and free from water (from rainfall, seepage, springs, and other causes) at all times, and the Contractor shall be responsible for all stoppage of sewer lines resulting from this Work.

§ 3.3.10 The Contractor shall, before closing any street or causing any obstruction to traffic on any street, furnish and erect suitable barricades and warning signs to protect the traveling public, as set forth in the latest edition of the manual for street barricades as published by the City of Arlington Public Works Department. In the event it becomes necessary to close any streets during the construction of this Project, the Contractor shall contact the City of Arlington Public Works Department for approval of a detour and barricade plan. No

additional compensation will be made to the Contractor for furnishing, installing, and maintaining barricades and warning signs and their subsequent removal.

§ 3.3.11 The Contractor shall prepare a construction activity report for each day work is performed. Copies of these daily reports shall be provided weekly to the Architect and the Owner. Each daily report shall record, as applicable, at least the following information:

1. Project identification.
2. Date of report.
3. List of subcontractors at the site.
4. Approximate count of personnel at the site.
5. General weather conditions, including high and low temperatures.
6. Work commenced.
7. Work completed.
8. Work performed in general, including location.
9. Critical material received.
10. Conditions causing work to stop or be delayed.
11. Services connected, disconnected.
12. Equipment or system tests and start-ups.
13. Meetings, special visitors, significant decisions.
14. Orders and requests of governing authorities.
15. Accidents and unusual events.

§ 3.3.12 The Contractor shall, before commencing any work, submit a traffic control plan to Owner for Owner approval. Any changes to the traffic control plan must be resubmitted to Owner for approval prior to implementation.

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 3.5 Warranty

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

§ 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.

§ 3.5.3 In addition to any specific guarantees required by the Contract Documents, Contractor hereby guarantees to perform the Work in a first-class, workmanlike manner and guarantees all work against defects

Init.

in workmanship and performance for a period of one (1) year as applicable: after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.9.1 for partial occupancy or use, or by terms of an applicable special warranty required in the Contract Documents, all as stated in Subparagraph 12.2.2. The Contractor shall repair and make good, without expense to the Owner, any and all defects in his work which may become apparent within that time. Any such repair, including adjustment or replacement, of Work previously accepted shall be similarly warranted by the Contractor until that portion of the Work has proved for a continuous year that it meets the requirements of the Contract.

§ 3.5.4 Substitutions of materials, products, or suppliers constitute changes in the Work and must be incorporated into the Contract by Change Order. The Contractor may propose substitutions only where one or more of the following conditions exist:

- a. Specified material or product cannot be provided and incorporated into Work in time allowed due to conditions beyond control of Contractor, or
- b. The substitution is required for compliance with final interpretation of code requirements or insurance regulations, or
- c. Subsequent information reveals that the specified material or product will not perform properly or fit correctly in the designated space, or
- d. The manufacturer or fabricator refuses to certify or guarantee performance of the specified product as required, or
- e. Owner will benefit by improved project or reduced cost. Owner shall receive appropriate benefit of any cost reductions.

§ 3.5.5 When requesting a substitution, the Contractor shall submit a statement of the reason for the proposed substitution, with such substantiating documents as may be required by the Architect for review. Proposed substitutions shall be subject to the Owner's final approval.

§ 3.5.6 Specific and special warranties required in the Contract Documents are in addition to, and not in lieu of, the Contractor's general warranty. The Contractor shall not be relieved of general warranty obligation by the statement of specific products or procedures.

§ 3.5.7 Warranty Service Clause: Under the terms of the warranties which arise from these Contract Documents and/or by the terms of any applicable special warranties required by the Contract Documents, if any of the Work in accordance with this Contract is found to not be in accordance with the requirements of the Contract Documents, the Contractor shall correct such work promptly after receipt of written notice from the Owner or the Architect, Engineer or other entity as the Contract Documents may provide. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract. In order to facilitate a prompt response, Contractor agrees to provide for warranty service to the extent practical from local businesses, including goods and services, when such goods and services are comparable in availability, quality and price. If Contractor fails within a reasonable time after written notice to correct defective work or to remove and replace rejected work, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any provision in the Contract Documents, either the Owner or its designee may, after seven (7) days' written notice to Contractor, correct and remedy any such deficiency at the expense of the Contractor.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are required by law. The Contractor shall be responsible to pursue with the State Comptroller any tax exemption for equipment and materials to be incorporated into this project.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, Owner will either pay for the building permit or other permits required by law or will reimburse Contractor for the cost of building and other permits secured by Contractor. The Contractor shall secure and pay for all other, 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

Init.

required at the time bids are received or negotiations concluded. **Unless specifically stated otherwise, the Contractor shall secure and pay for all approvals, and fees required for the Work, including but not be limited to: impact fees, water taps, sewer taps, water meters, fire hydrants, detector check devices, temporary sanitary facilities, and the like; and may be reimbursed specifically for the costs of impact fees, building permit, mechanical permit, electrical permit, plumbing permit, sign permit, water taps, sewer taps, water meters, fire hydrants, and detector check devices.**

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

§ 3.7.3 **The Contractor and each Subcontractor is responsible to be competent in his field of expertise. It shall be the obligation of the Contractor to coordinate with each appropriate Subcontractor to review the Contract Documents, and to determine any discrepancy between the Contract Documents and building codes or regulations of which the Contractor or Subcontractor has knowledge or should be reasonably able to determine due to specialized experience.** 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.

§ 3.7.4 **Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents **or the condition does not differ materially from that which a reasonable Contractor should expect to encounter** 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 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 allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness so as not to delay the Project's critical path. Delays hereunder shall be addressed by Section 8.3.1.

Init.

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. **The contractor shall, upon demand from Architect, based upon reasonable cause, immediately remove any superintendent whom the Architect considers incompetent or otherwise unacceptable.**

§ 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 Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. 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.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

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

§ 3.12 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.

Init.

§ 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.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 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.

§ 3.14 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 from and about the Project.

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

A. CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER AND ALL OF HIS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, HIS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES OR ANY OTHER PERSONS, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT CONTRACTOR'S OWN COST AND EXPENSE DEFEND AND PROTECT OWNER FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

B. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF CONTRACTOR AND OWNER, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE

WITH THE LAWS OF THE STATE OF TEXAS UNLESS OTHERWISE MUTUALLY AGREED BY CONTRACTOR AND OWNER. NOTHING IN THIS PARAGRAPH IS INTENDED TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO OWNER UNDER TEXAS LAW OR WAIVE ANY DEFENSES OF CONTRACTOR OR OWNER UNDER TEXAS LAW. THIS PARAGRAPH SHALL NOT BE CONSTRUED FOR THE BENEFIT OF ANY THIRD PARTY, NOR DOES IT CREATE OR GRANT ANY RIGHT OR CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CONTRACTOR OR OWNER.

- C. IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY SUBCONTRACTOR UNDER WORKMEN'S COMPENSATION ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

(Paragraphs deleted)

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.

§ 4.2 Administration of the Contract

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

Init.

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

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

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

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

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

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in 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. **Any Work involving drainage, paving, water or sewer systems or improvements occurring in dedicated easements or public rights-of-way (other than drive approaches and drive approach culverts) shall be performed by a contractor prequalified by and acceptable to the City of Arlington. Work for drainage or paving systems or improvements shall be performed by a contractor acceptable to the Engineering Services Department. Work for water or sewer systems or improvements shall be performed by a contractor acceptable to the Water Utilities Department.**

§ 5.2.2 The Contractor shall not contract with **any person or entity declared ineligible under federal laws or regulations from participating in federally assisted construction projects** or to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

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

§ 5.2.5 In performing this Contract, Contractor agrees to use diligent efforts to purchase all goods and services from Arlington Businesses whenever such goods and services are comparable in availability, quality and price. As a matter of policy with respect to City of Arlington projects and procurements, City of Arlington also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers or other persons in organizations proposed for work on this contract, the Contractor agrees to consider this policy and to use its reasonable and best efforts to select and employ such company and persons for work on this contract.

§ 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.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

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

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

§ 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. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

§ 6.2 Mutual Responsibility

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

Init.

§ 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 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.

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the 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.

§ 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.

§ 7.1.4 When the changes in the Work are caused by the negligence of the Contractor, Contractor agrees to bear costs of additional architectural services, both direct and indirect, required for effecting the change, and to make acceptable adjustments in related construction at no additional cost to Owner and without reduced quality in the project.

§ 7.1.5 Any request for a change in the Work exceeding \$500.00 in value shall be submitted in the form of a lump sum proposal with an itemized breakdown of all increases or decreases in the cost of the Contractor's work and all subcontractors' work, in at least the following detail:

- A. Material quantities and unit costs
- B. Labor costs (identified with specific item of material to be placed, or operation to be performed)
- C. Construction equipment
- D. Workmen's compensation and public liability insurance
- E. Overhead
- F. Profit
- G. Employment taxes under FICA and FUTA

§ 7.2 Change Orders

§ 7.2.1 Where these Contract Documents refer to "Change Order," each reference shall be understood to mean "Change Order or Construction Change Directive." 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 Change orders must be approved prior to the construction taking place. Any work done by the Contractor prior to the approval of the change order will be done at the Contractor's risk. A change in the work and an adjustment in the Contract Sum will only be considered if a Change Order is submitted in writing to Owner within thirty (30) calendar days from the time when Contractor begins the work that is the subject of the Change Order.

§ 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. Provided, however, Contractor shall have the option to refuse to proceed with Work subject of a Construction Change Directive if the aggregate total of Construction Change Directives meets or exceeds \$350,000.00.

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in 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 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 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.

§ 7.3.8.1 Percentages for overhead, profit and commission on changes in the Work shall not exceed the limits stipulated in this Clause. Percentages for overhead and profit shall not be applied to costs stated in Clause 7.3.7. Such increases in overhead and profit shall be full compensation for the Contractor's extended general conditions costs.

	Overhead	Profit	Commission
To Contractor on Work performed by other than his own forces	-	-	10%
To Contractor and/or Subcontractor(s) for that portion of the Work performed with their respective forces	10%	10%	-

§ 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 **immediately** 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 certified by the Architect in accordance with Section 9.8.

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

§ 8.1.5 Unless otherwise specified, where any action, submittal or response falls due on a Saturday, Sunday or legal holiday, such action, submittal, or response shall be considered due on the next day which is not a Saturday, Sunday nor a legal holiday.

§ 8.1.6 The following days shall be considered legal holidays:

New Year's Day	January 1
Martin Luther King's Birthday.....	3rd Monday in January
President's Day.....	3rd Monday in February
Good Friday.....	Friday preceding Easter
Memorial Day	last Monday in May
Independence Day	July 4
Labor Day.....	1st Monday in September
Thanksgiving Day.....	4th Thursday in November
Thanksgiving Friday.....	Friday following Thanksgiving Day
Christmas Eve Day.....	December 24
Christmas Day	December 25

If a holiday falls on a Saturday, it will be observed on the preceding Friday. If a holiday falls on Sunday, it will be observed on the following Monday.

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or its employee, or Owner's separate contractors, and without the fault or negligence of the Contractor then the Contract Sum shall be increased for a reasonable amount as the Owner and Architect may determine and the Contract Time shall be extended for such reasonable time Owner and Architect may determine. This provision shall not apply to actions taken by Owner as a regulatory authority.

If the Contractor is delayed at any time in the commencement or progress of the Work by other occurrences beyond the Contractor's control and without the fault or negligence of the Contractor that the Architect determines justify additional delay, then the Contract Time shall be extended for such reasonable time Owner and Architect may determine.

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

§ 8.3.3 Deleted

§ 8.3.4 The Contractor assumes the risk of all suspensions of or delays in performance of the Contract, regardless of length thereof, arising from all causes whatsoever, whether or not relating to this Contract, including wrongful acts or omissions of Owner or Architect or its contractors or subcontractors except only to the extent, if any, that compensation or an extension of time may be due as expressly provided for elsewhere in this Contract for such suspension or delays. And subject only to such exception, the Contractor shall bear the burden of all costs, expenses and liabilities which he may incur in connection with such suspensions or delays, and all such suspensions, delays, costs, expenses and liabilities of any nature whatsoever, whether or not

provided for in this Contract, shall conclusively be deemed to have been within the contemplation of the parties. Provided, however, to the extent such delay under Section 8.3.1 runs concurrently with a Contractor-controlled delay, Contractor shall only be entitled to an extension of Contract Time for such reasonable time as Owner and Architect may determine.

§ 8.3.5 Notwithstanding any provisions of this Contract, whether relating to time of performance or otherwise, Owner makes no representation or guarantee as to when the construction site or any part thereof will be available for the performance of the Contract, or as to whether conditions at the construction site will be such as to permit the Contract to be performed thereon without interruption or by any particular sequence or method or as to whether the performance of the Contract can be completed by the time required under this Contract or by any other time.

§ 8.3.6 Wherever in connection with this Contract it is required, expressly or otherwise, that Owner shall perform any act relating to the Contract, including making available or furnishing any real property, materials or other things, no guarantee is made by the Owner as to the time of such performance and the delay of Owner in fulfilling such requirement shall not result in liability of any kind on the part of Owner except only to the extent, if any, that an extension of time or compensation may be due as expressly provided for in this Contract or as otherwise provided herein.

§ 8.3.7 If the contract requires unforeseen work or work and materials in greater amounts than those set forth in the contract, then additional calendar days may be considered at the discretion of the City. However, the completion time can only be changed by the execution of a signed agreement. An extension of time will only be considered when a claim for such extension is submitted to the City in writing by the Contractor within fourteen (14) calendar days from the time when any alleged cause of delay occurs.

§ 8.3.8 **LIQUIDATED DAMAGES:** Time is of the essence in this Contract, it being important that this public improvement be completed on schedule. The Contractor and the Owner understand and agree that a breach of this Contract as to completion on the appropriate date will cause damage to the Owner, but further agree that such damage cannot be accurately measured or that it will be difficult. It is agreed between the Owner and the Contractor that if the actual date of Substantial Completion exceeds the time for Substantial Completion of the project as stated in this Contract and as adjusted by any Change Order, damages will be sustained by the Owner. And because such damages are difficult to determine, the Owner and the Contractor agree that, for each and every calendar day that actual Substantial Completion exceeds the time for Substantial Completion authorized under terms of this Contract, the Contractor shall pay as liquidated damages five hundred dollars (\$500.00) per calendar day. This amount shall be charged against the Contract Sum as liquidated damages. The Owner shall have the right to deduct and withhold the amount of any and all such liquidated damages from any and all monies owing to the Contractor, or the Owner may recover such amount from the Contractor and the sureties on the Contractor's bond. All of said remedies shall be cumulative and the Owner shall not be required to elect any one remedy nor be deemed to have made an election by proceeding to enforce any one remedy.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the 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, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 16:19:19 ET on 12/05/2024 under Order No.4104245307 which expires on 12/08/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1365397828)

unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. **The form of application for payment shall be the latest edition of AIA Document G702, Application and Certificate for Payment, supported by the latest edition of AIA Document G703, Continuation Sheet.**

§ 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.

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 For determining compliance with regulations regarding payment of wages, the Contractor shall cooperate with the Owner's investigation of pay records to the fullest extent necessary. Upon the Owner's request, the Contractor shall provide official and certified copies of payroll records of the Contractor or any subcontractor or sub-subcontractor in connection with this project. Information to be provided shall include at least a) the name of each worker employed in this project; b) the occupation classification of each worker listed; c) the hourly rate of pay for each worker listed, showing base rate as well as the rate including fringe benefits; d) specific dates employed in this project for each worker listed; and e) the work hours per day for each work date for each worker listed. If necessary to satisfy regulatory requirements, the Owner may require additional information to be submitted, and may require that the information be submitted at any time in the project. At the Owner's option, the Owner will be allowed to interview any and all workers employed in this project, and will be allowed to perform a complete examination of the financial records of the Contractor or any subcontractor or sub-subcontractor relative to this project, including but not limited to canceled checks, invoices and statements. Unless other arrangements are mutually agreed, such access will be limited to the time period from 8:00 a.m. to 5:00 p.m. on a day that is not a Saturday, Sunday or legal holiday.

§ 9.4 Certificates for Payment

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

Init.

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. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work, or any requirement of the Contract, 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, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

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

§ 9.6.8 PROVIDED THE OWNER HAS FULFILLED ITS PAYMENT OBLIGATIONS UNDER THE CONTRACT DOCUMENTS, THE CONTRACTOR SHALL DEFEND AND INDEMNIFY THE OWNER FROM ALL LOSS, LIABILITY, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES AND LITIGATION EXPENSES, ARISING OUT OF ANY LIEN CLAIM OR OTHER CLAIM FOR PAYMENT BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER. UPON RECEIPT OF NOTICE OF A LIEN CLAIM OR OTHER CLAIM FOR PAYMENT, THE OWNER SHALL NOTIFY THE CONTRACTOR. IF APPROVED BY THE APPLICABLE COURT, WHEN REQUIRED, THE CONTRACTOR MAY SUBSTITUTE A SURETY BOND FOR THE PROPERTY AGAINST WHICH THE LIEN OR OTHER CLAIM FOR PAYMENT HAS BEEN ASSERTED.

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

§ 9.8.2.1 The list of items to be completed or corrected, which is a condition of establishing Substantial Completion, shall be identified as the Punch List. The term Punch List shall refer to the original or any updated edition of the list of items to be completed or corrected. Any item of Work identified as incomplete or requiring correction before the Architect determines that the entire Work has been completed in accordance with terms and conditions of the Contract Documents shall be considered Punch List work. Such item shall be considered warranty work when it is first identified after the Architect's determination of final completion.

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 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.

§ 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.

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

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

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

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

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.

§ 10.1.2 It shall be the Contractor's responsibility to ensure that no building materials containing any form of asbestos are incorporated into the Work. Any such material shall be removed and satisfactorily replaced without additional cost to the Owner.

§ 10.1.3 Attention is called to the regulations issued by the Secretary of Labor pursuant to Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) entitled "Safety and Health Regulations for Construction" (29 CFR Part 1926). The Contractor shall be required to comply with those regulations to the extent that any resulting Contract involves construction.

§ 10.1.4 The Occupational Safety and Health Administration excavation standards for trench safety are in effect during the period of construction of the project whenever the Work requires a trench exceeding five feet in depth, as defined by OSHA. The section of the Project Manual stating trench safety standards is herein included by this reference, the same as if written word for word. In compliance with law, the Contractor or subcontractor performing trench excavation work on the Project shall comply with applicable trench safety standard.

§ 10.2 Safety of Persons and Property

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

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

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 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. **Explosives shall not be used or delivered to the site without the written approval of the Owner and issuance of required permits from governmental authorities.**

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall 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.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or

substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall release and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to 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 the same.

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

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

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

§ 10.4 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 the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Insurance is to be placed with insurers with a Best rating of no less than A: VII.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. **Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in**

coverage or in limits or materially changed except after thirty (30) days prior to written notice has been provided to the City. If a policy is canceled for non-payment of premium only 10 days notice is required.

(Paragraphs deleted)

§ 11.1.5 Refer to attached AIA Document A133-2019 Exhibit A Insurance and Bonds for requirement.

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.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 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 effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. This Contract is entered into subject to the Charter and ordinances of the City of Arlington, as they may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas and federal laws. The parties to this contract agree and covenant that for all purposes, including performance and execution that this contract/agreement will be enforceable in Arlington, Texas; and that if legal action is necessary to enforce this contract, exclusive venue will lie in Tarrant County, Texas.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. 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 nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

§ 13.3.2 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.

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

§ 13.4.2 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

Init.

such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 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.

§ 13.4.7 The temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or materials supplied under this Contract before completion and final acceptance of the Project shall not be construed as an evidence of acceptance of any of these items by the Architect. The Owner shall have the privilege of such temporary and trial usage, for such reasonable length of time as the Architect shall deem to be proper for making a complete and thorough test of these items. No claim for damage shall be made by the Contractor for the injury to or breaking of any parts of such Work which may be caused by weakness or inadequacy of structural parts or by defective material or workmanship related to these items. If the Contractor so elects, he may, at his own expense, appoint and place a competent person or persons, satisfactory to the Architect, to make such trial usage, such trial being under the supervision of the Architect.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest pursuant to the Texas Prompt Payment Act.

§ 13.6 Written Notice

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

§ 13.6.1 Written notification shall be required for any party considered to be in breach of the Contract. Such notification shall give at least seven days' written notice of the alleged breach of the Contract, specifying in what point the Contract has been violated and identifying appropriate measures for compliance with the Contract.

§ 13.7 Nondiscrimination

§ 13.7.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, disability or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff 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 policies of nondiscrimination.

§ 13.7.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, disability or national origin.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 16:19:19 ET on 12/05/2024 under Order No.4104245307 which expires on 12/08/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1365397828)

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 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;
- .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.

§ 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, seven 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 Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the 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, exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, 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.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement; but excluding any payment for profit or overhead on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The 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.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.6.3 Unless otherwise agreed and authorized by the Owner, normal weather conditions shall be considered to include the following Table of Anticipated Adverse Weather, listing calendar days in which natural events such as rain, ice, snow and mud may disrupt the scheduled construction. Contract Time shall not be extended due to adverse weather except when jobsite weather conditions are abnormal in relation to this table, and cause unavoidable delay to work upon which subsequent work is critically dependent. When Contract Time is extended due to adverse weather, there shall not be any related financial compensation or similar increase in the Contract Sum due to the Contractor.

TABLE of ANTICIPATED ADVERSE WEATHER

January	7	calendar days
February	7	calendar days
March	7	calendar days
April	8	calendar days
May	8	calendar days
June	6	calendar days
July	5	calendar days
August	5	calendar days
September	7	calendar days
October	6	calendar days
November	6	calendar days
December	6	calendar days

Owner and Contractor understand and agree that Contractor's schedule shall be built taking into account the above-specified Weather Days as a baseline. Unused Weather Days, if any, shall not be the basis for shortening of the Contract Time or denying a future claim for additional Weather Days by Contract in another month.

Adverse weather occurring on a Saturday, Sunday or holiday shall not be considered to disrupt the scheduled construction except where the Contractor has previously established a pattern of performing critical items of work on such days. Calendar days listed in the table above shall be prorated appropriately for the beginning and ending months of project activity. When the Contractor has determined that adverse weather has disrupted the construction schedule, the Contractor shall notify the Owner through the Architect, in writing, not later than seven days following the occurrence of such adverse weather. Notification shall specifically describe the adverse weather conditions with date of occurrence and effect on the project schedule. The Contractor shall have sole responsibility to ensure that the effect of adverse weather is recorded as described herein. The Architect will determine if the condition justifies consideration under the project schedule. Failure to submit notification as described herein shall indicate the Contractor's decision that the occurrence of such weather conditions has no significant effect on the Contractor's project schedule, and shall preclude the Contractor's claim for extension of Time at a later date.

§ 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 or litigation 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 request mediation or initiate 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, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of 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 either reject or approve the Claim in whole or in part.

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

§ 15.2.6 Either party may request mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

Init.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, request in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate, but may still 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 Deleted

§ 15.3.2 Deleted

§ 15.3.3 Deleted

§ 15.3.4 If the parties mutually agree to mediation, 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 Deleted

(Paragraphs deleted)

Staff Report



Arlington Economic Development Corporation – Modification of the Professional Service Contract for the E-Space Architect and Engineering Team, Project 24-0221	
AEDC Meeting Date: 12-11-2024	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Modification of the Professional Service Contract for the E-Space Architect with M. Arthur Gensler Jr. & Associates, Inc., of San Francisco, California, in an amount not to exceed \$4,035,250 for phase II of design development of the E-Space project.

PRIOR BOARD OR COUNCIL ACTION

On April 16, 2024, following a public hearing, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-005 authorizing the execution of a Master Agreement with espace Inc. and the City of Arlington, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On April 23, 2024, City Council approved Resolution No. 24-108 authorizing the execution of a Master Agreement with espace Inc. and the Arlington Economic Development Corporation, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On June 5, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-007 authorizing the execution of a professional services contract for the E-Space project manager with Hill Building Group, LLC, of Arlington, Texas, in an amount not to exceed \$226,800.

On June 11, 2024, City Council approved Resolution No. 24-143 accepting and approving the Arlington Economic Development Corporation Resolution No. 24-007 authorizing the negotiation and execution of a professional services contract for the E-Space project manager with Hill Building Group, LLC, of Arlington, Texas, in an amount not to exceed \$226,800.

On July 30, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-012 authorizing the use of the Construction Manager-at-Risk procurement method of construction for E-Space manufacturing facility.

On July 30, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-011 authorizing the execution of a professional services contract for the E-Space architect and engineering team with M. Arthur Gensler Jr. & Associates, Inc., dba Gensler, of San Francisco, California, in an amount not to exceed \$691,170.

On August 6, 2024, City Council approved Resolution No. 24-202 accepting and approving the Arlington Economic Development Corporation Resolution No. 24-011 authorizing the execution of a professional services contract for the E-Space architect and engineering team with M. Arthur Gensler Jr. & Associates, Inc., of San Francisco, California, in an amount not to exceed \$691,170.

ANALYSIS

In a public-private partnership with E-Space, the City of Arlington (City) and the Arlington Economic Development Corporation (AEDC) are developing a manufacturing facility and office space to house E-Space's North American headquarters at Arlington Municipal Airport.

In August 2024, to facilitate design of the project, the AEDC solicited proposals for an architecture team. The AEDC selected M. Arthur Gensler Jr. & Associates (Gensler) as the project architect. Gensler has been working alongside the project management team (Hill Building Group, LLC) to develop conceptual design over the past five months.

This contract modification is for phase II of the design of the project, which includes design development up to the potential project groundbreaking. Gensler will continue working with Hill Building Group, LLC, and Moss & Associates, LLC, the selected construction manager-at-risk for the project during this phase.

Once phase II of the design of the project is complete and final cost estimates have been developed, the AEDC and E-Space will determine whether to move into the construction phase. At that time, the AEDC will request a proposal from Gensler for architectural services for the construction phase.

Name of Prime Vendor	M. Arthur Gensler Jr. & Associates, Inc.
Total Modification Value	\$4,035,250
Prime Vendor's MWBE Status	None
Dollar Amount of Prime Vendor's Self-Performance	\$1,116,200
Percentage Amount of Prime Vendor's Self-Performance	27.66%
Name of Subcontractor (1)	DFW Consulting Group, Inc.
Subcontractor's MWBE Status & Trade	BL / MEP Engineering
Dollar Amount of Subcontractor's Performance	\$1,829,200
Percentage Amount of Subcontractor's Performance	45.33%
Name of Subcontractor (2)	Ponce-Fuess Engineering, LLC
Subcontractor's MWBE Status & Trade	HI / Structural Engineering
Dollar Amount of Subcontractor's Performance	\$35,000
Percentage Amount of Subcontractor's Performance	0.87%
Name of Subcontractor (3)	Bella Firma, Inc.
Subcontractor's MWBE Status & Trade	WO / Landscape Architect
Dollar Amount of Subcontractor's Performance	\$20,000
Percentage Amount of Subcontractor's Performance	0.50%
Name of Subcontractor (4)	Kimley-Horn & Associates, Inc.
Subcontractor's MWBE Status	None
Dollar Amount of Subcontractor's Performance	\$813,750
Percentage Amount of Subcontractor's Performance	20.17%
Name of Subcontractor (5)	La Fuess Partners, Inc.
Subcontractor's MWBE Status	None

Dollar Amount of Subcontractor's Performance	\$145,000
Percentage Amount of Subcontractor's Performance	3.59%
Name of Subcontractor (6)	WJHW, Inc.
Subcontractor's MWBE Status	None
Dollar Amount of Subcontractor's Performance	\$47,000
Percentage Amount of Subcontractor's Performance	1.16%
Name of Subcontractor (7)	ACS Group
Subcontractor's MWBE Status	None
Dollar Amount of Subcontractor's Performance	\$29,100
Percentage Amount of Subcontractor's Performance	0.72%
Total MWBE Participation	\$1,884,200 (46.69%)

M. Arthur Gensler Jr. & Associates, Inc., has committed to utilizing 46.69% MWBE sub-contracting participation. The Office of Business Diversity is in agreement with the consultant's participation efforts.

FINANCIAL IMPACT

The projected financial impact for this contract is as follows:

<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
\$4,035,250	\$0	\$0

Funding is available in the AEDC Professional Service Account No. CC973010-SC0574.

ADDITIONAL INFORMATION

Attached:	Resolution and Agreement
Under separate cover:	None
Available in the Purchasing Division:	Contract File
Form 1295:	Requested
MWBE:	No

STAFF CONTACTS

Lyndsay Mitchell, AICP, CPM Director of Strategic Initiatives 817-459-6653 Lyndsay.Mitchell@arlingtontx.gov	Marty Wieder, AICP AEDC Executive Director 817-459-6432 Marty.Wieder@arlingtontx.gov
Vanessa Canela Sr. Purchasing Agent 817-459-6321 Vanessa.Canela@arlingtontx.gov	April Nixon Director of Finance 817-456-6345 April.Nixon@arlingtontx.gov

ARLINGTON ECONOMIC DEVELOPMENT CORPORATION
Resolution No. _____

A resolution of the Board of Directors authorizing the Executive Director to execute a Modification of Professional Services Contract for the E-Space Architect with M. Arthur Gensler Jr. & Associates, Inc., of San Francisco, California, in an amount not to exceed \$4,035,250

WHEREAS, the Arlington Economic Development Corporation (“AEDC”) is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, E-Space, AEDC, and the City of Arlington (“City”) entered into a certain Master Agreement on May 1, 2024, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport (the “E-Space Project”); and

WHEREAS, M. Arthur Gensler Jr. & Associates, Inc., dba Gensler (“Consultant”) and AEDC entered into a certain Professional Services Contract for the E-Space Architect on August 7, 2024, in an amount not to exceed \$691,170 (hereinafter referred to as the “Contract”); and

WHEREAS, Consultant and AEDC desire to modify the Contract due to additional costs related to Phase II of the design of the E-Space Project; NOW THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON ECONOMIC DEVELOPMENT CORPORATION:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this body and as part of its official record.

II.

That the Executive Director of the Arlington Economic Development Corporation is hereby authorized to execute a Modification of Professional Service Contract for the E-Space Architect with M. Arthur Gensler Jr. & Associates, Inc., of San Francisco, California, in an amount not to exceed \$4,035,250 relative to Phase II design development of the E-Space project.

III.

A substantial copy of Modification of Professional Service Contract for the E-Space Architect is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the ____ day of _____, 2024, by a vote of ____ ayes and ____ nays at a regular meeting of the Board of Directors of the Arlington Economic Development Corporation.

Michael Jacobson, President

ATTEST:

Alex Busken, Assistant Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, Counsel for the
Arlington Economic Development
Corporation

BY *Beth Miller Atkinson*

Exhibit "A"

THE STATE OF TEXAS § Modification of
 § Professional Service Contract for the
COUNTY OF TARRANT § E-Space Architect

THIS MODIFICATION OF PROFESSIONAL SERVICE CONTRACT FOR THE E-SPACE ARCHITECT (hereafter “Modification”) is made and entered into on this _____ day of _____, 2024, by and between **M. ARTHUR GENSLER JR. & ASSOCIATES, INC.** (hereafter “CONSULTANT”) and the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**, a nonprofit corporation located in Tarrant County, Texas, acting by and through its Executive Director (hereafter “AEDC”).

WITNESSETH:

WHEREAS, on August 7, 2024, the AEDC and CONSULTANT entered into a contract relative to the Architectural Design of the E-Space project (hereafter referred to as “the Agreement”); and

WHEREAS, CONSULTANT and AEDC now desire to modify the Agreement in certain respects as set forth herein; NOW THEREFORE

The Agreement is incorporated herein as if written word for word. Except as provided below, all other terms and conditions of the Agreement shall remain unchanged and shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Modification and the Agreement, this Modification shall govern and control. In consideration of the foregoing, and for other good and valuable consideration, the parties hereby agree to modify the Agreement as follows:

I.
Term

This Modification shall become effective on January 1, 2025, and shall continue until the Services are complete, unless terminated earlier in accordance with the provisions of the Agreement.

II.
Compensation

In consideration for the additional Services being rendered pursuant to this Modification, AEDC agrees to pay to CONSULTANT an amount not to exceed Four Million Twenty Thousand Two Hundred Fifty Dollars (\$4,020,250) for the proper completion of all Basic Services included in this Modification, as detailed in **Exhibit A**. AEDC also agrees to pay to CONSULTANT an amount not to exceed Fifteen Thousand Dollars (\$15,000) for Reimbursable Expenses detailed in **Exhibit A**, for a total amount not to exceed Four Million Thirty-Five Thousand Two Hundred Fifty Dollars (\$4,035,250)

III.
Scope of Work

CONSULTANT shall perform such services as are necessary to provide professional design services for the AEDC E-Space project as outlined in Exhibit A (the "Services") to this Modification, attached hereto and incorporated herein by reference as though written word for word.

IN WITNESS WHEREOF, the parties hereto execute this Modification of Professional Service Contract for the E-Space Architect.

**M. ARTHUR GENSLER JR. &
ASSOCIATES, INC.**

BY _____
Rick Ferrara
Principal

**ARLINGTON ECONOMIC
DEVELOPMENT CORPORATION**

BY _____
Marty Wieder
Executive Director

ATTEST:

Alex Busken, Assistant Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, Counsel for the
Arlington Economic Development
Corporation

BY _____

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CONSULTANT
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **RICK FERRARA**, known to me (*or proved to me on the oath of _____ or through _____ (description of identity card or other document)*) to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **M. ARTHUR GENSLER JR. & ASSOCIATES, INC.** and as **PRINCIPAL** thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 20__.

Notary Public in and for the State of Texas

My Commission Expires:

Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

AEDC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **MARTY WIEDER**, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**, a municipal corporation in Tarrant County, Texas, and as the **EXECUTIVE DIRECTOR** thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 20__.

Notary Public in and for the State of Texas

My Commission Expires:

Notary's Printed Name

Project: RFQ 24-0221
City of Arlington and the Arlington Economic Development Corporation
RFQ solicitation Document for A&E services version V2 (DD Phase only)

This document is intended to define the Scope of Work (SOW) under contract for the above project, and is the second of three agreements. This agreement is for the Design Development Phase only. The third agreement will be for the Construction Documents and construction phase services, including permitting.

Scope:

The scope of services included in this agreement are for Design Development and will continue from the prior agreement which was for visioning, programming and schematic design. This agreement also includes a limited amount of time to continue some schematic design, which is primarily related to the facilities interiors, which at the time of the prior agreement the tenant was unable to provide sufficient programming information for the design team to complete schematics.

Project Description:

The project is a design-build for a tenant that the AEDC has identified and who will be leasing the Project from the city. The project site is located at the Arlington Municipal Airport and is anticipated to be a multi-phase project on approximately 48.5s. This Project is for Phase 1, which is comprised of an approximately 250,000 sf two-story building (Building 1), approximately 214,000 sf building (Building 2) and a 28,800 sf hangar. Site improvements including parking, open space and landscaping, on site detention exterior illumination and fencing is included in the scope. There are two future phases anticipated for this site. Building 1 is anticipated to have approximately 32,000 sf of office space in two stories. The Project will have a variety of clean rooms (ISO 8 or better) which the tenant will be responsible for the programming, design, documentation, construction and certification of.

The manufacturing hall will consist of a variety of clean rooms (ISO 8 or better) and aerospace manufacturing facilities and supporting spaces. Exterior improvements include parking areas, shipping and receiving facilities with 10 tractor trailer berths and airport apron to connect the hanger to the airport taxiway.

The City of Arlington has retained a third-party project manager to manage the project. Gensler shall be able to rely on the directions rendered by the manager(s). The manager will be responsible to coordinate the project with the City, AEDC, E-Space and Gensler. Gensler will route correspondence via the manager(s).

Project Budget:

The city has retained the services of a Contractor under a Construction Manager at Risk (CMAR) contractual agreement. The CMAR has established a schematic design level project budget and based on that initial study; the Project scope has been revised based on input from the Tenant. The City, through the CMAR will provide and maintain the Project budget at key intervals of the Project. The Project Budget will include appropriate amounts for design and construction contingencies, consistent with the nature of the Project. During design, City (or the CMAR) will provide Gensler estimates of the Construction Cost prior to the conclusion of a design phase, including contingency amounts commensurate with the stage of design evolution and the nature of the Project. City and Gensler will review such cost estimates and City will adjust it to reflect changes in the program requirements, design,

and level of design detail, or adjust the program, to the extent required for consistency with the Project Budget. Unless it would otherwise be an Additional Service, Gensler will incorporate any agreed upon changes in the subsequent design phase as part of its Basic Services.

Information Provided By City or Others:

The following information may be required on the Project and will be provided by City, City's consultants or contractors, or others:

- a. Legal description of the property; the name/address of the property owner; and the name/address of any construction lender(s);
- b. Geotechnical Engineering (in progress)
- c. Environmental, chemical, air, and water pollution and hazardous materials tests, and other laboratory tests, inspections, and reports required by law or by authorities having jurisdiction over the Project, or reasonably requested by Gensler.

Consultants:

As part of this SOW, Gensler will retain the following consultants:

- | | |
|------------------------|---------------------|
| 1. Civil Engineer | Kimley-Horn |
| 2. MEP Engineer | DFW Engineers |
| 3. Structural Engineer | LA Fuess |
| 4. Acoustical | WJHW |
| 5. Code Consultant | ACS Group |
| 6. Landscape Architect | Bella Firma |
| 7. Security Consultant | Priority Assessment |

Based on information that will be developed as part of this SOW, Gensler reserves the right to add or modify the future consultants.

City will engage separate consultants to provide the following services, if required by the Project: geotechnical, survey, archaeological, hazardous materials testing or abatement, environmental, cost estimating.

Schedule:

The project schedule of important milestones ("Schedule") is set forth below. The Project will proceed in accordance with the Schedule. The parties will monitor the Project for conformance with the Schedule. If City directs Gensler to provide Additional Services requiring additional time or the Project is not proceeding in accordance with the Schedule due to factors beyond Gensler's reasonable control, Gensler and City will adjust the Schedule as appropriate. At the time of this agreement the Schedule is anticipated as follows:

Programming and Master Planning	Completed
Schematic Design (continuation)	As part of Design Development
Design Development	4 months for the execution of this agreement

The above schedule is dependent on the tenant having sufficient programming information for Gensler to complete the design of the interior of the Project.

Basic Services

Gensler and its approved consultants will provide the following Basic Services under this Scope of Work:

Design Development:

Based on the approved Schematic Design and Client's authorization to proceed, Gensler will proceed with Design Development, to further develop the design, including:

- a. Site plan;
 - b. Life safety code sheets;
 - c. Floor plans;
 - d. Finish floor plans;
 - e. Furniture and Equipment plans (FF&E) ¹;
 - f. Reflected ceiling plans and typical light fixture locations;
 - g. Power and data plans;
 - h. Exterior building elevations;
 - i. Building sections;
 - j. Up to Eight (8) exterior color renderings of the primary façade;
 - k. Architectural treatments, including materials palettes and color selections;
 - l. Details of key design elements as required to communicate design intent;
 - m. Preliminary designs of building systems included in Gensler's scope of services (prepared by Gensler's consultants) and coordination with Client's engineering and other consultants;
 - n. Draft specifications of select specification sections (if requested by the CMAR);
 - o. Updated information on gross floor areas and parking calculation.
1. Unless the tenant can provide detailed FF&E plans and specifications, Gensler will use generic furniture only plans for the tenant's review and approval.

Final Deliverables:

The final deliverables for this phase will be PDF's of the above list.

Gensler will meet with the representatives of the AEDC, the City and the Tenant's team virtually or physically up to fourteen (14) times. If Gensler presents materials virtually, Client may request and Gensler will make arrangements to send physical samples to Client when feasible.

Consultant's scope of services:

Civil Engineering :

Gensler's civil engineering consultant (Kimley-Horn) will provide the following Basic Services under this agreement: Details for each section available on request:

Phase I Reduced Concept

- 200 Surveying Services (separate instrument easements only)
- 205 Tree Survey
- 210 Separate Instrument Easement (Up to 4)

- 400 Basic Site Civil Engineering Services
- 401 Site Plan Reconciliation

- 402 Mass Grading Permit Plans
- 403 On-Site Civil Engineering (Phase I Reduced Concept)
- 404 Vehicle Gate Design
- 405 Storm Water Detention Facility Plan
- 406 Center Street Signage and Striping Plan
- 407 Submittals and Permitting
- 408 Meetings and Team Coordination
- 409 Technical Specifications

- 500 Site Specific & Specialty Civil Engineering Services
- 501 Traffic Impact Analysis (TIA)
- 513 West Airfield Drainage Master Plan and Downstream Assessment Update
- 520 Franchise Utility Coordination
- 521 Duct Bank Design
- 525 Community Facilities Agreement / Three-Way Contract Assistance
- 527 Obstruction Evaluation (OE/AAA) - 7460
- 528 Construction Phasing and Safety Plan?

900 Phase I Full Concept Fees

- 901 Additional On Site Civil Engineering Design Fee
- 902 Vehicle Gate Design
- 903 Submittals and Permitting
- 904 Meetings and Team Coordination

MEP/F Engineers

Gensler's MEP/F engineering consultant (DFW Engineers) will provide the following Basic Services under this agreement: Details for each section available on request:

1. Participate in up to sixteen (16) weekly coordination meetings with the design team.
2. Participate in up to two (2) design review/progress meetings with the City.
3. Confirm space requirements for MEP systems.
4. Coordinate MEP requirements with other consultants.
5. Mechanical: Perform heating and cooling load calculations to determine major HVAC equipment capacities and sizes. Prepare mechanical plans defining new HVAC system types, capacities, and methods of distribution.
6. Electrical: Perform electrical load calculations to confirm electrical capacity requirements of the facility. Coordinate electrical equipment space requirements. Prepare electrical plans defining new system architecture and capacity.
7. Plumbing: Perform plumbing load calculations to determine system capacity requirements. Coordinate plumbing equipment space requirements. Prepare plumbing plans defining plumbing system types and methods of distribution for new systems.
8. Fire Alarm: Plans will begin to indicate locations of primary fire alarm features such as initiating devices; audible and visible notification appliances; interface to the fire sprinkler systems (e.g. waterflow, tamper switches, fire pump controller as required), access control doors, doors on magnetic hold-open, emergency lighting, public address systems, foam activation, smoke control system, and HVAC system).

9. Fire Protection: Drawings will begin to indicate hazard area classifications, discharge density

requirements, locations of main supply piping, risers, valves, and standpipe hose connections.

Branch-lines and individual sprinkler locations shall be the responsibility of the contractor and are not included in the scope of this proposal. A conceptual riser diagram will be included. A diagram of the fire pump room layout and/or storage tank will be included if required.

Structural Engineer:

Gensler's Structural engineering consultant (LA Fuess and Partners) will provide the following Basic Services under this agreement: Details for each section available on request:

1. Prepare structural plans, typical details and wall sections of the selected structural system
2. Prepare draft specifications
3. Consult regarding geotechnical recommendations and impact on the project; evaluate geotechnical recommendations for foundation design and coordinate with the geotechnical consultant
4. Consult regarding fire resistance requirements and their impact on structural systems
5. Attend local design meetings and conference calls

Acoustical consultant

Gensler's Acoustical engineering consultant (WJHW) will provide the following Basic Services under this agreement: Details for each section available on request:

ARCHITECTURAL ACOUSTICS

1. Work with the design team set acoustical criteria based on user needs and expectations for room acoustics, speech intelligibility, and other noise control requirements;
2. Assist in the determination of the quantity, type and location of acoustical finishes within the acoustically sensitive spaces listed above.
3. Assist in the coordination of acoustical material so that they best integrate with the architectural design in a way that is aesthetically appropriate for the architectural design of the building.
4. Help identify material selections and their acoustical properties for inclusion in the architectural construction documents.

ARCHITECTURAL NOISE CONTROL

5. Identify with the design team the sensitive areas where good sound isolation is required;
6. Set Sound Transmission Class (STC) criteria for sound transmission in and out of the spaces horizontally and vertically, as appropriate;
7. Review the adjacent spaces for which potential sound isolation conflicts might occur and make architectural recommendations to help control the transfer of objectionable sound between these areas;
8. Provide recommendations for the design, specification and construction of partitions, doors, windows, and other sound isolating elements to meet the expectations of noise control within the spaces identified as acoustically sensitive.

MECHANICAL NOISE AND VIBRATION CONTROL

1. Assign HVAC noise criteria (NC) values to the air conditioned/ventilated, noise sensitive spaces to meet Owner expectations and industry standards for acceptable background

- noise levels from mechanical equipment, for use by the Mechanical Engineer in their design efforts;
2. Review the HVAC design prepared by the Mechanical Engineer to determine if the calculated noise levels meet appropriate HVAC noise criteria;
 3. Review potential plumbing and electrical noise and vibration created by building services which may negatively impact acoustically sensitive spaces and provide recommendations to the design team to mitigate unwanted noise intrusions;
 4. Should any noise mitigation revisions to the design be warranted, we will work with the appropriate Engineer(s) and provide recommendations to reduce mechanical system noise to the desired level;
 5. Our vibration control recommendations will be for mechanical and electrical equipment;

Excluded from this consultants scope are any efforts on vibration analysis on the fundamental building structure, vibration due to occupancy activities (manufacturing), external sources (ie; transportation), nor will we review the expected fundamental structural response to vibration in regards to appropriateness for various forms of occupancy or other uses. This scope is based on the Structural Engineer or other consultant performing such analysis.

Code consultant

Gensler's Code consultant (ACS Group) will provide the following Basic Services under this agreement: Details for each section available on request:

DOCUMENTATION REVIEW:

Consultant will review the deliverables prepared by the Design team under the prior agreement and will work with the team to develop the following code related deliverables. These deliverables will be PDF mark-ups of the drawing packages and a memo/report outlining the findings, as required.

CHEMICAL CLASSIFICATION:

Consultant will collaborate with the design team and the end-user to gather information regarding the proposed use, storage, and handling of chemicals that are considered hazardous materials. Pertinent information includes the industrial processes, chemical storage quantities and configurations, and the use of said chemicals. ACS Group will assign hazard classifications, as determined in accordance with the IFC, for up to 150 unique chemicals.

A Hazardous Materials Inventory Statement (HMIS) will be produced following chemical classification. The HMIS will include summary sheets for each control area or Group H area (if required). The HMIS will including all of the following information:

1. Chemical Product Name
2. Components
3. Chemical Abstract Service (CAS) Number
4. Storage/Use Location
5. Container Size
6. Hazard Classification (determined in accordance with IFC criteria) Closed-use, Open-use, and Storage Quantities
7. Maximum Allowable Quantity (MAQ) per Control Area

FIRE PROTECTION & LIFE SAFETY REPORT (FPLS REPORT)

Consultants will prepare a Fire Protection & Life Safety (FPLS) Report for each building. The Report will contain the strategic fire protection and life safety approach for the facility. The reports will be based on the applicable code requirements and will describe the approach proposed to meet said requirements. This document is intended to be used as guidance for the design team to perform detailed design and in discussions with the Authority Having Jurisdiction (AHJ). The FPLS Report will include such items as:

1. Building Description
2. Industrial Process Description
3. Occupancy Classification and Special Uses
4. Key Issues and Considerations
5. Fire Service Features
6. Allowable Building Height and Area
7. Building Construction Requirements
8. Fire-Rated Separation Strategy
9. Interior Finishes and Building Contents
10. Occupant Egress and Exiting Strategy
11. Fire Suppression System Criteria
12. Alarm and Detection System Criteria
13. Emergency Communication System Criteria
14. High/Low-Piled Storage Criteria
15. Control Area and High-Hazard Area Strategy
16. Applicable Hazmat Storage/Use Requirements
17. Spill Control and Secondary Containment Requirements
18. Mechanical Ventilation Criteria
19. Explosion Control Criteria
20. Electrical Classification Criteria
21. Emergency and Standby Power Requirements.

Three (3) report issuances, issued at Client determined milestones, have been budgeted for this project. ACS Group will also incorporate any client comments received as a result of each report issuance.

FIRE SUPPRESSION/ALARM BASIS OF DESIGN (HANGAR ONLY)

It is understood that the preference for fire suppression in the hangar will be a water-based system without the use of foam. As such, ACS Group will prepare a basis of design (BOD) narrative to describe the concepts and decisions used to meet the owner's project requirements and governing regulations for the fire protection and life safety systems. This BOD narrative will include the following content:

Classification of hangar in accordance with NFPA 409:

1. Type(s) of suppression system(s) proposed;
2. Design criteria for suppression systems;
3. Design criteria for ignitable liquid containment and drainage systems;
4. Design criteria for detection and control systems;
5. Sequence of operations.

Landscape Architect:

Gensler's Structural engineering consultant (Bella Firma) will provide the following Basic Services under this agreement: Details for each section available on request:

1. Prepare a preliminary scope of documents and specifications (to a 25% contract / specification level).
2. Provide detailed plans, sections, and elevations of the Landscape Plans along with plant recommendations, samples, and other information to convey Design Development ideas.
3. Attend Project coordination meetings as requested by the Gensler.

Security consultant

Gensler's security consultant (Priority Assessment) will provide the following Basic Services under this agreement: Details for each section available on request:

1. Review the master plan, programming and SD drawings previously prepared under the initial agreement;
2. Review ongoing façade studies and provide input as to potential security considerations;
3. Coordinate with the tenant to discuss potential future security strategies related to the tenant securing federal (DOD or others) contracts; and
4. Provide a written brief outlining future security strategies and enhancements that the tenant may need to make to meet DOD security requirements.

Additional Services:

Gensler will provide services beyond the Basic Services described above ("Additional Services") if requested by City and confirmed in writing by Gensler. Additional Services include, but are not limited to:

- a. Services required due to accelerated deadlines, delays, untimely City information, approvals, or instructions, out-of-sequence phasing, Project pauses or remobilization, or other schedule changes due to reasons beyond Gensler's reasonable control;
- b. Services required due to changes in: (i) the Program; (ii) previously provided information, approvals, or instructions; or (iii) federal, state, or local laws, or regulations (or their interpretation by the authority having jurisdiction);
- c. Services required due to performance failures by City and City's consultants/contractors;
- d. Any Services which are not defined as Basic Services herein.

COMPENSATION

Gensler's Compensation for the above Basic Services will be the lump sum of **Four Million Thirty Five Thousand Two Hundred Fifty Dollars (\$4,035,250)**, broken down as follows:

Gensler – (Building 1 shell and interiors and Hanger)	\$988,700
Civil Engineer—Kimley-Horn (Phase 1 Reduced Concept Fees)	\$644,750
Civil Engineer – Kimley Horn (Phase II Full Concept Fees)	\$169,000
MEP Engineer—DFW Engineers	\$1,829,200
Structural Engineer—LA Fuess (Building 1 and Hanger)	\$180,000
Acoustics - WJHW	\$47,000
Code Consultant	\$29,100
Landscape Architect	\$20,000
Security Consultant	\$112,500
Sub-Total	\$4,020,250
Reimbursables	\$15,000
Total Basic Services (Lump Sum)	\$4,035,250

End

Staff Report



Arlington Economic Development Corporation – Modification of the Professional Service Contract for the E-Space Project Manager, Project 24-0222	
AEDC Meeting Date: 12-11-2024	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Modification of the Professional Service Contract for the E-Space Project Manager with Hill Building Group, LLC, of Arlington, Texas, in an amount not to exceed \$360,000 for phase II of design development of the E-Space project.

PRIOR BOARD OR COUNCIL ACTION

On April 16, 2024, following a public hearing, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-005 authorizing the execution of a Master Agreement with espace Inc. and the City of Arlington, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On April 23, 2024, City Council approved Resolution No. 24-108 authorizing the execution of a Master Agreement with espace Inc. and the Arlington Economic Development Corporation, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On June 5, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-007 authorizing the execution of a professional services contract for the E-Space project manager with Hill Building Group, LLC, of Arlington, Texas, in an amount not to exceed \$226,800.

On June 11, 2024, City Council approved Resolution No. 24-143 accepting and approving the Arlington Economic Development Corporation Resolution No. 24-007 authorizing the negotiation and execution of a professional services contract for the E-Space project manager with Hill Building Group, LLC, of Arlington, Texas, in an amount not to exceed \$226,800.

On July 30, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-012 authorizing the use of the Construction Manager-at-Risk procurement method of construction for E-Space manufacturing facility.

On July 30, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-011 authorizing the execution of a professional services contract for the E-Space architect and engineering team with M. Arthur Gensler Jr. & Associates, Inc., dba Gensler, of San Francisco, California, in an amount not to exceed \$691,170.

On August 6, 2024, City Council approved Resolution No. 24-202 accepting and approving the Arlington Economic Development Corporation Resolution No. 24-011 authorizing the execution of a professional services contract for the E-Space architect and engineering team with M. Arthur Gensler Jr. & Associates, Inc., of San Francisco, California, in an amount not to exceed \$691,170.

ANALYSIS

In a public-private partnership with E-Space, the City of Arlington (City) and the Arlington Economic Development Corporation (AEDC) are developing a manufacturing facility and office space to house E-Space’s North American headquarters at Arlington Municipal Airport.

In June 2024, to facilitate efficient management of the project, the AEDC solicited proposals for a project manager or “owner’s representative” to oversee the design process on behalf of the AEDC. The AEDC selected Hill Building Group, LLC as the project manager. Hill Building Group, LLC has been working alongside the architectural team (M. Arthur Gensler Jr. & Associates – “Gensler”) to develop conceptual design over the past five months.

This contract modification is for phase II of the design of the project, which includes design development up to the potential project groundbreaking. Hill Building Group, LLC, will continue working with Gensler and Moss & Associates, LLC, the selected construction manager-at-risk for the project during this phase. To allow for flexibility, this contract modification is proposed with a twelve-month term and a not-to-exceed amount of \$360,000. However, Phase II of the design of the project is expected to last only through March of 2025. Therefore, the estimated total expense for Hill Building Group’s services for this phase is only \$120,000.

Once phase II of the design of the project is complete and final cost estimates have been developed, the AEDC and E-Space will determine whether to move into the construction phase. At that time, the AEDC will request a proposal from Hill Building Group for project management for the construction phase.

Name of Prime Vendor	Hill Building Group, LLC
Total Contract Value	\$360,000
Prime Vendor’s MWBE Status	None
Dollar Amount of Prime Vendor’s Self-Performance	\$252,000
Percentage Amount of Prime Vendor’s Self-Performance	70%
Name of Subcontractor (1)	Cattlemen Consulting, LLC
Subcontractor’s MWBE Status & Trade	HI / Project Management
Dollar Amount of Subcontractor’s Performance	\$108,000
Percentage Amount of Subcontractor’s Performance	30%
Total MWBE Participation	\$108,000 (30%)

Hill Building Group, LLC, has committed to utilizing 30% MWBE sub-contracting participation. The Office of Business Diversity is in agreement with the consultant’s participation efforts.

FINANCIAL IMPACT

To allow for flexibility, this contract modification is proposed with a twelve-month term and a not-to-exceed amount of \$360,000. However, Phase II of the design of the project is expected to last only through March of 2025. Therefore, the estimated total expense for Hill Building Group’s services for this phase is only \$120,000. The projected financial impact for this contract is as follows:

FY 2025

FY 2026

FY 2027

Not to exceed \$360,000

\$0

\$0

Funding is available in the AEDC Professional Service Account No. CC973010-SC0574.

ADDITIONAL INFORMATION

Attached:
Under separate cover:
Available in the Purchasing Division:
Form 1295:
MWBE:

Resolution and Agreement
None
Contract File
Requested
No

STAFF CONTACTS

Lyndsay Mitchell, AICP, CPM
Director of Strategic Initiatives
817-459-6653
Lyndsay.Mitchell@arlingtontx.gov

Marty Wieder, AICP
AEDC Executive Director
817-459-6432
Marty.Wieder@arlingtontx.gov

Vanessa Canela
Sr. Purchasing Agent
817-459-6321
Vanessa.Canela@arlingtontx.gov

April Nixon
Director of Finance
817-456-6345
April.Nixon@arlingtontx.gov

ARLINGTON ECONOMIC DEVELOPMENT CORPORATION
Resolution No. _____

A resolution of the Board of Directors authorizing the Executive Director to execute a Modification of Professional Service Contract for the E-Space Project Manager with Hill Building Group, LLC, of Arlington, Texas, in an amount not to exceed \$360,000

WHEREAS, the Arlington Economic Development Corporation (“AEDC”) is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, E-Space, AEDC, and the City of Arlington (“City”) entered into a certain Master Agreement on May 1, 2024, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport (the “E-Space Project”); and

WHEREAS, the AEDC and Hill Building Group, LLC (the “Company”) entered into a certain Professional Services Contract for the E-Space Project Manager on June 26, 2024, in an amount not to exceed \$226,800 (hereinafter referred to as the “Contract”); and

WHEREAS, Company and AEDC desire to modify the Contract due to additional costs related to Phase II of the design of the E-Space Project; NOW THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON ECONOMIC DEVELOPMENT CORPORATION:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this body and as part of its official record.

II.

That the Executive Director of the Arlington Economic Development Corporation is hereby authorized to execute a Modification of Professional Service Contract for the E-Space Project Manager with Hill Building Group, LLC, of Arlington, Texas, for professional services in an amount not to exceed \$360,000 relative to Phase II design development of the E-Space project.

III.

A substantial copy of the Modification of Professional Services Contract for the E-Space Project Manager is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the ____ day of _____, 2024, by a vote of ____ ayes and ____ nays at a regular meeting of the Board of Directors of the Arlington Economic Development Corporation.

Michael Jacobson, President

ATTEST:

Alex Busken, Assistant Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, Counsel for the
Arlington Economic Development
Corporation

BY *Beth Miller Atkinson*

Exhibit "A"

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

Modification of
Professional Service Contract for the
E-Space Project Manager

THIS MODIFICATION OF PROFESSIONAL SERVICE CONTRACT FOR THE E-SPACE PROJECT MANAGER (hereafter “Modification”) is made and entered into on this _____ day of _____, 2024, by and between **HILL BUILDING GROUP, LLC** (hereafter “CONSULTANT”) and the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**, a nonprofit corporation located in Tarrant County, Texas, acting by and through its Executive Director (hereafter “AEDC”).

WITNESSETH:

WHEREAS, on June 26, 2024, the AEDC and CONSULTANT entered into a contract relative to the E-Space Project Manager (hereafter referred to as “the Agreement”); and

WHEREAS, CONSULTANT and AEDC now desire to modify the Agreement in certain respects as set forth herein; NOW THEREFORE

The Agreement is incorporated herein as if written word for word. Except as provided below, all other terms and conditions of the Agreement shall remain unchanged and shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Modification and the Agreement, this Modification shall govern and control. In consideration of the foregoing, and for other good and valuable consideration, the parties hereby agree to modify the Agreement as follows:

I.
Term

This Modification shall become effective on January 1, 2025, and shall continue until the Services are complete or December 31, 2025, whichever date is earlier, unless terminated earlier in accordance with the provisions of the Agreement.

II.
Compensation

In consideration for the additional Services being rendered pursuant to this Modification, AEDC agrees to pay to CONSULTANT an amount not to exceed Thirty Thousand Dollars (\$30,000) per month for the proper completion of all Phase 2 – Design Development through Project Groundbreaking Services included in this Modification, as detailed in **Exhibit A**. In no instance shall the total compensation to CONSULTANT for Phase 2 Services exceed Three Hundred Sixty Thousand Dollars (\$360,000).

III.
Scope of Work

CONSULTANT shall perform such services as are necessary to provide professional services for the AEDC E-Space project as outlined in Exhibit A (the "Services") to this Modification, attached hereto and incorporated herein by reference as though written word for word.

IN WITNESS WHEREOF, the parties hereto execute this Modification of Professional Service Contract for the E-Space Project Manager.

HILL BUILDING GROUP, LLC

BY _____
Signature

Printed name

**ARLINGTON ECONOMIC
DEVELOPMENT CORPORATION**

BY _____
Marty Wieder
Executive Director

ATTEST:

Alex Busken, Assistant Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, Counsel for the
Arlington Economic Development
Corporation

BY _____

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CONSULTANT
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me (*or proved to me on the oath of _____ or through _____ (description of identity card or other document)*) to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **HILL BUILDING GROUP, LLC** and as _____ thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 20____.

Notary Public in and for the State of Texas

My Commission Expires:

Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

AEDC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **MARTY WIEDER**, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**, a municipal corporation in Tarrant County, Texas, and as the **EXECUTIVE DIRECTOR** thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 20____.

Notary Public in and for the State of Texas

My Commission Expires:

Notary's Printed Name



11/27/2024

ATTN: Lyndsay Mitchell, AICP, CPM
Director of Strategic Initiatives
City of Arlington, Office of Strategic Initiatives
Lyndsay.Mitchell@arlingtontx.gov

CC: Will Velasco, CPPB, CONSPEC
Procurement Manager
City of Arlington, Finance Department
Will.Velasco@arlingtontx.gov

RE: E-Space Development Project – Arlington Municipal Airport

Please consider this proposal from Hill Building Group (**HBG**), to provide project management services (**the Services**) for the development of the E-Space manufacturing facility, (**the Project**), to be constructed at the Arlington Municipal Airport, Arlington, Texas. The Project consists of the design and construction of approximately 250,000 sq. ft. of customized manufacturing and office space, a 40,000 sq. ft. hangar space, employee parking and associated aircraft apron and circulation drives.

The overall scope of the project, we feel can be broken down into four phases:

1) **Phase 1 - Project planning and early design: COMPLETED**

- a) Procurement of design and engineering services.
- b) Programming of the project to identify the user's requirements.
- c) Provide review and comments to Conceptual design.
- d) Provide review and comments to Schematic design.
- e) Identify any special conditions or requirements.
- f) Facilitate site diligence (if required).
- g) Facilitate budgeting and scheduling format.
- h) Facilitate RFQ/RFP for procurement of a construction firm via CMAR delivery.
- i) Interview and evaluate CMAR bids and recommend award.
- j) Review specifications for General Conditions and General Requirements.
- k) Update preliminary project budget and schedule.

2) **Phase 2 – Design Development through Project Groundbreaking**

- a) Commencing with Design Development and completing with the start of Construction.
- b) Coordinate and manage Design Development and Construction Document progress.
- c) Coordinate design with CBO and AFD representatives.
- d) Solicit and coordinate construction management input for constructability and phasing.
- e) Coordinate plans submission and procurement of the building permit.
- f) Coordinate procurement services for early site package or "make-ready" package.
- g) Assist in identifying qualified subcontractors and MWBE firms.
- h) Coordinate requirements of an early site package and utility relocation and/or extension (if required).
- i) Coordinate and manage tenant design requirements
- j) Review and evaluate progress invoices from Design team and General Contractor.
- k) Facilitate budget review and Value Engineering process.
- l) Monitor and maintain master project schedule.
- m) Coordinate and/or attend all weekly design and budget meetings.
- n) Facilitate site diligence.
- o) Review and provide input for construction agreement, and monthly contractor representations (lien releases and stored materials affidavit).
- p) Coordinate procurement of third-party materials testing agency.



3) **Phase 3 – Construction Administration** (Fee TBD)

- a) Provide full-time project manager and administrator stationed on-site (if required)
- b) Attend weekly OAC meetings.
- c) Review proposed changes and proposed use of contingency.
- d) Monitor project schedule and job progress.
- e) Coordinate contractor's site staging and operations plan.
- f) Attend pay application meetings and monitor contractor's cost.
- g) Verify stored materials.
- h) Facilitate information and decisions required of the City and Owner.
- i) Facilitate procurement of Owner's separate contractors (telecom, FFE, racks and shelving).
- j) Monitor and coordinate punchlist and completion items.
- k) Coordinate Substantial Completion and occupancy.
- l) Coordinate Final Completion, contract compliance requirements and final payment.

Fee Arrangement

The fee requested for the services provided in **Phase 2** only, as described above, is **\$30,000.00 (thirty thousand dollars)** per month (**the Fee**). Should the cessation of Phase 2 services end prior to the end of the month, the Fee will be paid on the pro-rata portion of the month in which the services were performed.

This proposal may be extended to include services for Phases 3 based on a more detailed understanding of the project requirements.

Phase 2 fee includes all reimbursables except travel outside of the DFW metroplex. The Fee shall apply only to the services provided by HBG and does not include any third-party provided services. HBG will submit monthly invoices to be paid within 30 days.

Standard of Care

Services to be performed in accordance with the standard of professional care and quality that prevails among project management firms engaged in projects of similar type, use and size located in major metropolitan areas in the United States.

No Authority

HBG has no authority to, and shall not represent itself as having the power, right or authority to make any warranties, representations, or guaranties, or to enter into any obligations or commitments (including any transactions, purchases or agreements) whatsoever on behalf of or as agent for the City or Owner except with prior written approval.

Thank you for the opportunity to provide you with a proposal for project management services related to the development of this exciting new project. Upon acceptance of this proposal, we are available to start the planning phase immediately. Feel free to call or correspond with any questions or comments you may have.

Regards,

A handwritten signature in black ink, appearing to read "Jr".

Hill Building Group
Jack Hill Jr.

A handwritten signature in black ink, appearing to read "Jack Hill".

Hill Building Group
Jack Hill Sr.

Staff Report



Eden Cooper LP – First Amendment to Performance Agreement	
Arlington Economic Development Corporation Meeting Date: 12-11-2024	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing the Executive Director to execute the First Amendment to Performance Agreement with Eden Cooper LP relative to developing land on South Cooper Street in Arlington, Texas into commercial properties.

PRIOR BOARD OR COUNCIL ACTION

On April 16, 2024, the Arlington Economic Development Corporation Board approved the agreement by a vote of 6-0 through AEDC Resolution 24-006.

On April 23, 2024, the City Council approved the agreement through Resolution 24-104.

ANALYSIS

Eden Cooper LP has been diligently working towards executing this project. As proposed, the owner and his developer are still planning to develop vacant and underutilized properties near the intersection of Eden Rd. & S. Cooper St into new flex-hybrid space totaling approx. 227,000 sq. ft. This development is intended to attract smaller higher-end tenants and uses to support entrepreneurship and emerging industries such as bioscience, advanced pharma, innovative technology, and others. This will be the first project in the recently approved flex-hybrid zoning for the city. Estimated cost of construction is approximately \$42M.

However, due to some unforeseen circumstances and challenges beyond the ownership's control, the market has not supported the anticipated progress and success of the project thus far. This has caused some uncertainty in the proposed plans and scope of work that has also resulted in some planning and construction delays. Therefore, the owner has requested an amendment to the agreement by extending all dates one year out to allow for any potential change in the market conditions and a better outcome for this new industrial project.

The initial support was approved by both the Arlington Economic Development Corporation (AEDC) and City Council in an amount not to exceed \$3,407,000 for construction and completion of the Eden Rd. extension and onsite drainage improvements. The extension of Eden Road would connect from Cooper Street to the west and would also serve as access to this new development. The drainage improvements would remedy existing drainage issues on the site and would allow for fuller utilization of the property to be developed. The scope of the project and the amount of approved incentive does not change with this proposed amendment.

The owner still plans to construct the public improvements on the premises and dedicate the land on which the public improvements are constructed to the City of Arlington as public right-of-way and public drainage easements. Payment will be a reimbursement for costs associated with constructing the project and public improvements after they have been commenced, performed, and evidenced the work by the appropriate documentation.

This project upon completion, will support the city's economic development plans and goals by allowing for development of vacant land that is intended to encourage more business enterprises and create primary jobs in Arlington. The proposed extension would not impact or change this amount but would allow the owner and developer more time to make the necessary improvements.

FINANCIAL IMPACT

None.

ADDITIONAL INFORMATION

Attached:	Resolution with First Amendment
Under separate cover:	None
Available in the City Secretary's Office:	None

STAFF CONTACT(S)

Marcus Young, MEDP, BREC
Sr. Economic Development Specialist
817-459-6117
Marcus.Young@arlingtontx.gov

ARLINGTON ECONOMIC DEVELOPMENT CORPORATION
Resolution No. _____

A resolution of the Board of Directors authorizing the Executive Director to execute a First Amendment to Performance Agreement with Eden Cooper LP relative to developing land on South Cooper Street in Arlington, Texas into commercial properties

WHEREAS, the Arlington Economic Development Corporation (“AEDC”) is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, On May 21, 2024, AEDC and Eden Cooper LP (“Owner”) entered into a certain Performance Agreement (“Agreement”) to incentivize Owner in developing commercial property on South Cooper Street and extending Eden Road in Arlington (the “Project”); and

WHEREAS, Market conditions have changed since execution of the Agreement, altering the timeline by which Owner can reasonably complete the Project; and

WHEREAS, AEDC and Owner now desire to amend the Agreement in order to give appropriate time for completion of the Project; NOW THEREFORE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON ECONOMIC DEVELOPMENT CORPORATION:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this body and as part of its official record.

II.

That the Executive Director of the Arlington Economic Development Corporation is hereby authorized to execute a First Amendment to Performance Agreement with Eden Cooper LP relative to developing land on South Cooper Street in Arlington, Texas into commercial properties.

III.

A substantial copy of the First Amendment to Performance Agreement is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the ____ day of _____, 2024,
by a vote of ____ ayes and ____ nays at a regular meeting of the Board of Directors of the
Arlington Economic Development Corporation.

Michael Jacobson, President

ATTEST:

Alex Busken, Assitant Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, Counsel for the
Arlington Economic Development
Corporation

BY Jonathan Moss

First Amendment to Performance Agreement

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

**First Amendment to
Performance Agreement**

THIS First Amendment to Agreement is executed on _____, 2024, by and between **Eden Cooper LP**, an entity duly authorized to do business in the State of Texas, acting by and through its authorized officer (hereafter referred to as “OWNER”), and the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation acting by and through its authorized officer (hereafter referred to as “AEDC”).

WITNESSETH:

WHEREAS, OWNER and AEDC executed a Performance Agreement (the “Agreement”) on May 21, 2024, to incentivize OWNER in developing commercial property and extending Eden Road in Arlington (the “Project”); and

WHEREAS, Market conditions have changed since execution of the Agreement, altering the timeline by which OWNER can reasonably complete the project; and

WHEREAS, OWNER and AEDC desire to amend the Agreement in order to give appropriate time for completion of the Project;

NOW THEREFORE, for and in consideration of the mutual premises and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the AEDC and OWNER do hereby agree, covenant, and contract as set forth below:

1. Section II.A. of the Agreement is hereby amended and restated in its entirety to read as follows:

A. OWNER will construct the Public Improvements on the Premises and dedicate the land on which the Public Improvements are constructed to the City of Arlington as public right-of-way and public drainage easements. OWNER shall commence construction of the onsite infrastructure no later than July 1, 2026 and shall complete all other Public Improvements and dedicate the public right-of-way no later than December 31, 2027.

2. Section II.B. of the Agreement is hereby amended and restated in its entirety to read as follows:

B. OWNER shall construct the Project on the Premises. Construction of Phase 1 of the Project shall commence no later than January 1, 2027 and shall be completed by no later than June 30, 2028.

3. Except as modified by this First Amendment, the Agreement shall remain in full force and effect and this First Amendment shall be binding upon OWNER, AEDC, and their respective successors and assigns. If any inconsistency exists or arises between the terms of this First Amendment and the Agreement, the terms of this First Amendment shall prevail. This First Amendment shall be governed by the laws of the State of Texas.

4. This First Amendment, together with the Agreement, embodies the entire agreement and understanding between OWNER and AEDC regarding the subject matters therein. Any and all prior or contemporaneous oral or written representations, agreements, understandings, or statements other than those set forth in the Agreement or this First Amendment are of no force and effect.

5. If any term or provision of this First Amendment is found to be invalid, illegal, or unenforceable, the remaining terms and provisions of this First Amendment cannot be affected thereby, and each term and provision of this First Amendment will be valid and enforceable to the fullest extent permitted by law.

6. OWNER and AEDC hereby ratify and confirm the Agreement, as amended by this First Amendment.

7. This First Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

(signature page to follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

Eden Cooper LP

BY _____
Signature

Type or Printed Title

Date _____

WITNESS:

**ARLINGTON ECONOMIC
DEVELOPMENT CORPORATION**

BY _____
Marty Wieder

Executive Director

Date _____

ATTEST:

ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, Counsel for the
Arlington Economic Development
Corporation

BY _____

THE STATE OF Texas §

COUNTY OF _____ §

§

§

Eden Cooper LP

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **Eden Cooper LP** an entity duly authorized to do business in the State of Texas, and as the _____ thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2024.

Notary Public in and for
The State of California

My Commission Expires

Notary's Printed Name

THE STATE OF TEXAS §

COUNTY OF TARRANT §

§

§

§

**ARLINGTON ECONOMIC
DEVELOPMENT CORPORATION**

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **MARTY WIEDER**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Executive Director** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2024.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name