

# CITY OF NEW BRAUNFELS



## REQUEST FOR COMPETITIVE SEALED PROPOSALS

for

### Construction of the New Braunfels Police Station & Veterans Memorial

Solicitation # **CSP 21-002**

Date Issued:

October 1, 2020

RESPONSES MUST BE RECEIVED **NO LATER THAN:**  
**3:00 P.M. CST October 29, 2020**

Proposal  
Bond: 5%

Performance  
Bond: 100%

Payment  
Bond: 100%

Pre-Proposal Conference: October 15, 2020 @ 2:00 p.m. CST (REMOTELY HELD)  
Location: New Braunfels City Hall, 550 Landa Street, New Braunfels, TX 78130

New Braunfels Purchasing Department: Phone: 830-221-4389  
Email: [bcoleman@nbtexas.org](mailto:bcoleman@nbtexas.org)

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**NOTICE TO RESPONDENTS**  
**REQUEST FOR COMPETITIVE SEALED PROPOSALS**  
**# CSP 21-002**

The City of New Braunfels, Texas, (hereinafter referred to as “City” or “Owner”) intends to purchase and invites you to submit a sealed response for:

**CONSTRUCTION OF THE NEW BRAUNFELS POLICE STATION & VETERANS  
MEMORIAL**

Sealed Responses addressed to the Purchasing Manager will be received until **October 29, 2020 at 3:00 PM**, at City Hall, City Secretary Office: Attention: Purchasing Manager at 550 Landa Street, New Braunfels, Texas 78130. All Responses must be in the City’s possession on or before the scheduled date and time (no late responses will be considered). The City’s Purchasing Department is not open for weekend or holiday deliveries.

Proposal documents may be obtained at:

- the Purchasing Office from the Purchasing Manager
- online to <http://www.bidnetdirect.com/texas>, click on Bid Opportunities, then City of New Braunfels
- at the City of New Braunfels Website,  
<http://www.nbtexas.org/DocumentCenter/Home/Index/139>

In accordance with Chapter 2269 of the Texas Government Code, the contract will be awarded to the responder who provides the best value to the City. The City shall evaluate the responses on the basis of all factors described herein.

The City reserves the right to refuse and reject any or all responses, waive any or all formalities or technicalities, accept the response or portions of the response determined to be the best value to the City, and hold the responses for a period of 120 days without taking action. Respondents are required to hold their responses firm for the same period of time.

Proposal may be mailed or delivered (in person or by Express Mail or delivery service) to:

**Hand-delivered & Courier Submissions:**

Purchasing Manager  
City of New Braunfels  
550 Landa Street  
New Braunfels, TX 78130

**LABELING INSTRUCTIONS:** Envelopes must be clearly marked:

CSP 21-002 – New Braunfels Police Station  
Due: **October 29, 2020 at 3:00 p.m.**

# PART I GENERAL REQUIREMENTS FOR RESPONSES

## 1. DEVIATION FROM SPECIFICATION/ REQUIREMENTS

Please read the requirements thoroughly and be sure that your response complies with all requirements/specifications noted. Any variation from the solicitation requirements/specifications must be clearly indicated by letter, on a point-by-point basis, attached to and made a part of your response. If no exceptions are noted, and you are the successful respondent, the City will require that the good/service(s) be provided as specified.

## 2. GENERAL DESCRIPTION

Pursuant to Chapter 2269 of the Texas Government Code, the City invites the submittal of responses to this Request for Competitive Sealed Proposals (CSP) from qualified firms interested in providing construction services in connection with the Construction of the New Braunfels Police Station & Veterans Memorial. New Braunfels Police Station is an 11.78-acre site with a new approx. 62,300 sf two story steel framed brick masonry and composite rainscreen clad slab-on-void form Main Building, and a new one story 13,900 sf gridded structural slab on grade pre-engineered metal Annex Building. A granite clad Veterans Memorial feature at the front lawn will include low masonry planters, concrete bench seating, landscape lighting, and flag poles. The site will include secure walls and fences surrounding the property, approx. 278 parking spaces to accommodate staff and visitors, a secured evidence lot, an on-site water detention pond and an LCRA radio tower.

**Architect/Engineer** - The Project has been designed by

PGAL  
2222 Western Trails Blvd.  
Suite 300  
Austin, TX 78745  
Tel: (512) 236-1005

**Project Location** – 3030 W. San Antonio Street, New Braunfels, TX 78130

### **Project Duration**

The City has established a target commencement date for construction activities as January 7<sup>th</sup>, 2021. The projected completion date is estimated to be 480 calendar days. The City reserves the right to modify the commencement date, subject to Owner and Contractor availability, phase the construction of the Project, or modify the schedule as needed and determined by the City due to modifications in scope.

**Project Budget** - The proposed budget for construction costs for this Project is \$28,400,000 inclusive of all incidental and contingent expenses associated with the construction of the entire scope of the Project.

Responses are solicited for this service in accordance with the terms, conditions, and instructions set forth in the CSP guidelines.

### **Proposal Schedule**

DATE	MILESTONE
October 1, 2020	CSP – Posted <a href="http://www.bidnetdirect.com/texas">www.bidnetdirect.com/texas</a> & <a href="http://www.nbtexas.org/DocumentCenter/Home/Index/139">http://www.nbtexas.org/DocumentCenter/Home/Index/139</a>

October 15, 2020	Pre-Proposal Conference <i>(time &amp; address listed on Page 1 and Section 5)</i>
October 19, 2020	Deadline for questions and requests for clarification (Addenda)
October 29, 2020	Competitive Sealed Proposals (CSP) submission deadline <i>(time &amp; address listed on Page 3 and Section 6)</i>
October 30, 2020	Deadline to submit Response Form D – Subcontractor List and Percentage of Project
December 2020	Anticipated Approval & Award of Contract by City Council

### 3. PURPOSE

The City proposes to retain a highly qualified, capable firm or multiple firms to act as its general contractor for the construction of the Project using the Competitive Sealed Proposal delivery method authorized by chapter 2269 of the Texas Government Code. Firms who participate in this CSP process are sometimes referred to as “Proposers,” “Respondents,” and “Offerors.”

The City seeks the Respondent who provides the best value for the City based on (1) the selection criteria and the weighted value for those criteria and (2) the ranking evaluation.

The construction services requested of Proposers is generally described as the construction of a police station complex consisting of an approx. 62,300 sf main office building with evidence storage and forensic bay and lab, and a 13,900 sf annex building including vehicle bays and evidence storage, a Veterans Memorial feature, an on-site water detention pond, an LCRA radio tower and all other appurtenances necessary for the complete Project (the “Work”).

The selected Offeror(s) will be also responsible for: obtaining all applicable permits and inspections, including those required by the City of New Braunfels Building Division, those required by the State of Texas for asbestos abatement, and those required by TxDOT for driveway closure; providing all necessary performance and payment bonds and insurance certificates; and providing the City with all manufacturers’ warranties and all operations and maintenance (O&M) manuals for all equipment installed.

The bid set of Contract Documents, including the forms for the Contract Agreement between Owner and Contractor, General Conditions, Special Conditions, Supplementary Conditions (if any), Proposal Form, the Insurance Rider for Contractor Coverage, and the requisite bond forms are included with this request for CSP for Offeror evaluation prior to submission of a Proposal.

### 4. INTENT

The good/service(s) to be provided under the CSP shall be in accordance with and shall meet all specifications and requirements as shown in this solicitation.

### 5. PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held REMOTELY at **2:00 p.m. (CST) on October 15, 2020**. Remote access instructions are:

[Please click the link below to join the webinar:  
https://us02web.zoom.us/j/87563401459](https://us02web.zoom.us/j/87563401459)

[Telephone Only: \(833\) 926-2300](tel:8339262300)  
[Webinar ID: 875 6340 1459](https://us02web.zoom.us/j/87563401459)

Representatives of the City will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. The City will transmit to all prospective Proposers of record such Addenda as the City considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective. Pre-Proposal conference minutes and any addenda may be downloaded at <http://www.bidnetdirect.com/texas> or at the City of New Braunfels Website <http://www.nbtexas.org>.

## 6. SUBMITTAL OF RESPONSES

Companies responding to the CSP must follow the instructions below. Proposals are due **October 29, 2020 at 3:00 p.m. (CST)** to City Hall City Secretary Office: Attention: Purchasing Manager at 550 Landa Street, New Braunfels, Texas 78130.

The statements which follow request information that the Evaluation Committee will utilize to evaluate the proposal. Each statement should be specifically addressed. Failure to respond to a statement may result in a proposal being deemed non-responsive and therefore not considered in the selection Process.

To achieve a uniform review process and to obtain a maximum degree of comparability, the City of New Braunfels requires that proposals be submitted in a sealed envelope with **one (1) original master (marked original), one (1) copy, and one (1) electronic formatted USB. Responses shall be tabbed and labeled as indicated for consistency.**

1. **TAB 1** – Solicitation and Response Form A; completed and signed
2. **TAB 2** – Acknowledgment of Addenda, if applicable
3. **TAB 3** – Cover Letter: Name and address of the Proposer, as well as a brief description of the firm and its history.
4. **TAB 4** – Executive Summary: A brief summary highlighting the most important points of the proposal.
5. **TAB 5** – Proposal Forms (Response Forms B)
6. **TAB 6** – Qualifications and Certifications of Proposer (Response Form C and additional documentation for Proposal)
7. **TAB 7** – Plan & Schedule as required in Qualifications of Proposer
8. **TAB 8**- References
9. **TAB 9** – Acceptable Documentation
  - Proposal Guaranty/Bid Bond in an amount no less than five percent (5%) of price proposal.
  - One copy of Certificate of Insurance completed and signed
  - Conflict of Interest
  - Certificate of Interested Parties (Form 1295)
10. **TAB 10** – Required information indicated in Drawings, if applicable
11. **Required by October 30, 2020** – completed Subcontractor List and Percentage of Project (Response Form D)  
**\*\*Note-** All supporting documentation for subcontractors must be submitted no later than October 30, 2020 at 12:00 noon (CST) via email to Barbara Coleman, Purchasing Manager at [BColeman@nbtexas.org](mailto:BColeman@nbtexas.org).
12. **Required after contract award** – Performance & Payment Bonds.

Proposal shall include all specified items in this section and be placed in an envelope, sealed and clearly identified on outside as a Proposal to the City, with Proposer's name and address, and project name. Failure to submit Proposal in this manner may subject Proposer to disqualification. Proposal may be mailed or delivered (in person or by Express Mail or delivery service) to:

### Delivery:

Purchasing Manager

City of New Braunfels  
550 Landa Street  
New Braunfels, TX 78130

**Labeled as:**

CSP 21-002  
Construction of Police Station  
Due: **October 29, 2020 at 3:00 p.m.**

When sent by mail, Express Mail, or delivery service, sealed Proposal (marked as indicated above) shall be enclosed in an additional envelope clearly identified on outside as a Proposal to the City with Proposer's name and address, Project name, and Proposal date and time. It is the sole responsibility of the Proposer to ensure timely delivery of Proposal. The City will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the Proposer.

Responses **WILL** be accepted in person, by United States Mail, or by private courier service. Responses **WILL NOT** be accepted via oral communication, telephone, electronic mail, telegraphic transmission, or facsimile transmission.

Responses may be withdrawn prior to the above scheduled time set for closing. Alterations made before response closing must be initiated by Respondents guaranteeing authenticity. Submittal of a response constitutes an offer by the Respondent. Once submitted, the response becomes the property of the City, and as such the City reserves the right to use any ideas contained in any response regardless of whether that Respondent is selected.

Submission of a response to this solicitation, by any Respondent, shall indicate that the Respondent(s) has accepted the conditions contained in the request for CSP, unless clearly and specifically noted in the response submitted and confirmed in the contract between the City and the successful Respondent. Responses that do not comply with these requirements may be rejected at the option of the City. Responses must be filed with the City before the deadline day and hour. No late response will be accepted or considered. Late responses will be returned to Respondent unopened (if properly identified). Failure to meet response requirements may be grounds for disqualifying a Proposal.

**7. BID BOND**

**Each Proposal must be accompanied by a certified check, cashier's check, or an approved Bid Bond** in the amount of **5%** of the Proposal cost, payable to **City of New Braunfels, Texas** without recourse, as a guarantee the Proposer will enter into a contract and execute 100% performance and payment bonds on the forms provided, within ten (10) days after the contract has been awarded.

Bid guaranty accompanying the Proposal of the apparent best value proposer will be retained until Contract is awarded and successful proposer executes Contract and furnishes required bonds and insurance, after which proposal guaranty will be returned to the proposer. Proposal guaranty accompanying the second best value proposer will be retained until Contract is awarded. All other proposal guaranties will be returned after Proposal evaluations and ranking.

All Respondents acknowledge and guarantee that their Proposal will remain open and the pricing therein is affirmed for 120 days after submission of the Proposal.

**8. PERFORMANCE AND PAYMENT BONDS**

A Performance Bond in the amount of one hundred percent (100%) of the contract price will be required (if the contract exceeds \$100,000).

A Payment Bond in the amount of one hundred percent (100%) of the contract price will be required (if the contract amount exceeds \$50,000).

The successful proposer will be required to furnish performance and payment bonds, if required as stated above, in the contract amount on the approved formed attached hereto this request for CSP, the Project specifications, or the latest edition issued with the contract at the time of award. The bonds must be issued by one or more corporate sureties authorized to do business in Texas as acceptable to the City. All Bonds for values in excess of \$100,000 shall be issued by Sureties that are a holder of certificate from the US Secretary of the Treasury or had reinsured the amount in excess of \$100,000 by a reinsurer holding such certificate.

## **9. PROPOSAL OPENING**

The City will be accepting sealed Proposals until **3:00 p.m.**, central standard time, on **October 29, 2020** at which time they will be opened publicly and the name of the offeror and the monetary component of the Proposals shall be read aloud virtually at: <https://us02web.zoom.us/j/81540735837>

Telephone Only:  
(833) 926-2300  
Webinar ID: 815 4073 5837

Any Proposal received after bidding time will be returned unopened. Receipt of response does not bind the City to any contract for said services, nor does it give any guarantee that a contract for the Project will be awarded.

## **10. ASSIGNMENT**

Respondents are advised that the City shall not allow the successful Respondent to sell, assign, transfer, or convey any part of any contract resulting from this response in whole or in part, to a third party without the written approval of the City.

## **11. SCOPE OF WORK**

The City anticipates the scope of work to consist of the following responsibilities and the following items will be included in the scope of the Projects:

- New construction of a Police Station, approx. 62,300 sq ft with offices, training room, community room, evidence and records storage, forensic lab an bay.
- New construction of an Annex building, approx. 13,900 sq ft with a gym, vehicle prep bays, vehicle maintenance bays offices, and evidence storage
- Veterans Memorial Monument feature with etched granite imagery, walk paths, benches, landscape features and lighting.
- All other appurtenances necessary to complete the Project.

The Project will be designed and constructed so as to meet all applicable federal, state, and local accessibility standards.

The selected Offeror will be also responsible for: obtaining all applicable permits and inspections; providing all necessary performance and payment bonds and insurance certificates; and providing the Owner with all manufacturers' warranties and all operations and maintenance (O&M) manuals for all equipment installed.

The selected Offeror may be required to perform some or all of the following pre-construction and construction services. Preconstruction Services may include, but not necessarily be limited to,



planning and value engineering the Work. Construction Services may include, but not necessarily be limited to, all work associated with construction, occupancy and warranty of the facilities.

## **12. PREPARATION OF RESPONSE**

Responses **MUST** give full firm name and address of Respondent and be manually signed. Failure to do so will disqualify your submittal. The person signing the response must show title or **AUTHORITY TO BIND FIRM IN A CONTRACT**. Firm name and authorized signature must appear on each page that calls for this information. The legal status of the Respondent whether corporation, partnership, or individual, shall also be stated in the submittal. A corporation shall execute the submittal by its duly authorized officers in accordance with its corporate bylaws and shall also list the state in which it is incorporated. A partnership Respondent shall give full names and business addresses of all partners. All partners shall execute the submittal. Partnership and Individual Respondents shall state in the submittal the names and addresses of all persons with a vested interest therein. The place of residence of each Respondent, or the office address of the contractor, with county and state and telephone number, shall be given after the signature. Any costs associated with assembling this submittal will be at the sole expense of the Respondent.

## **13. WITHDRAWAL**

Responses may be withdrawn prior to the due date for submission. Written notice of withdrawal shall be provided to the Purchasing Manager for proposals submitted in hard copy. No response may be withdrawn after opening time without reasonable exception in writing and only after written approval by the City.

## **14. TIME ALLOWED FOR ACTION TAKEN**

The City may hold responses 120 days after submittal deadline without taking action. Respondents are required to hold their Responses firm for same period of time.

## **15. ALTERATIONS/AMENDMENTS TO RESPONSES**

Responses **CANNOT** be altered or amended after the opening deadline. Alterations made before opening time must be initialed by Respondent guaranteeing authenticity.

## **16. LIST OF EXCEPTIONS**

The Respondent shall attach to the response a list of any exceptions to the specifications/requirements, on a point-by-point basis.

## **17. NAME BRANDS**

Specifications may reference name brands and model numbers. It is not the intent of the City to restrict these Responses in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Respondents may offer items of equal stature and the burden of proof of such stature rests with Respondents. The City shall act as sole judge in determining equality and acceptability of products offered.

## **18. INSPECTIONS & TESTING**

The City reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the using department. If a Respondent cannot furnish a sample of a response item, where applicable, for review, or fails to satisfactorily show an ability to perform, the City can reject the response as inadequate.

## 19. PRICING

Prices for all goods or services shall be firm for the duration of this contract and shall be stated on the Proposal form. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the response prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, Respondent MUST indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails.

## 20. INTERPRETATIONS

Any questions concerning the requirements or scope of work with regards to this solicitation for responses shall be directed to the designated individuals as outlined herein. Such interpretations, which may affect the eventual outcome of this solicitation for responses, shall be furnished in writing to all prospective Respondents via Addendum. No interpretation shall be considered binding unless provided in writing by the City in accordance with paragraph titled “**Addenda and Modifications.**”

## 21. ANTICIPATED TERM OF CONTRACT

The anticipated term for the proposed contract is for the Project Duration until Final Completion of the Project.

## 22. EVALUATION

The evaluation process shall be used to determine which response items or services meet the criteria described in “AWARD OF CONTRACT” Section. All responses are subject to evaluation by the City’s Evaluation Committee based on the selection criteria and recommendation to the City Council. Compliance with all response requirements, delivery and needs of the using department are considerations in evaluating responses. The City reserves the right to contact any responder, at any time, to clarify, verify or request information with regard to any response.

## 23. AWARD OF CONTRACT

In accordance with Section 2269.101 of the Texas Government Code, the City seeks to contract with the best value proposer. In determining the best value proposer pursuant to Section 2269.055, the City may consider the following criteria:

- 1) the purchase price;
- 2) the experience and reputation of the Respondent and of the Respondent's goods or services;
- 3) the quality of the Respondent's goods or services;
- 4) the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- 5) the Respondent’s safety record;
- 6) the Respondent’s proposed personnel;
- 7) whether the Respondent’s financial capability is appropriate to the size and scope of the Project; and
- 8) any other relevant criteria specifically listed in the Request for Responses.

**Respondents must provide sufficient information to allow the City to evaluate Proposers based on the weighted selection criteria included in this request for CSP.** To demonstrate qualifications to perform the Work, each Proposer must include with its submission written evidence, such as financial data, previous experience, present commitments and other such data that meets the best value considerations outlined in Section 2269.055 of the Texas Government Code. Each Proposal must contain evidence of Proposer’s qualification to do business in the state of Texas or covenant to obtain such qualification prior to award of the Contract.

## 24. SELECTION PROCESS

Respondents should prepare a sealed proposal responsive to all information requested in this request for CSP.

The City will use a selection committee to evaluate the proposals (the "Evaluation Committee"). The City will select the offeror that submits the proposal that offers the best value for the City based on the criteria in this request and its ranking evaluation. The Evaluation Committee will use the below selection criteria to evaluate the proposals. The City will award the Project based on the best value to the City. The response received will be part of the selection process utilized by the City. The City reserves the right to and may contact Offerors with questions or clarifications relating to that Offeror's response to this request for CSP.

The Evaluation Committee will rank the Offerors as set forth below and will notify each of the rankings within 45 days of proposal opening. The City will then negotiate with the highest ranked Offeror(s) as allowed by statute. The set of Contract Documents, including the forms for the Standard Form of Agreement between Owner and Contractor, General Conditions of the Contract, the Insurance Rider (Exhibit A to the Agreement), the Technical Specifications, the requisite bond forms, and the Drawings and Specifications are included with this request for CSP for Offeror evaluation prior to submission of a Proposal. If a contract cannot be successfully negotiated with the highest ranked Offeror, in the opinion of the City, negotiations will be terminated and the City will proceed to negotiate with the next highest ranked Offeror(s) in the order of the selection ranking until a mutually agreed contract can be negotiated or all proposals are rejected.

## 25. SELECTION CRITERIA

The Proposals submitted in response to this request for CSP will be reviewed by the Evaluation Committee. Proposers must submit fully completed Response Forms A, B, C, and D; provide all information requested below; and include any separate documentation in TAB 6 as necessary to provide additional information to assist the Evaluation Committee in the evaluation of the CSP responses based on the selection criteria. The selection criteria used to evaluate the CSP responses for the Police Station & Veterans Memorial will include the following criteria:

1. **Cost of the Work** (weighted at 40 pts).  
TAB 5 - The City will consider the Total Proposal Price for the cost of the work for the Project as part of its evaluation. The City will have the right to accept alternates, if applicable, in any order or combination unless otherwise specifically provided in the Proposal Documents.

2. **Project Experience and Qualifications of Firm/Personnel** (weighted at 30 pts).

TAB 6 - Proposers must demonstrate experience in the construction of projects of similar size, construction cost or techniques and describe how they intend to provide the needed experience and expertise to this Project. This criterion includes the firm's personnel, resources and methodologies commonly used by your firm that may be applicable to the Project. Proposers must detail available resources to complete the Project and how the resources dedicated to these assignments will impact Proposers' ability to effectively execute the construction of this Project. The City will also consider the firm's safety record.

Proposers must include at a minimum the following items to assist the City in its evaluation:

- o Organizational Chart - describe organizational structure and management team;
- o List of all Key Personnel (e.g., supervisors, superintendents, project managers, safety manger, quality control manager);

- Key Personnel Resumes & Experience – must include years of experience in organization, percentage of time dedicated to the Project, experience on similar projects and identify role in project and whether it was with the same organization or another;
- Firm Experience on Projects– identify the project, original budget and whether project completed within the original budget, completion date and whether the project was complete within schedule;
- Firm Experience on Police Station projects;
- List of Similar Projects from last 5 years - identify the 5 projects most similar in size and scope completed within the last 5 years, original budget and whether project completed within the original budget, completion date and whether the project was complete within schedule;
- List of proposed subcontractors (to be submitted by October 30, 2020 on Response Form D); and
- Proposer may submit photographs, project descriptive narratives, letters of recommendation, project awards, and references to demonstrate experience in constructing a project which meets the City’s expectations for a quality Project constructed on time.

3. **Proposed Schedule/Contract Time** (weighted at 20 pts).

TAB 7 - This criterion includes a detailed preliminary schedule based on the Contract Documents.

- a) Baseline Schedule – Provide a proposed baseline schedule in Microsoft Projects or other Gantt software for this Work defining critical path.
- b) Schedule Strategies – If applicable, provide strategies which are included in the proposal to minimize delays and areas for possible time savings, project controls and Q/A Procedures
- c) Offeror must also provide a detailed description of its approach and plan for proceeding with the work, including outlining the scopes of work the Proposer plans to self-perform work and the portions of work the Proposer intends to sub-contract.

4. **Previous Experience** (weighted at 5 pts).

TAB 6 - The City will consider information regarding the qualifications, reputation, capability and past performance of the contractor and the contractor’s subcontractors and suppliers on projects with the City of New Braunfels, other municipalities or governmental entities. The Proposal should detail the following:

- Experience with City of New Braunfels;
- Experience with other municipalities; and
- Experience with other governmental entities including counties and DPS.

5. **References** (weighted at 5 pts).

TAB 8 - Proposer must provide at least 5 references from projects of similar size and scope, including name, title, phone number, and project.

6. **Financial Information (Pass/Fail)**

TAB 6 - The City will consider the firm’s corporate history and financial stability, including the historical stability, corporate structure, firm’s ability to acquire and maintain surety bonds and insurance, history of litigation or arbitration, history of debarment by municipalities or other public entities, and a statement of any liquidated damages that have previously been withheld by public owner clients of the Proposer

on projects in the last five (5) years.

Proposers must include at a minimum the following items to assist the City in its evaluation:

- the past two (2) years of available financial statements, preferably audited. Provide financial statements showing the name and address of the firm preparing the financial statements and the date of preparation. Proposers may choose to report on the financial capability and stability of their organization to demonstrate that they have the ability to complete the Project in a manner that will not impose undue efforts on the part of the City to invoke rights under bonds to complete the Project or for Proposer to meet financial obligations;
- a list bank references, including contact name and title, address and phone of contact person; and
- written evidence of its authority to do business in the state of Texas.

**This is a Pass or Fail. Any Proposer receiving a score of “Fail” will be automatically disqualified.**

<b>SELECTION CRITERIA – POLICE STATION</b>	<b>WEIGHTED VALUE</b>
Cost of Work	40 pts
Project Personnel and Experience	30 pts
Schedule/Contract Time	20 pts
Previous Experience	5 pts
References	5 pts
Financial Information	Pass/Fail
<b>TOTAL POINTS</b>	<b>100 pts</b>
Interview (Optional)	15 pts
<b>POST-INTERVIEW TOTAL POINTS</b>	<b>115 pts</b>

**Optional Interview** (weighted at 15 pts). After the proposals have been initially ranked based solely upon the selection criteria above, the City, in its sole discretion, may conduct oral interviews of respondents. The number of respondents invited to interview will depend on the scores following evaluation of the written proposal responses. Only the highest ranked Respondents that are, on the basis of their written proposal, qualified to perform the work will be invited for interviews. No more than five (5) Proposers will be interviewed. If the City chooses to conduct interviews, selected Proposers will be notified of the time and place for the interview; the interview format and agenda; and individuals from the firm expected to participate in the interview as a minimum standard. Failure to participate in the interview, if requested, may result in disqualification of the proposal. Respondents selected for interview will be scored based on the interview for a maximum score of 15 points. The interview points will be added to the initial proposal score for final total score, on which the final rankings will be based. The City reserves its right to reevaluate or rescore any submission post-interview based on information learned during the interview process that is materially different than the Proposer’s original submission.

**FINAL SELECTION** - Based on all information, including the written proposal and oral interview, if conducted, the Evaluation Committee will establish the final ranking of the Proposers.

Offerors shall include with the proposal all information and qualifications to allow the City’s selection committee to evaluate the proposal in accordance with this section and the evaluation criteria listed here. The City reserves the right to request additional post-proposal information from any or all Offerors to assist in evaluating the proposal based on the selection criteria. The City reserves the right to reject any and all proposals. The City reserves the right to waive any and all irregularities in proposals.

**26. RIGHT TO REJECT/ AWARD**

The City reserves the right to reject any or all Responses, to waive any or all formalities or technicalities, and to make such awards of contract to the lowest responsible proposer.

**27. CLARIFICATION OF REQUIREMENTS AND QUESTIONS**

All questions about the meaning or intent of the Contract Documents are to be directed to Purchasing Manager. Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda emailed, mailed or delivered to all parties recorded by Purchasing Manager as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

**28. RESTRICTIONS ON COMMUNICATION**

Respondent(s) are prohibited from communicating with: 1) the City Council and the City staff, with the except of those individuals listed below, regarding the CSP or proposals from the time the CSP has been released until the contract is posted as an agenda item; and 2) the City employees from the time the CSP has been released until the contract is awarded. These restrictions extend to “thank you” letters, phone calls, emails and any contact that results in the direct or indirect discussion of the CSP or proposal submitted by Respondent. Violation of this provision by Respondent or its agent may lead to disqualification of Respondent’s proposal from consideration.

The persons listed below may be contacted for information regarding the Invitation for Proposals. If the Proposer contacts any other City employee, including Council Members and members of Boards and Commissions, the Proposer may be found in violation regarding Anti-Lobbying and Procurement.

PROJECT MANAGER:	Joshua Niles	830-221-4638
CONTRACT PROCUREMENT REP.:	Barbara Coleman	830-221-4389

**29. ADDENDA AND MODIFICATIONS**

Any changes, additions, or clarifications to the request for CSP are made by amendments (addenda) and will be posted on the Public Purchase website. Any Respondent in doubt as to the true meaning of any part of the request for CSP or other documents may request an interpretation from the Purchasing Manager. At the request of the Respondent, or in the event the Purchasing Manager deems the interpretation to be substantive, the interpretation will be made by written addendum issued by the Purchasing Manager. Such addendum will be attached to the original request for CSP in the Public Purchase file and will become part of the request for CSP package having the same binding effect as provisions of the original request for CSP. It shall be the Respondent’s responsibility to ensure that they have received all Addenda with respect to this Project. Furthermore, Respondents are advised that they must recognize, comply with, and attach a signed copy of each Addendum which shall be made part of their submittal. Respondent’s signature on Addenda shall be interpreted as the respondent’s recognition and compliance to official changes as outlined by the City and as such are made part of the original request for CSP documents. Failure of any Respondent to receive any such addendum or interpretation shall not relieve such Respondent from its terms and requirements. Addenda may be downloaded at <http://www.bidnetdirect.com/texas> or at the City of New Braunfels Web site, <http://www.nbtexas.org>. No verbal explanations or interpretations will be binding. The City does not assume responsibility for the receipt of any addendum sent to Respondents.

### **30. INVITATION FOR RESPONSES PREPARATION COSTS**

Issuance of this request for CSP does not commit the City, in any way, to pay any costs incurred in the preparation and submission of a response. All costs related to the preparation and submission of this CSP shall be borne by the respondent.

### **31. EQUAL EMPLOYMENT OPPORTUNITY**

Respondent agrees that it will not discriminate in hiring, promotion, treatment, or other terms and conditions of employment based on race, sex, national origin, age, disability, or in any way violate Title VII of 1964 Civil Rights Act and amendments, except as permitted by said laws.

### **32. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful Respondent as independent contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful Respondent under this contract and that the successful Respondent has no authority to bind the City.

### **33. INSURANCE**

Required Insurance Coverage. Any of the coverage set forth in this request for CSP may be waived by the City in its sole discretion, but any such waiver must be in writing and signed by an authorized representative of the City. The contracted Respondent will be required to maintain, at all times during performance of the Contract, the insurance detailed in the Insurance Rider attached as Exhibit A to the Agreement.

### **34. WARRANTIES**

Respondents shall furnish all data pertinent to warranties or guarantees which may apply to items in the response.

The Respondent shall warrant that any equipment furnished, or work performed shall be free from defects in design, materials, workmanship, and will give successful service under the specified operating conditions. Furthermore, the Respondent agrees, upon notice from the City, to make good all defects in design, materials, or performance developing in the materials or equipment under its intended use for at least twelve (12) months from the date of installation and initial operation, or the manufacturer's warranty whichever is greater length of time.

In the event that the equipment must be returned to the factory under warranty, the Respondent shall be responsible for delivery charges both to and from the factory.

### **35. INDEMNIFICATION CLAUSE**

TO THE FULLEST EXTENT PERMITTED BY LAW, THE RESPONDENT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF NEW BRAUNFELS AND ITS OFFICERS EMPLOYEES OR AGENTS THEREOF, (THE CITY OF NEW BRAUNFELS AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY"), FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) TO WHICH ANY SUCH INDEMNIFIED PARTY MAY BECOME SUBJECT, UNDER ANY THEORY OF LIABILITY WHATSOEVER ("CLAIMS"), INSOFAR AS SUCH CLAIMS (OR ACTIONS IN RESPECT THEREOF) RELATE TO, ARISE OUT OF, OR ARE CAUSED BY THE GOODS OR SERVICES PROVIDED BY THE RESPONDENT, ITS OFFICERS, EMPLOYEES, AGENTS, OR ANY TIER OF SUBCONTRACTOR IN THE PERFORMANCE OF THIS AGREEMENT.

**36. RESPONDENT'S EMPLOYEES**

Neither the Respondent nor his/her employees engaged in fulfilling the terms and conditions of any awarded contract shall be employees of the City. The method and manner of performance of such undertakings shall be under the exclusive control of the vendor on contract. The City shall have the right of inspection of said undertakings at any time.

**37. VERBAL THREATS**

Any threats made to any employee of the City, be it verbal or written, to discontinue the providing of item/material/services for whatever reason or reasons shall be considered a breach of contract and the City will immediately sever the Contract with the Respondent.

**38. CONFIDENTIAL INFORMATION**

A. Any information deemed to be confidential or proprietary by the Respondent should be clearly annotated on the pages where confidential or proprietary information is contained. The City cannot guarantee that it will not be required to disclose all or part of any public record under Texas Public Information Act, since information deemed to be confidential or proprietary by the Respondent may not be confidential or proprietary under Texas Law, or pursuant to a Court order. Pursuant to Government Code, Chapter 552, the City must disclose certain contracting information and the law presumes that most contracting information is public. Certain types of contracting information must generally be released under the Public Information Act: overall price; price and description of items or services to be delivered; delivery and service deadlines; remedies for breach of contract; identity of the parties to the Contract; execution and effective dates; and information connected to a vendor or contractor's performance on the Contract. Additionally, information regarding performance under the Contract, including breaches of the Contract, Contract variances, amendments, liquidated damages, and other penalties for non-performance, must generally be released under the Public Information Act.

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

**39. JURISDICTION**

Contract(s) executed as part of this solicitation shall be subject to and governed under the laws of the State of Texas. Any and all obligations and payments are due and performable and payable in Comal County, Texas.

**40. VENUE**

The parties agree that exclusive venue for purposes of any and all lawsuits, causes of action, arbitration, or any other dispute(s) arising from this solicitation or the resulting contract shall be in state district court of competent jurisdiction in Comal County, Texas.

**41. CONFLICT OF INTEREST**

Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity must disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. This questionnaire must be filed, by law, with the City no later than the 7th business day after the date the person becomes aware of facts that require the statement be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor. For



more information or to obtain the Questionnaire CIQ go to the Texas Ethics Commission web page at [www.ethics.state.tx.us/forms/CIQ.pdf](http://www.ethics.state.tx.us/forms/CIQ.pdf).

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A MISDEMEANOR.

#### **42. CERTIFICATE OF INTERESTED PARTIES**

Pursuant to Section 2252.908, Texas Government Code, as amended and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the City, will require the on-line completion of Form 1295 "Certificate of Interested Parties." Form 1295 is also required for any and all contract amendments, extensions or renewals. Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website, [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and <https://www.ethics.state.tx.us/tec/1295-Info.htm> for more information.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT.

#### **43. ARTICLE 21 – RESIDENT PROPOSERS**

Texas provides no advantage to resident Proposers in the award process. However, offers from another state where that state favors their residents will be evaluated by adding the same differential to the proposal that would be required for a non-resident proposal to be awardable in their resident state. (For example, how much lower a Texas firm must be in that state than one of their resident proposals in order to be the awardee).

Pursuant to Local Government Code §271.9051, the City of New Braunfels has a local preference resolution 2009-R61. This resolution authorizes the municipality to enter into a contract with the lowest Proposer or the Proposer whose principal place of business is in the City of New Braunfels if that local Proposer is within five percent of the lowest proposal price received from a Proposer who is not a resident and offers the municipality the best combination of contract price and additional economic development opportunities for the City created by the contract award; including the employment of residents of the municipality and increased tax revenues to the municipality and total amount of the contract is less than \$100,000. This provision does not prohibit the City of New Braunfels from rejecting all proposals.

#### **44. GENERAL CONTRACTOR REGISTRATION**

Ordinance 2008-43 requires all general Contractors and their Subcontractors to be registered with the City of New Braunfels before commencing work within city limits. All information may be obtained at [www.nbtexas.org](http://www.nbtexas.org) click on-line services, Download Center, Building then GC Reg. Application or call the Building Division at 830-221-4060.

#### **45. PREVAILING WAGES**

Proposer's must comply with all requirements of the prevailing wage statute, Government Code 2258 and Davis-Bacon and Related Acts for non-Federal contracts.

Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Highway-Heavy Trades "AS APPLICABLE".

- A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.  
<https://www.wdol.gov/dba.aspx>

#### Attachment C - Prevailing Wage Schedule

Such wage rates shall be used throughout the contract. If a classification is to be used, which is not listed in the attached wage rates, Contractor shall submit to owner rates and classification proposed for use, for approval, prior to performance of the Work.

### **46. EMPLOYMENT REQUIREMENTS AND WAGE RATES**

This Contract shall be based upon payment by Contractor and his Subcontractors of wage rates not less than the general prevailing rate of per diem wages for Work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Contractor agrees to comply with the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act of 1990, and Contractor will indemnify and hold Owner harmless for any failure to so comply and any discrimination for which Contractor may be charged.

Contractor shall keep certified payrolls which will be collected and maintained by the Contractor for itself and all subcontractors and made available to the Owner as may be required upon request or for audit at completion of the job. Accurate records shall show the names and occupations of all laborers, workmen, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by representatives of the Owner.

According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

Contractor shall comply with all requirements of the hours of work on public works law of the State of Texas, Texas Revised Civil Statutes, Articles 5165.1 to 5165.3, including the latest amendments thereto.

Pursuant to Texas Revised Civil Statutes, Article 4413(31), Contractor shall give preference in employment to honorably discharged veterans who were engaged in the services of the United States in time of war or conflict and who are and have been citizens of Texas for not less than five years.

### **47. CONFIDENTIALITY OF INFORMATION AND SECURITY**

Should the successful Respondent be awarded a contract and become the holder of, and have access to, confidential information, (in the process of fulfilling its responsibilities in connection with the contract), the successful Respondent agrees that it shall keep such information confidential and will comply fully with the laws and regulations of the State of Texas, ordinances and regulations of the City of New Braunfels, and any applicable federal laws and regulations relating to confidentiality.

**48. SUBSTITUTIONS/CANCELLATIONS OF RESPONSES**

No substitutions or cancellations are permitted without approval of the City or as allowed within the Contract Documents.

**49. AGREEMENT**

The successful Respondent shall enter into the Standard Form of Agreement and General Conditions of the Contract.

**PART II  
RESPONSE FORM A - PROPOSAL SIGNATURE PAGE**



**OFFER  
SIGNATURE PAGE**

City of New Braunfels  
Purchasing  
550 Landa Street  
New Braunfels, Texas 78130

**Solicitation Number: CSP 21-002**

**Construction of Police Station**

- Invitation for Bid (IFB)  
 Request for Competitive (CSP) Sealed Proposal

**Date Issued: October 1, 2020**

**SOLICITATION**

**Proposers must submit Sealed Proposals containing one (1) signed original, one (1) copy, and one (1) electronic formatted (USB).**

**Proposals will be received at the address shown above until: 3:00 P.M. (Central Time), October 29, 2020 and virtually read aloud by joining the webinar: <https://us02web.zoom.us/j/81540735837> or Telephone Only: (833) 926-2300**

Webinar ID: 815 4073 5837

**Proposals received after the time and date set for submission will be returned, unopened, upon request.**

For information regarding this solicitation, contact:

Purchasing Representative  
Barbara Coleman

E-mail: [bcolemanl@nbtexas.org](mailto:bcolemanl@nbtexas.org)

Phone: (830) 221-4389

Fax: (830) 608-2112

(NO collect calls, Telegraphic, E-mail, On-Line or Fax offers accepted)

5% Proposal Bond Required:  
**100% Payment Bond Required:**  
 100% Performance Bond Required:

**YES**  
 **YES**  
 **YES**

**OFFER**

**(This portion must be fully completed by Proposer.)**

*In compliance with the above, the undersigned offers and agrees to furnish any or all items or services awarded at the prices stipulated for each item delivered at the designated point(s) and within the time specified herein.*

CONTRACT AWARD WILL INCLUDE ALL ASSOCIATED SOLICITATION DOCUMENTS, ATTACHMENTS, AND ADDENDA.

SIGNATURE IS MANDATORY; **MANUALLY SIGN** ORIGINAL DOCUMENT AND COPIES SUBMITTED ARE TO INDICATE SIGNATURE.

Company Name, Address of Proposer:

Name and Title of Person Authorized to Sign Offer:

E-Mail Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

**Signature:**

**Date:**

**Specify Name, Address, E-mail Address, and Telephone Number of Person authorized to conduct negotiations on behalf of Proposer, if different than listed above.**

## RESPONSE FORM B – PROPOSAL FORM

To: City of New Braunfels, Texas  
550 Landa St.  
New Braunfels, Texas 78130

Project: Construction of Police Station  
Solicitation No.: CSP 21-002

Offeror: \_\_\_\_\_  
(Print or type full name of proprietorship, partnership, corporation, or joint venture)

### 1.1 OFFER

- A. Total Proposal Price:** The undersigned Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with City of New Braunfels, Texas, in the form included in the Contract Documents to perform all Work as specified or indicated in Contract Documents for the Contract Amount indicated in this Proposal or as modified by a Change Order or Change Directive.
- B. Period for Proposal Acceptance:** Offeror accepts all of the terms and conditions of the Request for Proposals and Instructions to Offerors, including without limitation those dealing with the disposition of required Bonds. This offer shall remain open to acceptance and is irrevocable for 120 days after Proposal Date (opening). That period may be extended by mutual written agreement of City of New Braunfels and Offeror.
- C. Addenda:** Offeror hereby acknowledges it has received, examined and carefully studied all Addenda and all Addenda have been considered and all related costs are included in the Total Proposal Price.

### 2.1 OFFEROR REPRESENTATIONS

- A. Offeror is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the Work.
- B. Offeror has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance and furnishing of the Work.
- C. Offeror is aware of the general nature of work to be performed by City of New Braunfels and others at the Site that relates to the Work as indicated in the Contract Documents.
- D. Offeror has given City of New Braunfels or Architect written notice of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in the Contract Documents, and the written resolution thereof by Architect are acceptable to Offeror.

- E. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Proposal is submitted.
- F. Laws to be Observed: In the performance of the Contract, the Contractor must comply with all applicable federal, state, and local laws, ordinances and regulations, including but not limited to laws concerned with labor, safety, minimum wages, and the environment. The Contractor will make himself familiar with and shall at all times observe and comply with all federal, state, and local laws, ordinances and regulations which in any manner affect the conduct of the work, and SHALL INDEMNIFY AND SAVE HARMLESS THE CITY OF NEW BRAUNFELS, AND ITS OFFICERS, OFFICIALS, EMPLOYEES, AND REPRESENTATIVES AGAINST ANY CLAIM ARISING FROM VIOLATION OF ANY SUCH LAW, ORDINANCE OR REGULATION BY HIMSELF OR BY HIS SUBCONTRACTOR OR BY HIS EMPLOYEES.
- G. Review by City of New Braunfels: The City of New Braunfels and authorized representatives, agents and employees of the City of New Braunfels shall at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, books and accounting records, subcontracts, purchase orders, and all other relevant data, documents and records pertaining to this Contract.
- H. Offeror will submit written evidence of its authority to do business in the state of Texas with its Proposal.
- I. Offeror further represents that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal; Offeror has not solicited or induced any individual or entity to refrain from submitting a Proposal; and Offeror has not sought by collusion to obtain for itself any advantage over any other Offeror or over the City of New Braunfels.

### 3.1 PROPOSAL PRICE AND TIME

1. **PROPOSAL PRICE** - Offeror must submit the proposed costs as set forth below. The Owner will have the right to accept alternates, if applicable, in any order or combination unless otherwise specifically provided in the Proposal Documents.

Having carefully examined this request for CSP, the General Conditions, Special Conditions, the Drawings and Specifications and addenda thereto, as well as the Project premises and all the conditions affecting the work, the undersigned proposes to furnish all labor, materials, and equipment necessary to complete the entire work in accordance with the Contract Documents for the following sum:

**LUMP SUM PROPOSAL:** This is a lump sum proposal. The prices in the lump sum proposal shall include all labor, equipment, materials, services, transportation, shoring, removal, dewatering, overhead, profit, insurance, bonding, etc., to cover the completed work in place.

Total Proposal dollar amounts and percentages shall be shown in both written and figure form. In case of discrepancy between the written amount and the figure, the written amount will govern.

**BASE PROPOSAL –**

Base Proposal for the Stipulated Lump Sum of \$ \_\_\_\_\_  
(Total Proposal Price)

\_\_\_\_\_  
Dollars

**PROPOSAL ALTERNATES –**

Additional detailed information regarding alternates may be found in Specification Section 01 23 00 Alternates. For your consideration, we quote the following Proposal Alternates:

- A. Alternate No.1: Remove L shaped canopy at the northeast side of the Main Building Deduct \$ \_\_\_\_\_
- B. Alternate No. 2: Include box culvert for the entire length of Evidence Parking ADD \$ \_\_\_\_\_

- 2. **PROPOSAL TIME** - In addition to the below information, Offeror must submit information as requested in Section 25, Selection Criteria. Respondent understands that TIME IS OF THE ESSENCE for this Project.

Having carefully examined this request for CSP, the General Conditions, Special Conditions, the Drawings and Specifications and addenda thereto, as well as the Project premises and all the conditions affecting the work, the undersigned proposes to furnish all labor, materials, and equipment necessary to complete the entire work in accordance with the Contract Documents for the following time.

**TIME OF COMPLETION:** The issuance of a Notice to Proceed (NTP) requires the undersigned to commence work under this contract not later than ten (10) days thereafter and to substantially complete such work within the overall time of 480 calendar days.

Proposer shall indicate if they accept the specified Time of Completion or may show below a shorter duration period:

Accepted Time of Completion: \_\_\_\_\_

or

\_\_\_\_\_ Calendar Days

[see next page for signatures]

**4.1 SIGNATURES:**

The undersigned proposer does hereby declare and stipulate that this proposal, including Response Forms A, B, C, D, and all other information provided as part of this proposal, which are incorporated herein by reference for all purposes, is made in good faith, and it is made in pursuance of and subject to all the terms and conditions of the advertisements, proposal documents and requirements, Addenda, the Standard Form Agreement and General Conditions, and the Contract Documents, including the Plans and Specifications pertaining to the work, all of which have been examined by the undersigned proposer. The undersigned hereby declares that he/she has visited the site or has ample opportunity to visit the site, has had sufficient time to make all tests and investigations to arrive at an intelligent estimate of the cost of doing the work, and has carefully examined the Plans, Specifications, and Contract Documents relating to the work covered by his/her proposal, and that he/she agrees to do the work, and that no representations made by the City are in any sense a warranty, but are mere estimates for guidance of the contractor.

The undersigned further agrees that he/she will provide all necessary tools and apparatus, do all work, furnish all materials, and do everything required to carry out the work covered by this proposal, in strict accordance with the Contract Documents, and the requirements pertaining thereto, for the Total Proposal Price and Time as indicated herein.

Additionally, the undersigned affirms that the Offeror is willing to sign the attached Standard Form of Agreement with the General Conditions of the Contract (Attachment A). Further, Offeror certifies that the only person or parties interested in this offer as principals are those named herein.

**ADDENDA:** The undersigned hereby acknowledges receipt of the following addenda to the Drawings and Specifications, all of the provisions and requirements of which addenda have been taken into consideration in the preparation of this Proposal.

<b>Addendum No.</b>	<b>Dated</b>
Addendum No. _____	Dated _____
Addendum No. _____	Dated _____
Addendum No. _____	Dated _____

Offeror: \_\_\_\_\_  
(Print or type full name of your proprietorship, partnership, corporation or joint venture\*)

\*If Proposal is a joint venture, add additional Proposal Form signature sheets for each member of the joint venture.

By: \_\_\_\_\_ Date \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Doing Business as: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_



# RESPONSE FORM C

## QUALIFICATIONS AND CERTIFICATIONS OF PROPOSER

To demonstrate qualifications to perform the Work, each Proposer must submit written evidence of financial data, previous experience, present commitments and other such data as may be called for below. Each proposal must contain evidence of Proposer's qualification to do business in the state of Texas or covenant to obtain such qualification prior to award of the contract.

Each proposal must contain evidence of Proposer's qualifications to perform the work described in the Contract Documents. Provide a list of similar projects as may be called for below.

The object of the request for the qualification of Proposer is neither to discourage proposals nor to make it difficult for a qualified Proposer to file proposals. Nor is it intended to discourage beginning Contractors. It is intended to make it possible for Owner to obtain more exact information on financial ability, equipment, and experience in order to reduce hazards involved in awarding contracts to parties who may not be qualified to perform the Work as specified.

The Proposer is required to submit the following information to Owner for consideration:

**Answer all questions. Provide responses that are clear and comprehensive. Attach any additional information provided on separate sheets.**

Company name: \_\_\_\_\_

Permanent main office address: \_\_\_\_\_  
Street City, ST ZIP

Tax ID No.: \_\_\_\_\_

DUNS No.: \_\_\_\_\_

1. Provide a list of officers of the firm who, while in the employ of the firm or the employ of previous firms, were associated with contracts which resulted in lawsuits, contracts defaulted or filed for bankruptcy.

2. Form of ownership:  Proprietorship  Partnership  Corporation  Other (specify)  
\_\_\_\_\_

3. When organized: \_\_\_\_\_

4. If a corporation, where incorporated:  
\_\_\_\_\_

5. How many years has your company been engaged in business under its present name?

\_\_\_\_\_

6. Give former names of the company, with dates of operation under each name.

Former Name	Date

7. General Character of work performed by your company:

\_\_\_\_\_  
\_\_\_\_\_

8. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?  Yes  No

9. Is Respondent authorized and/or licensed to do business in Texas?  Yes  No

If yes, list authorizations/licenses.

\_\_\_\_\_  
\_\_\_\_\_

**DEBARMENT/SUSPENSION INFORMATION (Selection Criterion 6)**

1. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity, or is Respondent listed on the federal government’s terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>?  Yes  No

If yes, identify in an attachment the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

**SURETY INFORMATION (Selection Criterion 6)**

1. Has the Respondent ever had a bond or surety canceled or forfeited?  Yes  No

If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture. (Provide in this format.)

\_\_\_\_\_  
\_\_\_\_\_

**BANKRUPTCY INFORMATION (Selection Criterion 6)**

1. Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?  Yes  No

If yes, state in an attachment, the date, court, jurisdiction, cause number amount of liabilities and amount of assets.

2. Provide a list of officers of the firm who, while in the employ of the firm or the employee of previous firms, were associated with contracts which result in lawsuits, contracts defaulted or filed for bankruptcy. (Please attach if applicable.)

**LITIGATION DISCLOSURE (Selection Criteria 5 & 6)**

Failure to fully and truthfully disclose the information required by this Litigation Disclosure may result in the disqualification of your bid/proposal from consideration or termination of the contract, once awarded.

1. Has your company ever failed to complete, defaulted, or been terminated on a project?  Yes  No

If yes, attach the project name and location, owner and architect names, and explanation of the occurrence.

2. Does your company have any involvement in prior, pending or threatened claims or litigation alleging?

A) Non-compliance by your company with any obligations under any current contract or previous contract within the last five years, including completion, remaining on schedule and cooperation with the owner; or  Yes  No

B) Any error or omission by your company in performing services under any current contract or previous contract within the last five years; and/or  Yes  No

C) Non-payment to Sub-Contractors and material suppliers?  Yes  No

D) Have you or any member of your Firm or Team paid liquidated damages in the last three (3) years?  Yes  No

If you answered yes to any of the above questions, provide in an attachment the project name and location, owner and architect names, and explanation of the nature, status and/or outcome of such claim or litigation.

3. Has your company or any of your Sub-Contractors' companies ever failed to take corrective action on items of work under warranty during the warranty period?  Yes  No

4. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?  Yes  No

**EXPERIENCE & QUALIFICATIONS: (Selection Criteria 2 & 4)**

Prospective Respondents must show and document that they are responsible, qualified, capable, bondable, etc. to fulfill and abide by the specifications herein listed, and prospective respondents must have the capability and capacity in all respects to fully satisfy all of the contractual requirements described in this solicitation. Prospective bidders must not have been terminated by the City of New Braunfels on any prior projects nor have any litigation with the City for any construction project.

1. How many years has your current organization been doing business as a construction general contractor? \_\_\_\_\_ years

If less than five (5) years, please explain in an attachment your organization's construction general contractor history.

2. Your company certifies that the Superintendent/Manager you propose for this Project has sufficient knowledge, skills and experience in similar Project work  Yes  No
3. Your company certifies that it is able to meet the insurance requirements and provide Certificates of Insurance as specified in the General and Supplemental Conditions of this Contract.  Yes  No
4. Your company certifies that it is not in arrears in the payment of any obligations to the City of New Braunfels, including, without limitation, property or sales taxes, fees or utility charges.  Yes  No

If no to any of the above, attach an explanation.

5. Proposals shall be considered from responsible respondents with experience in police station or similar construction. The Respondent's experience, in combination with its subcontractor's experience, should include a *minimum* of three (3) projects within the last five (5) years.

5.1 On a separate sheet, list major similar construction projects your organization has in progress, giving the name of project, owner, phone number, architects, contract amount, percent complete, scheduled completion date, and type of work performed by your work forces. Include names and phone numbers of contact persons for each project.

5.1.1 State total worth of work in progress and under contract: \_\_\_\_\_

5.2 On a separate sheet, list the major similar projects your organization has completed in the past five (5) years, giving the name of project, owner, architect, contract amount, date of completion, the type of work performed by your work forces, and percentage of the cost of the work performed with your own forces. Include names and phone numbers of contact persons for each project.

5.2.1 State average annual amount of construction work performed during the past five (5) years:

---

5.3 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

5.4 Proposer shall provide the name of each subcontractor and/or supplier the Proposer will use in the performance of the contract. The proposer shall specify the work to be performed, the amount of the subcontract and the percentage of the contract the proposer will expend throughout the life of the project.

*(Please note that any changes in the subcontractor and/or supplier listed below shall require additional approval prior to contract execution.)*

6. Provide a list of primary sub-Contractors and Suppliers for the Work.

### **PROJECT SCHEDULE (Selection Criterion 3)**

Provide an estimated project schedule based on the construction specifications. Include this information as a Gantt chart in Tab 6.

### **FINANCIAL (Selection Criterion 6)**

1. Please indicate the current limit of your Bonding Capacity: \_\_\_\_\_

2. How much work is your firm currently contracted to provide? (Provide current total amount of work in dollars from ALL sources.) \_\_\_\_\_

3 List bank references, including name and title, address and phone of contact person.

---

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4. Will you provide a detailed financial statement and furnish any other pertinent information that may be required by the City.  Yes  No

If no, explain: \_\_\_\_\_

---

### **CONTRACTOR'S CERTIFICATIONS**

1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract, as defined below:  Yes  No

A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

B. "fraudulent practice" means an intentional misrepresentation of facts made

1. to influence the bidding process or the execution of the Contract to the detriment of Owner,
  2. to establish Bid or Contract prices at artificial non-competitive levels, or
  3. to deprive Owner of the benefits of free and open competition;
- C. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
- D. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## 2. NON-COLLUSION CERTIFICATION

A. Non-Collusion Certification: Do you certify that all of the following are true and correct concerning your company’s bid?  Yes  No

1. That you are fully informed of the contents of the bid and the circumstances of its preparation;
2. That your bid is genuine and is not a collusive or sham bid;
3. That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other bidder, firm or person to submit a collusive or sham bid, or to refrain from bidding, or sought by communication or conference with any other bidder, firm or person to fix the prices, overhead, profit, or any cost element in your bid or in any other bid, or to secure through any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other bidder; and
4. The prices quoted in your bid are fair and proper and are not affected by any collusion, conspiracy, connivance or unlawful agreement on the part of your company or anyone acting on its behalf.

## 3. SAFETY RECORD QUESTIONNAIRE & STATEMENT OF BIDDER’S SAFETY EXPERIENCE (Selection Criterion 2)

- A. Pursuant to Section 252.0435 of the Local Government Code, the City of New Braunfels will consider the safety records of potential contractors prior to awarding bids on City contracts. The City of New Braunfels follows written definitions and criteria for accurately determining the safety record of a Bidder prior to awarding bids on City contracts. The term “Bidder” includes the firm, corporation, partnership, or other legal entity represented by the Bidder or anyone acting for such firm, corporation, partnership or other entity submitting the bid. The definitions and criteria for determining the safety record of a Bidder are:
1. “Citations” include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments. Notice of Violations and Notice of Enforcement received

from the TCEQ shall include those classified as major violations and moderate violations under the TCEQ'S regulations for documentation of Compliance History, 30 Texas Administrative Code, Chapter 60.2 (c) (1) and (2).

2. "Environmental Protection Agency" includes, but is not limited to the Texas Commission on Environmental Quality (TCEQ), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Texas Department of Health, the Texas Parks and Wildlife Department, the Structural Pest Control Service, agencies of local governments responsible for enforcing environmental protection laws or regulations, and similar regulatory agencies of other states of the United States.

- B. If the Bidder's response to the following questions reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the Bidder for serious violations of Occupational Safety & Health Administration (OSHA) regulations within the past five (5) years, the City will, at its discretion, determine whether to disqualify the Bidder.
- C. If the Bidder's response to the following questions reveals more than one (1) case in which Bidder has received a citation or for which final orders have been entered from an environmental protection agency for violations within the past five (5) years, the City will, at its discretion, determine whether to disqualify the Bidder.
- D. If the Bidder's response to the following questions reveals that the Bidder has been convicted of a criminal offense within the past ten (10) years or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily harm or death, at its discretion, the City will determine whether to disqualify the Bidder.
- E. The City may consider the responses to each question listed below separately when making a discretionary determination of whether to disqualify a Bidder and it may consider the cumulative impact of the information generated by the Bidder's responses in making the determination.
- F. In order to consider the safety records of potential contractors prior to awarding bids on City contracts, the City requires that Bidders answer the following questions and submit them upon request:

**QUESTION ONE**

Has the Bidder or sub contractors' companies received any Citations for violations of OSHA within the past five (5) years?  Yes  No

**QUESTION TWO**

Has the Bidder or sub contractors' companies received any Citations for violations of environmental protection laws or regulations within the past five (5) years?  Yes  No

**QUESTION THREE**

Has the Bidder or sub contractors' companies ever been convicted, within the past ten (10) years, of a criminal offense or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily injury or death?  Yes  No

---

If the Bidder or sub contractors' companies has indicated "Yes" to any question above, the Bidder must provide to the City, with its bid submission, the following information:

Date of Citation or offense and location where violation or offense occurred, type of violation or

offense, final disposition of violation or offense, if any, and penalty assessed.

---

G. In addition, the City will utilize the following information and, in its discretion, as additional support to make any discretionary determination of whether to disqualify a Bidder. Accordingly, Bidder must answer the following questions and provide evidence that it meets minimum OSHA construction safety standards and has a lost time injury rate that does not exceed the limits established below:

1. Does the Bidder have a written construction safety program?  Yes  No
2. Does the Bidder conduct regular construction site safety inspections?  Yes  No
3. Does the Bidder have an active construction safety training program?  Yes  No
4. Does the company have a lost time injury rate and a total recordable injury rate of less than or equal to the national average for North American Industrial Classification System (NAICS) Category 23 for each of the past five (5) years?  Yes  No  
(Attach the Bidder's OSHA 300 and 300A logs for the past five (5) years.)
5. Does the Bidder have an experience modifier rate of 1.0 or less?  Yes  No  
(Attach the Bidder's NCCI workers compensation experience rating sheets for the past five (5) years.)
6. Has the Bidder had any OSHA inspections within the past six (6) months?  Yes  No

If yes, provide sufficient documentation to indicate the nature of the inspection, the findings, and magnitude of the issues.

---

**See next page for Acknowledgement**



## **ACKNOWLEDGEMENT**

THE STATE OF TEXAS

COUNTY OF COMAL

I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my bid to be rejected.

**Bidder's full name and entity status:**

---

**Company's Name**

---

**Signature, Authorized Representative of Bidder**

---

**Title**

# RESPONSE FORM D

## LIST OF SUBCONTRACTORS AND PERCENTAGE OF PROJECT

### City of New Braunfels Construction of Police Department and Veterans Memorial

#### Subcontractor List and Percentage of Project

<b>Name of Proposer:</b>				
<b>Total Proposal Amount</b>	<b>\$</b>			<b>-</b>
<b>Scope</b>	<b>Subcontractor</b>	<b>Principle Place of Business</b>	<b>Total Contract Amt.</b>	<b>% of Project</b>
Division 1				
Division 1				
Division 1				
Division 1				
<b>Division 1 Totals</b>			<b>\$</b>	<b>-</b>
Division 3				
Division 3				
Division 3				
Division 3				
<b>Division 3 Totals</b>			<b>\$</b>	<b>-</b>
Division 4				
Division 4				
Division 4				
Division 4				
<b>Division 4 Totals</b>			<b>\$</b>	<b>-</b>
Division 5				
Division 5				
Division 5				
Division 5				
<b>Division 5 Totals</b>			<b>\$</b>	<b>-</b>
Division 6				
Division 6				
Division 6				
Division 6				
<b>Division 6 Totals</b>			<b>\$</b>	<b>-</b>
Division 7				
Division 7				
Division 7				
Division 7				
<b>Division 7 Totals</b>			<b>\$</b>	<b>-</b>
Division 8				
Division 8				
Division 8				
Division 8				
<b>Division 8 Totals</b>			<b>\$</b>	<b>-</b>
Division 9				
Division 9				
Division 9				
Division 9				

<b>Division 9 Totals</b>			\$	-
Division 10				
Division 10				
Division 10				
Division 10				
<b>Division 10 Totals</b>			\$	-
Division 11				
Division 11				
Division 11				
Division 11				
<b>Division 11 Totals</b>			\$	-
Division 12				
Division 12				
Division 12				
Division 12				
<b>Division 12 Totals</b>			\$	-
Division 13				
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<b>Division 13 Totals</b>			\$	-
Division 14				
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<b>Division 14 Totals</b>			\$	-
Division 21				
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<b>Division 21 Totals</b>			\$	-
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<b>Division 22 Totals</b>			\$	-
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<b>Division 23 Totals</b>			\$	-
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<b>Division 26 Totals</b>			\$	-
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<b>Division 27 Totals</b>			\$	-
Division 28				

Division 28				
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<b>Division 28 Totals</b>			\$	-
Division 31				
Division 31				
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Division 31				
<b>Division 31 Totals</b>			\$	-
Division 32				
Division 32				
Division 32				
Division 32				
<b>Division 32 Totals</b>			\$	-
Division 33				
Division 33				
Division 33				
Division 33				
<b>Division 33 Totals</b>			\$	-

**PART III**

**ATTACHMENTS**

**ATTACHMENT A:**  
**STANDARD FORM OF AGREEMENT**  
**GENERAL CONDITIONS OF THE CONTRACT**

AIA Document A101 – Standard Form of Agreement between Owner and Contractor

AIA Document A201 – General Conditions of the Contract for Construction

# DRAFT AIA® Document A101™ - 2017

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

AGREEMENT made as of the « \_\_\_ » day of « October » in the year « 2020 »  
(In words, indicate day, month and year.)

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

« City of New Braunfels » « »  
« 550 Landa St. »  
« New Braunfels, Texas 78130 »

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

« » « »  
« »  
« »  
« »

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

« Construction of the New Braunfels Police Station & Veterans Memorial »  
« 3030 W. San Antonio Street »  
« New Braunfels, Texas 78130 »

New Braunfels Police Station is an 11.78-acre site with a new approximately 62,300 sf two story steel framed brick masonry and composite rainscreen clad slab-on-void form Main Building, and a new one-story 13,900 sf gridded structural slab on grade pre-engineered metal Annex Building. A granite clad Veterans Memorial feature at the front lawn will include low masonry planters, concrete bench seating, landscape lighting, and flag poles. The site will include secure walls and fences surrounding the property, approximately 278 parking spaces to accommodate staff and visitors, a secured evidence lot, an on-site water detention pond, and an LCRA radio tower.»

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

« PGAL » « »  
« 2222 Western Trails Blvd. »  
« Suite 300 »  
« Austin, Texas 78745 »  
Tel: (512)236-1005 »

The Owner and Contractor agree as follows.

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

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

The parties should complete A101™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

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

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

Unless otherwise provided in these Contract Documents, the Contractor shall be responsible for performing or causing to be performed all Work, including labor and materials, necessary to build, construct, erect and equip the Project in accordance with the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

- [ « » ] The date of this Agreement.
- [ « X » ] A date set forth in a notice to proceed issued by the Owner.
- [ « » ] Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

[ « » ]

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

- [ « X » ] Not later than « four hundred and eighty » ( « 480 » ) calendar days from the date of commencement



of the Work.

[ « » ] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.3.3 The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed work following expiration of the Contract Time. The Contractor further acknowledges and agrees that, if the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

§ 3.4 Time is of the essence in all phases of the Work and performance of obligations owed by the Contractor to the Owner as stated in this Agreement and the Contract Documents. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

§ 3.5 FINAL COMPLETION

§ 3.5.1 Timely final completion is an essential condition of this contract. Contractor agrees to achieve final completion of the Work within 30 days of the designated or extended substantial completion date.

§ 3.5.2 Final Completion means actual completion of the Work, including any punch list items, extras or Change Orders reasonably required or contemplated under the Contract Documents other than warranty work that may be required pursuant to Section 3.5 of AIA Document A201-2017 as amended.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price

§ 4.4 Unit prices, if any: (Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:

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

« A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.31 above, plus any extensions thereof allowed in accordance with the Contract Documents. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **Six Hundred Dollars (\$600.00)** per calendar day for each day that expires after the time specified in Paragraph 3.3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **Six Hundred Dollars (\$600.00)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

»

§ 4.6 Other:

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

«§ 4.6.1 Special Damages

A. In addition to the amount provided for in liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 3.3.1 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 3.3.1 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment

C. The remedies contained in this Article 4 are not exclusive and shall be cumulative to other remedies provided to the Owner in the event of default or breach by the Contractor. »

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

« »

§ 5.1.3 Provided that an Application for Payment made in accordance with Section 9.4 of AIA Document A201-2017 as amended is received by the Architect not later than the « 20th » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « 15th » 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 « forty-five » ( « 45 » ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

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

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

§ 5.1.6 In accordance with AIA Document A201™–2017 as amended, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect or Owner determines, as provided in Section 7.3.4 of AIA Document A201-2017 as amended, to be reasonably justified.

§ 5.1.6.2 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 which the Architect has previously withheld or nullified a Certificate for Payment as provided in Article 9 of AIA Document A201–2017 as amended;
- .3 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 as amended; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

« 5% »

§ 5.1.7.2 Except as set forth in this Section 5.1.7.2, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7, less such amounts as the Architect shall determine for incomplete Work. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017 as amended.

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

§ 5.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017 as amended, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the Work has been completed and accepted by the Owner, in writing, following the issuance of the Architect’s final Certificate for Payment.

« »

§ 5.3 Interest

Timeliness and interest due or payments to the Contractor are subject to and controlled by Chapter 2251 of the Texas Government Code.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

Unless otherwise indicated in the Contract Documents, the Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 as amended.

§ 6.2 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 Section 15.4 of AIA Document A201–2017

Litigation in a state district court of competent jurisdiction located in Comal County, Texas.

Other (Specify)

« »

If the Owner and Contractor 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 in Comal County, Texas.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017 as amended.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017 as amended.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 as amended or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

« Adam Michie »  
« Project Manager »

« 550 Landa Street »  
« New Braunfels, Texas 78130 »  
« »  
« »

§ 8.3 The Contractor's representative:  
(Name, address, email address, and other information)

« »  
« »  
« »  
« »  
« »  
« »

§ 8.4 The Contractor's representative may not be changed without written consent of the Owner, which shall not be unreasonably withheld.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017 as amended, Article 11 of AIA Document A201-2017 as amended, Exhibit A to the Agreement, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 as amended, Article 11 of AIA Document A201-2017 as amended, and elsewhere in the Contract Documents.

§ 8.6 Other provisions:

« None »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017 as amended, Standard Form of Agreement Between Owner and Contractor
- .2 Exhibit A to the Agreement is the Insurance Rider
- .3 AIA Document A201™-2017 as amended, General Conditions of the Contract for Construction
- .4 Drawings  
[Redacted]
- .5 Specifications  
[Redacted]
- .6 Addenda, if any:

Number	Date	Pages
[Redacted]	[Redacted]	[Redacted]

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .7 Other Exhibits:  
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[ « » ] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:

(Insert the date of the E204-2017 incorporated into this Agreement.)

<< >>

[ << >> ] The Sustainability Plan:

Title	Date	Pages

[ << >> ] Supplementary and other Conditions of the Contract:

Document

.8 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 Contractor’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.)

1. << >>

This Agreement entered into as of the day and year first written above.

CITY OF NEW BRAUNFELS, TEXAS

[CONTRACTOR]

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

<< >><< >>

<< >><< >>

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

# DRAFT AIA® Document A201™ - 2017

## General Conditions of the Contract for Construction

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

«Construction of the New Braunfels Police Station & Veterans Memorial »  
« 3030 W. San Antonio Street »  
New Braunfels, Texas 78130 »

THE OWNER:  
(Name, legal status and address)

« City of New Braunfels  
550 Landa St.  
New Braunfels, Texas 78130 » « »  
« »

THE ARCHITECT:  
(Name, legal status and address)

« PGAL » « »  
« 2222 Western Trails Blvd. »  
« Suite 300 »  
« Austin, Texas 78745  
Tel: (512)236-1005 »

### TABLE OF ARTICLES

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- 13 MISCELLANEOUS PROVISIONS

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

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

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

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES





*General Conditions of the Contract for Construction*

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Standard Form of 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, performance and payment bonds, and 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.

§ 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

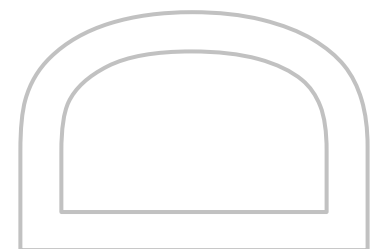
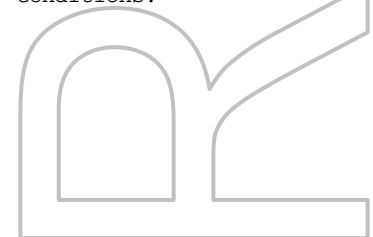
The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.



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

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

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



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### § 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.

§ 1.2.4 In the event of a conflict between the provisions of any of the Contract Documents, the terms shall be interpreted in the following order of controlling authority:

1. The Agreement
2. General Conditions
3. Specifications & Drawings

Should the Specifications and Drawings conflict, proposals shall be based on the most expensive combination of quality and quantity of work indicated. Any conflicts not resolved by a quality and quantity determination, or conflicts involving priority of controlling authority of the Contract Documents shall be determined by the Initial Decision Maker.

## § 1.3 Capitalization

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

## § 1.4 Interpretation

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

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

§ 1.5.1 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 Owner's 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.

#### § 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 registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice sent or transmitted by electronic mail or facsimile must be actually received to be considered delivered and to comply with notice requirements herein. Transmission alone by electronic mail or facsimile does not constitute delivery.

§ 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

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, or other forms to establish the protocols for the development, use, transmission, and exchange of digital data.

### ARTICLE 2 OWNER

#### § 2.1 General

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

#### § 2.2 Deleted in Entirety.

#### § 2.3 Information and Services Required of the Owner

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

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

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

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

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

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

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

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor. The Contractor waives any rights, claims, or causes of action against Owner as a result of activities or duties of the Architect in the Architect's administration of the Contract or representations made by the Architect in the Instrument of Service.

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions 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.

§ 3.2.3 The Contractor shall take field measurements and verify field conditions and must carefully compare such field measurements and conditions and other information known to the Contractor with the Contract documents, before ordering any material or performing any Work.

§ 3.2.4 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.

§ 3.2.5 If the Contractor believes that any portion of the Contract Documents do not comply with applicable laws, statutes, ordinances, buildings codes, rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.7 and request direction before proceeding with the affected Work.

§ 3.2.6 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2.1 through 3.2.5, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

§ 3.2.7 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 through 3.2.6, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 through 3.2.6, 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.

§ 3.2.8 Contractor, for itself and its subcontractors, acknowledges that the construction premises are restricted and that access is affected by the security at the Project, location of the Project, the Facilities surrounding the Project, and by other construction either presently being performed or proposed to be performed during the performance of this Contract. Contractor, for itself and its subcontractors, further acknowledges that such limitations in space and accessibility have been taken into account in the Contractor's proposal and Contractor waives any claims for additional time or money associated with any such limitations.

### § 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.

### § 3.4 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 For any such substitutions, the contractor warrants that modifications suggested by the Contractor will give satisfactory results.

§ 3.4.4 For any such substitutions, the Contractor warrants that substitutions will be equal or superior to the specified items or method unless the Contractor specifically lists shortcomings in its request for making substitution.

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

### § 3.5 Warranty

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

§ 3.5.2 The Contractor warrants and guarantees for one (1) year from Final Completion as defined by Section 9.11.1 as the date of issuance of the Architect's final Certificate for Payment, or for a longer period if expressly stated in the Contract Documents, the Work. This includes a Warranty and Guarantee against any and all defects. The Contractor must correct any and all defects in material and/or workmanship which may appear during the Warranty and Guarantee period, or any defects that occur within one (1) year of Final Completion even if discovered more than one (1) year after Final Completion, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the Owner, within a reasonable period of time, and to the Owner's satisfaction.

§ 3.5.3 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including direct and consequential damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

§ 3.5.4 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Final Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work which is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

§ 3.5.5 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 9.9.4.

### § 3.6 Taxes

§ 3.6.1 The Owner enjoys tax-exempt status as a municipality. To enjoy the cost-saving benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that certificate to exempt any purchases made for the Work from taxes. All savings for the tax-exempt status will be passed on to the Owner by the Contractor. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

§ 3.6.2 The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are to be paid on material procurements and that such savings shall be passed on to the Owner.

§ 3.6.3 The Contractor will maintain records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable timeframe after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

.1 The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.

.2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the Owner.

§ 3.6.4 Subject to the terms above, the Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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

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

### § 3.9 Superintendent

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

§ 3.9.2 The Contractor shall identify those persons and entities important to the Project and require that they be available and assigned to the Project for such time as they are needed.

§ 3.9.3 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.

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

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the 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 and expeditious and practicable execution 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. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis, if not more frequently at the Contractor's discretion, to be submitted to the Owner with each Application for Payment.

§ 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.



§ 3.10.4 The Contractor shall employ and manage PROCORE Construction Software project management tool, and provide access to the Owner, Design Team, Contractors and Subcontractors. The Contractor shall establish use of the PROCORE Construction Software shortly after being awarded the Project and maintain its use continually through Project until final completion. All Project records to be dispersed at final completion to Project participants as record copies.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Current Construction Schedule, 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. The Contractor shall display a current Construction Schedule at the site for reference and reliance by the Owner and Architect. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 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. Should the Contractor perform portions of the Work in contravention of this section, any costs and time associated with the correction, removal, or repair of said Work shall be borne solely by the Contractor.

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall remain liable for the design or engineering services created or provided by its Subcontractors or errors and omissions insurance is to be carried by the Subcontractor. 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 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 and with five (5) days written notice from the Owner, 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

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, 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.

FOR ANY SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE THAT IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, CONTRACTOR'S INDEMNITY OBLIGATION APPLIES ONLY IF CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

§ 3.18.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

## 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. 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. The Architect's or Architect's representative's presence at the Project site shall not imply concurrent approval of the Work. The Contractor shall call specific items to the Architect's attention in writing if it wishes to obtain the Architect's opinion.

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, 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.

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

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

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

### § 5.3 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.

### 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.

§ 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 then reasonably discoverable.

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

§ 6.2.4 The Contractor shall promptly remedy damage 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 No Work, or portion of the Work, performed by the Contractor in excess or deviation from the Contract Documents will be subject to adjustments in the Contract Sum or Contract Time without prior written authorization as provided in this Article.

### § 7.2 Change Orders

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

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

### § 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or 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 Owner or 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 Contract Documents, 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 and overhead on such deleted work. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such



agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect. 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.

#### § 8.2 Progress and Completion

§ 8.2.1 In all aspects of the Work, time is of the essence of the Contract. Additionally, time limits stated in the Contract Documents are of the essence. 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. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.2.4 Should the Contractor default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, the Owner may withhold or deduct all costs and damages for compensable delay caused by the Contractor from the Contract Sum. Such costs shall include any attorney's fees, additional services fees charged by the Architect in addition to the Architect's Basic Services, and all other costs, expenses, and damages actually incurred by the Owner as a result of such delay.

#### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts and the Architect determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

§ 8.3.3 The Contractor shall receive no financial compensation for delay or hindrance of the Work. In no event shall the Owner be liable to the Contractor for any damages arising out of or associated with any delay or hindrance to the Work, regardless of the source of the delay or hindrance. The Contractor's sole remedy for delay or hindrance shall be an extension of time.

§ 8.3.4 The procedure for the determination of time extensions for unusually severe weather. In order for the Owner and Architect to award a time extension under this clause, the following conditions must be satisfied.

- (1) The weather experienced at the Project site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month.
- (2) The unusually severe weather must actually cause a delay to the completion of the Project. The delay must be beyond the control and without the fault of negligence of the contractor.

§ 8.3.5 The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the Project location and will constitute the base line for monthly weather time evaluations. The Contractor's activity durations provided in the progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

**MONTHLY ANTICIPATED ADVERSE WEATHER DELAY  
WORK DAYS BASED ON FIVE (5) DAY WORK WEEK**

JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
(4)	(4)	(4)	(3)	(5)	(6)	(4)	(3)	(4)	(4)	(4)	(4)

§ 8.3.6 For the duration of the Contract, the Contractor shall maintain in its daily reports an accurate and contemporaneous record of the occurrence of adverse weather and resultant impact to normally scheduled Work. Delay from adverse weather shall not qualify as a delay day unless Work on the overall Project's critical activities is prevented for 50 percent or more of the Contractor's scheduled work day. The number of actual adverse weather days shall be calculated monthly. If the number of actual adverse weather delay days in a month exceed the number of days for that month as referenced in paragraph 8.3.5 above, the Architect upon notification by the Contractor, will cover any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and a modification shall be issued in accordance with the Contract.

**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.

**§ 9.2 PREVAILING WAGE REQUIREMENTS**

§ 9.2.1 Contractor shall comply with chapter 2258 of the Texas Government Code governing prevailing wage. The Contractor shall provide and pay for labor in accordance with the prevailing wage in the locality and shall not pay less than the prevailing wage. The Owner has not independently performed a wage determination in accordance with controlling state and federal statutes. Accordingly, the Contractor must utilize the wage determinations and rates published by the U.S. Department of Labor pursuant to the Davis-Bacon Act.

§ 9.2.2 Certified payrolls demonstrating compliance with the prevailing wage requirements shall be maintained by the Contractor and all Subcontractors performing the Work. The Contractor is required to submit to the Owner a copy of all certified payrolls for any pay period with each Pay Application. Failure to provide certified payrolls may be grounds for withholding of funds and default as provided in article 13.

**§ 9.3 Schedule of Values**

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

## § 9.4 Applications for Payment

§ 9.4.1 The Contractor must submit to the Architect itemized Application for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Along with each Application the Contractor shall submit a partial release of lien, current as-built plans, current progress photographs, and updated progress and billing schedules. Each Application for Payment must be consistent with the approved Schedule of Values. The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or other such form as may be prescribed by the Owner. 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, releases and waivers of liens from Subcontractors and suppliers, or other documents, and shall reflect retainage.

§ 9.4.1.1 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.

§ 9.4.1.2 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.

§ 9.4.2 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. Cost of materials stored off the construction site may be included in Contractor's request at the sole discretion of the Owner for progress payment, if the following submittals are made and conditions are met:

1. Contractor shall submit a written narrative giving location of stored materials, provisions for protection of same, and arrangements for transportation of materials to the job site.
2. Contractor shall submit separate Bills of Sale or Invoices on all materials stored off site.
3. Contractor shall submit suitable written evidence that materials stored off site are covered by insurance protection adequate to cover Owner's interests.
4. Contractor shall store materials in facilities which are suitable to protect same from loss and deterioration. Materials shall be separated from other stored materials and shall be clearly labeled as to description, OWNERSHIP and PROJECT destination. Access to stored materials shall be made convenient for inspection which will be made by Architect's representative prior to the issue of EACH CERTIFICATE OF PAYMENT which includes payment for materials stored off site.
5. Payment for materials stored off site shall not affect warranty period for such materials, which period shall commence upon date of final completion of the Work.

§ 9.4.3 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.

## § 9.5 Certificates for Payment

§ 9.5.1 The Architect will, within ten (10) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.6.1.

§ 9.5.2 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 and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. 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.

#### § 9.6 Decisions to Withhold Certification

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

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

§ 9.6.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.6.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.6.4 If the Architect withholds certification for payment under Section 9.6.1.3, 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.

#### § 9.7 Progress Payments

§ 9.7.1 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.

§ 9.7.2 The Contractor shall pay each Subcontractor, no later than five (5) 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.

§ 9.7.3 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.

§ 9.7.4 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.

§ 9.7.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.7.2, 9.7.3 and 9.7.4.

§ 9.7.6 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.

§ 9.7.7 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. However, Contractor shall comply with the provisions of the Texas Trust Fund Act, Chapter 162 of the Texas Property Code.

§ 9.7.8 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.

#### § 9.8 Failure of Payment

Failure of payment by Owner within the time limits prescribed by chapter 2251 of the Texas Government Code shall entitle the Contractor to the remedies contained in that chapter. Further, should the Owner fail to pay the Contractor any sums for which a Certificate for Payment has been issued within sixty (60) days, the Contractor may suspend performance of the Work until such payment of the amount owing has been received. A suspension under this section shall entitle the Contractor to an increase in the Contract Sum for all costs associated with the suspension provided the Contractor files a claim in accordance with Article 15 herein.

#### § 9.9 Substantial Completion

§ 9.9.1 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.

§ 9.9.2 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.

§ 9.9.3 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.



§ 9.9.3.1 Inspections required and defined in Paragraphs 9.9.3, and 9.11.1 of the General Conditions are a component of the Architect's Basic Services. Additional inspections which result from the Contractor's failure to complete the Work of the Contract within the specified time are in addition to the Architect's Basic Services and will therefore be the responsibility of the Contractor and said costs shall be deducted by the Owner from the Contractor's Application for Payment. Costs deducted will be based on the Architect's invoices for these additional services. Costs related to additional inspections which results from the Contractor's repeated failure to correct defective or incomplete Work are the responsibility of the Contractor, costs for the additional inspections of the Architect shall be deducted by the Owner from the Contractor's Application for Payment. Costs deducted will be based on the Architect's invoices for cost of additional services and inspections.

§ 9.9.4 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.

§ 9.9.5 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.

#### § 9.10 Partial Occupancy or Use

§ 9.10.1 The Owner may occupy or use any completed or partially completed portion of the provided such occupancy or use is authorized by public authorities having jurisdiction over the Project.

§ 9.10.2 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.

§ 9.10.3 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.

#### § 9.11 Final Completion and Final Payment

§ 9.11.1 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. The Contractor's written notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect will promptly notify the Contractor if the Owner or Architect do not concur that the Work is finally complete. 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 9.11.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.11.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits the following 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 release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier;
- .3 a certificate evidencing that the Contractor's liability insurance will remain in effect after final payment and

- will not be cancelled or allowed to expire prior to the period required by these contract documents;
- .4 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .5 consent of surety to final payment;
- .6 other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;
- .7 a certified building location survey and as-built site plan in the form and number required by the Contract Documents;
- .8 all warranties and bonds required by the Contract Documents.

§ 9.11.3 If the Contractor is unable to secure from any Subcontractor or supplier a release or waiver required under the Contract, THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER FOR ANY AND ALL COSTS INCURRED BY THE OWNER IN ADDRESSING, REMOVING, DISCHARGING OR OTHERWISE SETTLING A SUBCONTRACTOR OR SUPPLIER PAYMENT CLAIM, INCLUDING ALL ATTORNEYS' FEES.

§ 9.11.4 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.

§ 9.11.5 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.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

- .1 all persons at the site and other persons who may be affected by the Work or other operations of the Contractor;
- .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.

§ 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. In the event the Contractor encounters on the Site material reasonably believed to be a Hazardous Material (other than those for which the Contractor may have specific responsibility for remediation under the Agreement), and the Contractor's reasonable precautions will be inadequate to prevent foreseeable damage or injury and the Contractor cannot proceed with the Work in the absence of the removal, containment or remediation of the Hazardous Material, the Contractor must immediately stop Work in the area affected and report the condition to the Owner and the Architect, in writing, within 24 hours of discovery.

§ 10.3.2 Upon receipt of notice of suspected Hazardous Materials, Owner will cause an investigation to be made to verify the presence and extent of such materials, to determine whether such materials are in fact hazardous, and the steps necessary for their removal, containment or remediation.

§ 10.3.3 If the Owner's investigation confirms the presence of Hazardous Materials which present a risk of injury or damage which will not be adequately protected against by the Contractor's reasonable precautions, then the Work in the affected area must not thereafter be resumed except at the written direction of the Owner. The Work in the affected area will be resumed promptly (i) in the absence of a finding of Hazardous Material by the Owner, (ii) upon the removal, containment or remediation of the Hazardous Materials, or (iii) upon the establishment of appropriate safety precautions.

#### § 10.3.4

The Contractor may request a change in the Contract Sum or Contract Time if the Contractor incurs additional costs on account of or is delayed by the need to remove, contain or remediate Hazardous Materials which has not been rendered harmless at the Site unless the Contractor is responsible for same under the Agreement. Any such requested change in the Contract Sum or Contract Time must be made in writing within ten (10) days of discovery of any Hazardous Materials, which has not been rendered harmless, pursuant to Articles 7 and 15 herein.



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

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor must take all necessary action, without the necessity for any special instruction or authorization from the Owner or Architect, to prevent threatened damage, injury or loss. The Contractor must promptly but in all events within twenty-four (24) hours of the occurrence report such action in writing to the Owner and Architect. If the Contractor incurs additional costs on account of or is delayed by such action, the Contractor may request a change in the Contract Sum or Contract Time to account for such action. Any such requested change in the Contract Sum or Contract Time must be made in writing within ten (10) days of the occurrence, pursuant to Articles 7 and 15 herein. Any adjustment in the Contract Sum or Contract Time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance Requirements

§ 11.1.1 The Contractor's insurance requirements are contained in Exhibit A to this Agreement and are incorporated verbatim as if printed herein.

§ 11.2 **Owner's Liability Insurance.** The Owner is self-insured and is not required to purchase or maintain liability insurance.

§ 11.3 **Property Insurance** The Owner is self-insured and is not required to purchase or maintain liability insurance.

#### § 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Contractor shall provide performance and payment bonds in accordance with Chapter 2253 of the Texas Government Code.

§ 11.4.2 Upon 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.

### 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 and upon written approval by the Owner, 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 subject to the written approval by the Owner 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 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 an express 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 pursuant to the warranties provided, 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 State of Texas without regard to its conflict of law principles.

### § 13.2 VENUE

This Agreement is entered into and performed in Comal County, Texas, and the Contractor and the Owner agree that mandatory venue for any legal action related to this contract shall be in the State District Courts of Comal County, Texas.

### § 13.3 Successors and Assigns

§ 13.3.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract in whole or in part without the express 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 and the attempted assignment shall be of no legal force or effect as to the other party.

## § 13.5 Rights and Remedies

§ 13.5.1 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.

§ 13.5.2 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.

## § 13.6 Tests and Inspections

§ 13.6.1 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 with the appropriate public authority. The Owner shall bear all related costs of tests, inspections, and approvals. The Contractor must schedule all tests, inspection or specific approvals required by law or the Contract Documents so as to avoid any delay in the Work. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures.

§ 13.6.2 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 13.6.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and Architect of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.6.3 If procedures for testing, inspection, or approval under Sections 13.6.1 and 13.6.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.6.4 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.

§ 13.6.5 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.

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

§ 13.6.7 In addition to the tests required by this Section 13.6, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

## § 13.7 DOCUMENT RETENTION AND AUDIT PROVISIONS

The Contractor shall account for all materials, equipment and labor entering into the Work and must keep such full and detailed records as may be necessary for proper financial management pursuant to the Contract Documents for a period of four years after final payment. Furthermore, the Owner has the right to examine the Contractor's and its Subcontractors' and suppliers' records directly or indirectly pertaining or relating to the Work or the Agreement and the Contractor must grant the Owner access to and an opportunity to copy such records at all reasonable times during the Contract period and for four years after final payment.

## § 13.8 TEXAS PUBLIC INFORMATION ACT REQUESTS

A. The Contractor recognizes that this Project is publicly owned and the Owner is subject to the disclosure requirements of the Texas Public Information Act ("TPIA"). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or

obligations arising out of the Owner's obligations under the TPIA. This acknowledgement and obligation are in addition to and complimentary to the Owner's audit rights in section 13.7.

B. This provision applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner in a fiscal year of the Owner. The Contractor must (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to Owner for the duration of the Contract; (2) promptly provide to Owner any contracting information related to the contract that is in the custody or possession of the entity on request of Owner; and (3) on completion of the contract, either:

- (A) provide at no cost to Owner all contracting information related to the Contract that is in the custody or possession of the entity; or
- (B) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to Owner.

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

§ 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 (7) days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on such work, profit on unperformed work, and direct job costs incurred by reason of such termination.

### § 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, 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 (7) 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.

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

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

§ 14.2.5 In the event of a termination for cause pursuant to this section and a demand by Owner on the Contractor's performance bond surety and guarantor to take-over and complete the Work, said surety must commence performance within thirty (30) days of the termination.

§14.2.6 In the event of a determination by a court or other authority to whom a dispute between the Parties has been submitted that a termination for cause under this section 13.2.2 was either wrongful, improper, or unjustified for any reason, the termination shall automatically be deemed a termination for convenience pursuant to section 13.2.4 below and the Contractor's remedy for such termination shall be limited to the recoveries allowed pursuant to section 13.2.4.3.

### § 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 not include additional 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 and if required by the Owner, participate in an inspection of the Work with the Owner and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .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.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a written demand 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. Notice of claims should be provided contemporaneously with the events giving rise to the claim or concurrent to the time the claimant recognizes the condition giving rise to the claim. Failure to provide timely notice and preserve conditions and records to substantiate a claim may result in the diminishment or denial of a claim. Failure to provide notice required by the Contract Documents and this Section 15.1.3 within ninety (90) days of the occurrence or event giving rise to the claim shall constitute an express waiver and complete bar to recovery for any adjustment to the Contract Time, Contract Sum, or other damages and accommodations.

§ 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 9.8 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 prepare Change Orders and 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. Failure to provide written notice of a Claim in accordance with section 15.1.2 and other application provisions of the Contract Documents constitutes an express waiver by the Contractor of any right of recovery on such Claim.

## § 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. Failure to provide written notice of a Claim in accordance with section 15.1.2 and other applicable provisions of the Contract Documents constitutes an express waiver by the Contractor of any right of recovery on such Claim.

§ 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.

## § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, bonding capacity, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

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

#### § 15.1.8 LIMITATION OF DAMAGES

The Contractor expressly acknowledges, to the exclusion of all other damages, the total amount of money awarded in an adjudication brought against the Owner for breach of this Contract shall be limited to the following:

- .1 The balance due and owed by the Owner under this Contract as it may have been amended;
- .2 The amount owed for approved change orders or additional work the Contractor was directed to perform by the Owner in connection with this Contract;
- .3 Reasonable and necessary attorney's fees that are equitable and just; and
- .4 Interest as allowed by law, including interest as calculated under the Texas Government Code Chapter 2251.

§ 15.1.9 Notwithstanding any other limitation of damages set forth in this Contract, the total amount of damages awarded in an adjudication brought against the Owner arising under this Contract shall not include:

- .5 Consequential damages, including those waived under Section 15.1.7;
- .6 Exemplary damages;
- .7 Damages for unabsorbed home office overhead; or
- .8 Damages not expressly permitted under Paragraph 15.1.8.

#### § 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 and 10.4, shall be referred to the Initial Decision Maker for initial decision. Unless expressly waived by the Parties, in writing, the provisions of this Section 15.2 shall be a condition precedent to any further dispute resolution or adjudication of claims. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (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 and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 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.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to filing suit.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing.

§ 15.3.3 The parties shall select a mediator, as well as the time and location for mediation, by agreement. Should the parties be unable to agree upon a mediator, the mediation shall be administered by the American Arbitration Association in accordance with the Construction Industry Mediation Procedures in effect on the date of this Agreement.

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



# EXHIBIT A

## Owner’s Insurance Requirements

### 1. Specific Insurance Requirements

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ \$1,000,000 Per Occurrence</li> <li>▪ \$2,000,000 General Aggregate</li> <li>▪ \$2,000,000 Products/Completed Operations Aggregate</li> <li>▪ \$1,000,000 Personal And Advertising Injury</li> <li>▪ Designated Construction Project(s) General Aggregate Limit</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CG 00 01</li> <li>▪ Additional insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 04 13 and CG 20 37 04 13.</li> <li>▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and will not seek contribution from any other insurance held by Owner Parties, with Owner Parties’ insurance being excess, secondary and non-contributing.</li> <li>▪ Stop Gap coverage shall be provided if any work is to be performed in a monopolistic workers’ compensation state.</li> <li>▪ The following exclusions/limitations (or their equivalent(s), are prohibited:                             <ul style="list-style-type: none"> <li>○ Contractual Liability Limitation CG 21 39</li> <li>○ Amendment of Insured Contract Definition CG 24 26</li> <li>○ Limitation of Coverage to Designated Premises or Project, CG 21 44</li> <li>○ Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95</li> <li>○ Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43</li> <li>○ Any Classification limitation</li> <li>○ Any Construction Defect Completed Operations exclusion</li> <li>○ Any endorsement modifying the Employer’s Liability exclusion or deleting the exception to it</li> <li>○ Any endorsement modifying or deleting Explosion, Collapse or Underground coverage</li> <li>○ Any Habitational or Residential exclusion applicable to the Work</li> <li>○ Any “Insured vs. Insured” exclusion except Named Insured vs. Named Insured</li> <li>○ Any Punitive, Exemplary or Multiplied Damages exclusion</li> <li>○ Any Subsidence exclusion</li> </ul> </li> </ul>
Business Auto Liability	Amount of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ \$1,000,000 Per Accident</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CA 00 01</li> <li>▪ Arising out of any auto (Symbol 1), including owned, hired and nonowned</li> </ul>

Workers' Compensation and Employer's Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ Statutory Limits</li> <li>▪ \$1,000,000 Each Accident and Disease</li> <li>▪ Alternate Employer endorsement</li> <li>▪ USL&amp;H must be provided where such exposure exists.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page</li> <li>▪ Such insurance shall cover liability arising out of the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.</li> <li>▪ Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.</li> </ul>
Excess Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$5,000,000 Each Occurrence</li> <li>▪ \$5,000,000 Annual Aggregate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Such insurance shall be excess over and be no less broad than all coverages described above.</li> <li>▪ Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits and shall include a duty to defend any insured.</li> </ul>
Professional Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Each Occurrence</li> <li>▪ \$2,000,000 Annual Aggregate</li> <li>▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.</li> <li>▪ Such insurance shall cover all services rendered by the Contractor and its consultants under the Agreement, including but not limited to design or design/build services.</li> <li>▪ Policies written on a Claims-Made basis shall be maintained for at least two years beyond termination of the Agreement.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement.</li> <li>▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> <li>○ bodily injury or property damage where coverage is provided in behalf of design professionals or design/build contractors</li> <li>○ habitational or residential operations</li> <li>○ mold and/or microbial matter and/or fungus and/or biological substance</li> <li>○ punitive, exemplary or multiplied damages.</li> </ul> </li> <li>▪ Any retroactive date must be effective prior to beginning of services for the Owner.</li> <li>▪ Policies written on a Claims-Made basis shall have an extended reporting period of at least two years beyond termination of the Agreement. Vendor shall trigger the extended reporting period if identical coverage is not otherwise maintained with the expiring retroactive date.</li> </ul>

<p>Contractors Pollution Liability</p>	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Each Loss</li> <li>▪ \$2,000,000 Annual Aggregate</li> <li>▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.</li> <li>▪ The policy must provide coverage for: <ul style="list-style-type: none"> <li>○ the full scope of the named insured's operations (on-going and completed) as described within the scope of work for this Agreement</li> <li>○ loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall</li> <li>○ third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations;</li> <li>○ diminution of value and Natural Resources damages</li> <li>○ contractual liability</li> <li>○ claims arising from non-owned disposal sites utilized in the performance of this Agreement.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ The policy must insure contractual liability, name Owner Parties as an Additional Insured, and be primary and noncontributory to all coverage available to the Additional Insured.</li> <li>▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> <li>○ Insured vs. insured actions. However, exclusion for claims made between insured within the same economic family are acceptable.</li> <li>○ impaired property that has not been physically injured</li> <li>○ materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval.</li> <li>○ property damage to the work performed by the contractor</li> <li>○ faulty workmanship as it relates to clean up costs</li> <li>○ punitive, exemplary or multiplied damages</li> <li>○ work performed by subcontractors</li> </ul> </li> <li>▪ If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of this Agreement or the commencement of contractor services relation to the Work.</li> <li>▪ The policy will offer an extended discovery or extended reporting clause of at least three (3) years.</li> <li>▪ Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least two (2) years after the property owner accepts the project or this contract is terminated. The purchase of an extended discovery period or an extended reporting period on a Claims Made policy or the purchase of occurrence based Contractors Environmental Insurance will not be sufficient to meet the terms of this provision.</li> </ul>
<p>Builders Risk</p>	<ul style="list-style-type: none"> <li>▪ Coverage shall be provided in an amount equal at all times to the full contract value, including change orders, and cost of debris removal for any single occurrence.</li> <li>▪ Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing.</li> <li>▪ The policy must provide coverage for:</li> </ul>	<ul style="list-style-type: none"> <li>▪ Insureds shall include Owner, General Contractor, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds.</li> <li>▪ Such insurance shall cover: <ul style="list-style-type: none"> <li>○ all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling;</li> <li>○ all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings)</li> </ul> </li> </ul>

<ul style="list-style-type: none"> <li>o Agreed Value</li> <li>o Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse</li> <li>o Debris removal additional limit</li> <li>o Earthquake and Earthquake Sprinkler Leakage</li> <li>o Flood</li> <li>o Freezing</li> <li>o Mechanical breakdown including hot &amp; cold testing</li> <li>o Ordinance or law</li> <li>o Pollutant clean-up and removal</li> <li>o Preservation of property</li> <li>o Theft</li> <li>• Deductible shall not exceed</li> <li>o All Risks of Direct Damage, Per Occurrence, except</li> <li>o Named Storm</li> <li>o Earthquake and Earthquake Sprinkler Leakage, Per Occurrence</li> <li>o Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V</li> </ul>	<ul style="list-style-type: none"> <li>Included</li> <li>Included</li> <li>\$1,000,000</li> <li>\$5,000,000</li> <li>\$5,000,000</li> <li>Included</li> <li>Included</li> <li>\$1,000,000</li> <li>\$ 25,000</li> <li>Included</li> <li>Included</li> <li>\$10,000</li> <li>2% subject to \$50,000 minimum</li> <li>\$100,000</li> <li>\$100,000</li> </ul>	<ul style="list-style-type: none"> <li>located at the site;</li> <li>o all property including materials and supplies on site for installation;</li> <li>o all property including materials and supplies at other locations but intended for use at the site;</li> <li>o all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and</li> <li>o other Work at the site identified in the Agreement to which this Exhibit is attached.</li> <li>• No protective safeguard warranty shall be permitted.</li> <li>• The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed. This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: <ul style="list-style-type: none"> <li>o the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;</li> <li>o occupancy, in whole or in part;</li> <li>o the date on which release of substantial completion is executed; or</li> <li>o the date on which the insurable interests of Contractor in the Covered Property has ceased.</li> </ul> </li> <li>• A waiver of subrogation provision shall be provided in favor of all insureds.</li> </ul>
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## 2. General Insurance Requirements

### A. Definitions. For purposes of this Agreement:

- i. "ISO" means Insurance Services Office.
- ii. "Contractor" shall include subcontractors of any tier.
- iii. "Owner Parties" means (a) the City of New Braunfels ("Owner"), (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Construction Documents.

### B. Policies.

- i. Contractor shall maintain such General Liability, Excess Liability, Professional and Pollution insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.
- ii. All policies must:

- a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
  - b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
  - c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
  - d. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
  - iv. Contractor shall provide to the Owner a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.
  - v. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

**C. Limits, Deductibles and Retentions**

- i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- ii. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same

**D. Forms**

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Owner will have the right to require other equivalent forms.
- ii. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

**E. Evidence of Insurance. Insurance must be evidenced as follows:**

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
  - a. Owner as certificate holder at Owner's mailing address;
  - b. Insured's name, which must match that on this Agreement;
  - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
  - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
  - e. Additional Insured status in favor of Owner Parties;
  - f. Amount of any deductible or self-insured retention in excess of \$25,000;
  - g. Designated Construction Project(s) General Aggregate Limit;
  - h. Primary and non-contributory status;
  - i. Waivers of subrogation; and
  - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
  - a. General Liability Additional insured endorsement(s);
  - b. General Liability Schedule of Forms and Endorsements page(s); and
  - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

**F. Contractor Insurance Representations to Owner Parties**

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Contractor shall fail to remedy such breach within five (5) business days after notice by the Owner, the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Contractor by the Owner. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Construction Agreement.

**G. Insurance Requirements of Contractor's Subcontractors**

- i. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- ii. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

**H. Use of the Owners Equipment**

The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use. If the Contractor or any of its agents, employees, subcontractors or suppliers utilize any of the Owners equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the Contractor shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use.

**I. Release and Waiver**

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**

## ATTACHMENT B: Prevailing Wage Schedule

### WAGE RATE DETERMINATION

COUNTY NAME: COMAL

Wages are based on DOL General Decision:

TX20190240 - BUILDING

- Wages shall be paid in accordance with the Davis Bacon Wage Rates.
- <https://beta.sam.gov/>

### PREVAILING WAGES

Proposers must comply with all requirements of the prevailing wage Statue 2258 for non- Federal contracts and Davis-Bacon and Related Acts for federal contracts.

Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Highway-Heavy Trades "AS APPLICABLE".

- A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.  
<https://beta.sam.gov/>  
Attachment C - Prevailing Wage Schedule

Such wage rates shall be used throughout the contract. If a classification is to be used, which is not listed in the attached wage rates, Contractor shall submit to owner rates and classification proposed for use, for approval, prior to performance of the Work.

### EMPLOYMENT REQUIREMENTS AND WAGE RATES

This Contract shall be based upon payment by Contractor and his Subcontractors of wage rates not less than the general prevailing rate of per diem wages for Work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Contractor agrees to comply with the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act of 1990, and Contractor will indemnify and hold Owner harmless for any failure to so comply and any discrimination for which Contractor may be charged.

Contractor and each Subcontractor shall keep an accurate record showing the names and occupations of all laborers, workmen, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by representatives of the Owner.

According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

Contractor shall comply with all requirements of the hours of work on public works law of the State of Texas, Texas Revised Civil Statutes, Articles 5165.1 to 5165.3, including the latest amendments thereto.

"General Decision Number: TX20200240 02/14/2020

Superseded General Decision Number: TX20190240

State: Texas

Construction Type: Building

County: Comal County in Texas.

**BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).**

**Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).**

**Modification Number    Publication Date**

**0            01/03/2020  
1            02/14/2020**

**ASBE0087-014 01/01/2018**

**Rates            Fringes**

**ASBESTOS WORKER/HEAT & FROST  
INSULATOR (Duct, Pipe and  
Mechanical System Insulation)....\$ 22.72            10.02**

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**BOIL0074-003 01/01/2017**

**Rates            Fringes**



**BOILERMAKER.....\$ 28.00      22.35**

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**BRTX0005-006 06/01/2017**

**Rates      Fringes**

**BRICKLAYER.....\$ 23.02      9.53**

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**ELEC0060-003 06/01/2019**

**Rates      Fringes**

**ELECTRICIAN (Communication  
Technician Only).....\$ 22.55      9%+5.45**

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**\* ELEC0060-004 06/01/2019**

**Rates      Fringes**

**ELECTRICIAN (Excludes Low  
Voltage Wiring).....\$ 28.60      18%+5.45**

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**\* ELEV0133-002 01/01/2020**

**Rates      Fringes**

**ELEVATOR MECHANIC.....\$ 42.30      34.765**

**Footnote:**

**A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.**

**B. Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.**

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**ENGI0450-002 04/01/2014**

**Rates      Fringes**

**POWER EQUIPMENT OPERATOR  
Cranes.....\$ 34.85      9.85**

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**IRON0084-011 06/01/2019**

**Rates      Fringes**

**IRONWORKER, ORNAMENTAL.....\$ 24.42      7.12**

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**IRON0482-012 06/01/2017**

**Rates      Fringes**

**IRONWORKER, STRUCTURAL.....\$ 22.15      6.68**

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PLUM0142-009 08/07/2019

	Rates	Fringes
HVAC MECHANIC (HVAC Electrical Temperature Control Installation Only).....	\$ 30.25	13.36
HVAC MECHANIC (HVAC Unit Installation Only).....	\$ 30.25	13.36
PIPEFITTER (Including HVAC Pipe Installation).....	\$ 31.05	13.76
Including HVAC Pipe Installation		
PLUMBER (Excludes HVAC Pipe Installation).....	\$ 31.05	13.76
Excludes HVAC Pipe Installation		

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SFTX0669-002 04/01/2019

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 29.53	21.27

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SHEE0067-004 06/01/2019

	Rates	Fringes
Sheet metal worker Excludes HVAC Duct Installation.....	\$ 26.81	16.80
HVAC Duct Installation Only.	\$ 26.81	16.80

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SUTX2014-016 07/21/2014

	Rates	Fringes
CARPENTER (Acoustical Ceiling Installation Only).....	\$ 18.00	0.00
CARPENTER (Form Work Only).....	\$ 13.63	0.00
CARPENTER, Excludes Acoustical Ceiling Installation, Drywall Hanging, Form Work, and Metal Stud Installation.....	\$ 16.64	2.57
CAULKER.....	\$ 15.00	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 22.27	5.30
DRYWALL FINISHER/TAPER.....	\$ 13.81	0.00
DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 15.38	0.00

<b>ELECTRICIAN (Low Voltage Wiring Only).....</b>	<b>\$ 20.19</b>	<b>3.75</b>
<b>IRONWORKER, REINFORCING.....</b>	<b>\$ 12.27</b>	<b>0.00</b>
<b>LABORER: Common or General.....</b>	<b>\$ 14.11</b>	<b>0.00</b>
<b>LABORER: Mason Tender - Brick...</b>	<b>\$ 12.00</b>	<b>0.00</b>
<b>LABORER: Mason Tender - Cement/Concrete.....</b>	<b>\$ 12.00</b>	<b>0.00</b>
<b>LABORER: Pipelayer.....</b>	<b>\$ 11.00</b>	<b>0.00</b>
<b>LABORER: Roof Tearoff.....</b>	<b>\$ 11.28</b>	<b>0.00</b>
<b>LABORER: Landscape and Irrigation.....</b>	<b>\$ 8.00</b>	<b>0.00</b>
<b>OPERATOR: Backhoe/Excavator/Trackhoe.....</b>	<b>\$ 19.43</b>	<b>3.49</b>
<b>OPERATOR: Bobcat/Skid Steer/Skid Loader.....</b>	<b>\$ 14.00</b>	<b>0.00</b>
<b>OPERATOR: Bulldozer.....</b>	<b>\$ 14.00</b>	<b>0.00</b>
<b>OPERATOR: Drill.....</b>	<b>\$ 14.50</b>	<b>0.00</b>
<b>OPERATOR: Forklift.....</b>	<b>\$ 13.06</b>	<b>0.00</b>
<b>OPERATOR: Grader/Blade.....</b>	<b>\$ 19.30</b>	<b>0.00</b>
<b>OPERATOR: Loader.....</b>	<b>\$ 13.90</b>	<b>0.00</b>
<b>OPERATOR: Mechanic.....</b>	<b>\$ 18.75</b>	<b>5.12</b>
<b>OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....</b>	<b>\$ 16.03</b>	<b>0.00</b>
<b>OPERATOR: Roller.....</b>	<b>\$ 11.25</b>	<b>0.00</b>
<b>PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping.....</b>	<b>\$ 13.13</b>	<b>0.00</b>
<b>ROOFER.....</b>	<b>\$ 12.00</b>	<b>0.00</b>
<b>TILE FINISHER.....</b>	<b>\$ 11.32</b>	<b>0.00</b>
<b>TILE SETTER.....</b>	<b>\$ 16.91</b>	<b>0.71</b>
<b>TRUCK DRIVER: Dump Truck.....</b>	<b>\$ 12.39</b>	<b>1.18</b>
<b>TRUCK DRIVER: Flatbed Truck.....</b>	<b>\$ 19.65</b>	<b>8.57</b>

**TRUCK DRIVER: Semi-Trailer**  
Truck.....\$ 12.50            0.00

**TRUCK DRIVER: Water Truck.....\$ 12.00            4.11**  
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**WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.**

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**Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).**

**Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).**

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**The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).**

**Union Rate Identifiers**

**A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this**

classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
 Wage and Hour Division  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

**ATTACHMENT C: Specifications for Police Station**

**ATTACHMENT D: Drawings for Police Station**