



**COMMISSIONERS COURT  
COMMUNICATION**

COURT ORDER NUMBER 145319  
PAGE 1 OF 25  
DATE: 6/3/2025

**SUBJECT: CONSIDERATION OF A GENERAL CONSTRUCTION SERVICES AGREEMENT BETWEEN TARRANT COUNTY HOSPITAL DISTRICT, D/B/A JPS HEALTH NETWORK AND MORALES CONSTRUCTION SERVICES, INC.**

**COMMISSIONERS COURT ACTION REQUESTED**

It is requested that the Commissioners Court consider a General Construction Services Agreement between Tarrant County Hospital District (TCHD) and Morales Construction Services, Inc. for construction services related to the installation of mobile and modular MRI units at the Viola Pitts Clinic, located at 4701 Bryant Irvin Road North, Fort Worth, TX 76107.

**BACKGROUND**

TCHD intends to construct infrastructure required for mobile and modular MRI units at the Viola Pitts Clinic. This project will enhance outpatient imaging capabilities and improve timely access to care for patients in the community.

The Agreement includes labor, materials, and supervision necessary to prepare the site for the installation of one (1) mobile and one (1) modular MRI unit. A total of six (6) responses were received through a competitive Request for Proposals (RFP) process, with Morales Construction Services, Inc. selected for award. The construction timeline is estimated to take 4 to 6 months.

This Agreement involves construction in an amount exceeding \$500,000.00 which requires Commissioner Court approval.

The TCHD Board of Managers approved the attached Agreement at its May 8, 2025, Board of Managers meeting. In addition, TCHD Counsel has reviewed the Agreement and approved it as to form.

**FISCAL IMPACT**

Funding in the amount of \$859,606.00 is available in TCHD's approved Capital budget.

SUBMITTED BY	JPS Health Network - Administration	PREPARED BY:	Lani Taylor, Legal Operations Manager
		APPROVED BY:	Daphne Walker, EVP, Chief Legal Officer

# AIA<sup>®</sup> Document A102<sup>™</sup> – 2017

## **Standard Form of Agreement Between Owner and Contractor**

*where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

**AGREEMENT** made as of the « » day of « » in the year **2025**  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:

(Name, legal status, address and other information)

**TARRANT COUNTY HOSPITAL DISTRICT D/B/A JPS HEALTH NETWORK**

1500 South Main Street  
Fort Worth, Texas 76104

and the Contractor:

(Name, legal status, address and other information)

«Morales Construction Services, Inc. »

«990 N. Walnut Creek Drive »

«Suite 2018 990 N. Walnut Creek Drive»

«Mansfield, TX 76063 »

«817-225-6807 »

for the following Project:

(Name, location and detailed description)

«RFP #24-1227 MOBILE MRI UNITS AT VIOLA PITTS CLINIC »

«4701 BRYANT IRVING ROAD NORTH »

«FORT WORTH, TX 76110 »

The Architect:

(Name, legal status, address and other information)

«Primera Design Associates»

«2102 Roosevelt Dr »

«Suite A»

«Dalworthington Gardens, TX 76013 »

«817-303-5400 »

The Owner and Contractor agree as indicated on the following pages:

### **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 A102<sup>™</sup>-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201<sup>™</sup>-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.

**ELECTRONIC COPYING** of any portion of this AIA<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	RELATIONSHIP OF THE PARTIES
4	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
5	CONTRACT SUM
6	CHANGES IN THE WORK
7	COSTS TO BE REIMBURSED
8	COSTS NOT TO BE REIMBURSED
9	DISCOUNTS, REBATES AND REFUNDS
10	SUBCONTRACTS AND OTHER AGREEMENTS
11	ACCOUNTING RECORDS
12	PAYMENTS
13	DISPUTE RESOLUTION
14	TERMINATION OR SUSPENSION
15	MISCELLANEOUS PROVISIONS
16	ENUMERATION OF CONTRACT DOCUMENTS
17	INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents consist of this Agreement and its attached Exhibits, the General Conditions of the Contract AIA Document A201-2017 (hereinafter, including all modifications to said document for this Project, the “A201-2017”), Owner Provided Information and documents described in **Exhibit J** attached hereto, 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. The Contract Documents are listed in Article 16 of this Agreement. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 The Contract Documents are intended to be complimentary and what is required by one shall be as binding as if required by all. If, and to the extent of, any inconsistency, ambiguity, or discrepancy in the Contract Documents and/or items that can be reasonably inferred by the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) written Modifications issued after execution of this Agreement, with the Modification bearing the latest date taking precedence; (2) this Agreement, other than **Exhibit F** – Contractor's Assumptions and Clarifications, which shall be given the priority described in this Section 1.2; (3) the A201-2017; (4) **Exhibit F** – Contractor's Assumptions and Clarifications; and (5) the Drawings and Specifications identified in and incorporated into the Contract Documents, with those addenda and revisions bearing the latest date taking precedence. Without limiting the foregoing, the terms of the Agreement and the A201-2017 shall control over

any terms in the Drawings or Specifications inconsistent therewith. Any Contractor's Assumptions and Clarifications document included in a Modification or as an exhibit to a Modification will be considered part of the Modification for the particular scope of work modified in the Modification. Any Contractor's Assumptions and Clarifications document shall clearly and precisely describe the specification provision, if any, the qualification or clarification seeks to qualify or clarify.

**§ 1.3 Definitions.** Definitions are set forth in the A201–2017 and are incorporated herein by reference.

## **ARTICLE 2 THE WORK OF THIS CONTRACT**

**§ 2.1** The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Contractor agrees to perform the Work in a good and workmanlike manner, in accordance with industry standards, the requirements of the Contract Documents, the Project Schedule, and in compliance with Applicable Law as defined in Section 1.2 of the AIA Document A201-2017 (as modified for this Project). The Contractor shall inform itself fully and completely comply with Applicable Law and shall require all of its Subcontractors to comply with all Applicable Law. Contractor's obligation for compliance shall also apply to changes in or additions to Applicable Law effective as of the time of the Contractor's performance, subject to Contractor's right to make a claim for a change in the Contract Time pursuant to Section 8.3 of the AIA Document A201-2017 (as modified for this Project) or an increase in the Guaranteed Maximum Price to the extent Contractor can establish that it incurred additional Cost of the Work arising from the change in or addition to Applicable Law, subject to the requirements of Article 7 of the General Conditions.

**§ 2.2 Key Personnel.** The Contractor shall furnish only skilled and properly trained staff for the performance of the Work. Contractor's representative(s) designated in Section 15.3 shall be those responsible for the day-to-day management of the Work. The Contractor shall keep a competent Superintendent at the Site at all times, fully authorized to act on behalf of the Contractor. Other key personnel shall be designated by Contractor in **Exhibit D**. Each person shall be designated with a title and a brief description of the obligations and limitations of each representative's authority. Contractor shall not change representatives/assignments without Owner's written consent, which consent shall not be unreasonably withheld. Contractor shall not assign or retain on the Project any person or entity to whom Owner reasonably objects. Once designated, the key personnel will not be changed unless such person becomes unable to perform any required duties due to death, injury, transfer, or termination of employment with Contractor. If the Contractor changes any of the key personnel, Contractor shall notify Owner and Project Manager and provide the name and qualifications of the new personnel.

## **ARTICLE 3 RELATIONSHIP OF THE PARTIES**

**§ 3.1** The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and other members of the Project Team. Contractor shall exercise its best skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision. Contractor shall at all times furnish an adequate supply of workers and materials to the Project. Contractor shall perform the Work in accordance with the Contract Documents and in an expeditious and economical manner consistent with the Owner's interests, Applicable Laws, rules, regulations, and lawful orders of Authorities Having Jurisdiction. The Owner agrees to furnish or approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Contractor shall immediately give written notice to Owner upon its determination that any of the information referenced in the preceding sentence is not being timely provided by Owner, with such notice detailing what information is not being timely provided. Nothing in this Section 3.1 shall be interpreted as creating a fiduciary duty between the parties.

### **§ 3.2 Agreement of Cooperation**

Contractor shall use its best efforts to construct the Project in a coordinated, careful and harmonious fashion and in the most efficient and expeditious manner consistent with the interests of the Project and Applicable Law. Contractor shall communicate promptly to Owner any and all concerns that Contractor may have with regard to the Work, or services of others on the Project, including, without limitation, any defects or potential defects in planning, design, or construction of the Work, and shall cooperate with Owner and other professionals and experts if errors or omissions are discovered in the Contract Documents. If upon review of any plans, Drawings, Specifications or other design documents the Contractor discovers a defect, inaccuracy, inadequacy or insufficiency in said documents, the

Contractor shall promptly report to the Owner, in writing, the existence of any defect discovered, or that reasonably should have been discovered, by the Contractor using ordinary diligence, before, during, and after construction and in conformance with Texas law.

#### ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The Date of Commencement of the Work shall be:

(Check one of the following boxes.)

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

**On or before the 21st day after the written notice to proceed ("NTP") from the Owner to Contractor.**

§ 4.2 The Contract Time shall be measured from the Date of Commencement. Contractor shall perform the Work in accordance with the Project Schedule and the dates of Substantial Completion and Final Completion and all Interim Milestone Dates.

§ 4.2.1 The Contractor shall not knowingly, except by agreement or instructions of the Owner in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by **Exhibit H** to be furnished by the Contractor to the Owner. The Contract Time shall not be adjusted as a result of the Contractor's failure to obtain insurance required under this Contract.

#### § 4.3 Substantial Completion

§ 4.3.1 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 « » ( «110» ) calendar Days from the Date of Commencement of the Work.
- [ « » ] By the following date: « »

(the "Required Date of Substantial Completion"). The Contractor shall diligently continue to prosecute the Work to Final Completion, as defined in Section 1.1 of the AIA Document A201-2017 (as modified for this Project), in order to achieve Final Completion of the Work no later than **sixty (60)** Days following the Required Date of Substantial Completion.

§ 4.3.2 **Interim Milestone Dates.** 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 (the "Interim Milestone Date(s)"):

**Portion of Work**

« »

**Substantial Completion Date**

« »

§ 4.3.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6. By executing this Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 4.4 Scheduling.** The Contractor shall provide scheduling and periodic updating of the progress of the Work and other necessary schedules in the interest of completing the Work in the most expeditious and economic manner (hereinafter called the "Project Schedule") and as otherwise required by Section 3.10 of the A201-2017. Except as otherwise expressly agreed by Owner and Contractor, the Project Schedule shall be and remain consistent with the schedule attached as **Exhibit C**.

**§ 4.4.1 Recovery Schedule.** In the event Contractor falls behind the critical path of the Project Schedule by more than **ten (10)** day(s), for any reason that does not justify an extension of the Required Date of Substantial Completion under Section 8.3 of AIA Document A201-2017, Contractor shall comply with Section 3.10.4.1 of the AIA Document A201-2017.

**§ 4.4.2** Subject to Section 8.3 of the AIA Document A201-2017, Contractor will record on a daily basis whether the critical path of its job progress has been materially affected by adverse weather conditions or any other cause not the responsibility of the Contractor. No application for extension of time will be made unless the critical path of the Project is materially affected and the Contractor has complied with Section 8.3 of the AIA Document A201-2017.

## **ARTICLE 5 CONTRACT SUM**

**§ 5.1** The Owner shall pay the Contractor, as provided in the Contract Documents, the Contract Sum for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7, including Contractor's General Conditions Costs, plus the Contractor's Fee as provided in this Article 5, all of which Contractor represents shall not exceed the Guaranteed Maximum Price set forth in Section 5.2.1 below.

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

The Contractor's Fee for performing the Work of the Contract is **Seventy-seven thousand, six hundred dollars and zero cents (\$77,600.00)** of the Cost of the Work as defined in Article 7, except as limited by the Guaranteed Maximum Price.

**§ 5.1.2** The method of adjustment of the Contractor's Fee for changes in the Work:

None.

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

Any Contractor or subcontractor overhead and profit attributable to increases in the cost of its portion of the Work, as evidenced by executed Change Order(s) identifying the same, shall not exceed **ten percent (10%)** for overhead and **five percent (5%)** for profit on the increased cost of its Work. In no event shall the total of overhead and profit payable by the Owner for changes in the Work performed by a Subcontractor and/or sub-subcontractor (regardless of the number of tiers) exceed **fifteen percent (15%)** of the actual direct labor and material cost of the changed Work. Mark-up on any Self-Performed Work will not be charged other than as Fee set forth in 5.1.2 above.

**§ 5.1.4** Rental rates for Contractor-owned equipment shall not exceed **five** percent (**5**) of the standard rental rate paid at the place of the Project.

**§ 5.1.5** 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.)*

<b>Item</b>	<b>Units and Limitations</b>	<b>Price Per Unit (\$0.00)</b>
« »	« »	« »

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

**§ 5.1.6.1 All time limits stated in the Contract Documents are of the essence.** Contractor acknowledges and agrees that its failure to meet the deadlines set forth in this Agreement shall be a material breach of the Agreement and that Owner will incur substantial damages due to any failure by the Contractor to achieve Substantial Completion on or before the Required Date of Substantial Completion and any Interim Milestone Dates. If the Contractor fails to achieve Substantial Completion of the Work by the Required Date of Substantial Completion as such date may be modified in accordance with the terms of the Contract Documents, the Contractor shall pay Owner liquidated damages, and not as a penalty, [\$1,000.00] per Day until Substantial Completion of the Work is achieved. If the Contractor fails to achieve Substantial Completion of certain Interim Milestones(s) by the date(s) set forth in Section 4.3.2 above as such date(s) may be modified in accordance with the terms of the Agreement, the Contractor shall pay Owner liquidated damages, and not as a penalty or forfeiture, the following:

until Substantial Completion of such Milestone is achieved.

**§ 5.1.6.2** Owner may deduct any liquidated damages from any amounts due the Contractor, and/or Owner may require the Contractor to pay any liquidated damages, within **ten (10)** Days after Owner's request should the available contract funds be insufficient to cover the liquidated damages assessed against the Contractor. If liquidated damages are actually recovered by Owner, the above-stated liquidated damages provided for herein shall be Owner's exclusive damages remedy for the Contractor's unexcused failure to achieve Substantial Completion of the Work by the Required Date of Substantial Completion or Substantial Completion of any construction milestone by the Interim Milestone Date(s), but such damages shall in no way limit Owner's other rights (e.g., termination) under the Agreement or Owner's entitlement to damages for any other injury, damage or loss, other than for delay to achieving Substantial Completion of the Work by the Required Date of Substantial Completion or Substantial Completion of certain construction milestone(s) by the Interim Milestone Date(s), for which the Contractor may be responsible pursuant to the terms of this Agreement or Applicable Law.

**§ 5.1.6.3** In determining the amount(s) of liquidated damages above, Owner has carefully considered the following categories of damages and has thoughtfully determined such amount(s) accordingly: increased financing charges, cost of relocation of personnel to alternative space, costs for managing an extended schedule, costs for the Architect's or Project Manager's extended involvement, costs of storage of Owner-provided FF&E, lease extension costs, and other numerous damages. Further, the Contractor acknowledges and agrees that as of the date this Agreement is executed (i) the amount of damages Owner will incur due to the Contractor's failure to achieve Substantial Completion of the Work by the Required Date of Substantial Completion or Substantial Completion of certain construction milestone(s) as required by this Agreement are impossible or difficult to estimate, (ii) the liquidated damages set forth herein are a reasonable pre-estimate of damages that Owner will incur as a result of a delay in achieving Substantial Completion of the Work by the Required Date of Substantial Completion or Substantial Completion of certain construction milestone(s) as required by this Agreement, (iii) that the consequential damages contemplated at the time of this Agreement are uncertain and difficult to determine with exactness, and (iv) that the liquidated damages set forth herein are in proportion to the probable loss.

**§ 5.1.6.4** This Section 5.1.6 shall survive the termination of this Agreement. In the event this liquidated damage provision is held to be unenforceable or void (except when the holding is the result of a challenge by Owner), Owner shall be allowed to recover actual damages (both direct and consequential damages) caused by the Contractor's failure to achieve the applicable Contract Time requirements to the fullest extent allowed by Applicable Law.

**§ 5.1.7** Other:

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

## **§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Contract Sum is guaranteed by the Contractor not to exceed **Eight hundred fifty nine thousand, six hundred six and No/100 Dollars (\$859,606.00)** subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the "Guaranteed Maximum Price" or "GMP." Contractor assumes the risk of, and shall be responsible for, all costs that overrun the Guaranteed Maximum Price from any cause whatsoever, including costs due to otherwise excusable circumstances for which an adjustment to the Guaranteed Maximum Price would have been permitted, unless Contractor has

obtained in advance of the incurring such overrun costs a Change Order to this Agreement increasing the Guaranteed Maximum Price for such costs.

**§ 5.2.2 Alternates.** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner.

*(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

Item	Price
«None »	« »

**§ 5.2.2.1** 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
«None »	« »	« »

**§ 5.2.3** Allowances included in the Guaranteed Maximum Price, are as follows:

Item	Price
«Owner Controlled Contingency »	«\$100,000.00 »

**§ 5.2.4** Assumptions, if any, on which the Guaranteed Maximum Price is based:

Contractor's Assumptions and Clarifications are indicated as such on **Exhibit F**.

**§ 5.2.5** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 5.2.6** *[Intentionally deleted].*

**§ 5.2.7 Contingency.** The Guaranteed Maximum Price contains a separately identified Owner controlled contingency amount of [\$100,000.00] (the "Contingency") to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. Contingency shall be used to fund (i) increases in the Cost of the Work incurred by the Contractor for unforeseen causes to which an allowance is not assigned; or (ii) items not capable of reasonable anticipation at the time this Agreement is executed that are not the basis for a Change Order, and then only as follows: (a) the Contractor provides the Owner with a written explanation of each requested draw upon the Contingency, along with back-up documentation reasonably requested by the Owner, with each Application for Payment in which such draw of Contingency is requested, (b) each Application for Payment contains a report aggregating the Contractor's use of the Contingency, and (c) each draw on the Contingency is approved **in advance** by the Owner (such approval not to be unreasonably withheld). Any re-allocation of funds from the Contingency to cover increases in the Cost of Work or any other claimed costs by the Contractor must be approved by Owner in advance and in writing, such approval not to be unreasonably withheld. The Contractor shall include the Contingency amount as a separate line item in the Schedule of Values, and upon the use of part of the Contingency, that part shall be allocated to the applicable line item of the Schedule of Values. In no event shall Contingency be used for any cost incurred that is not a Cost of the Work. Contingency is the Owner's to expend and any unused portion of the Contingency shall be returned to Owner.

## ARTICLE 6 CHANGES IN THE WORK

**§ 6.1** Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of the A201-2017.

**§ 6.2** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the adjustments shall be determined in accordance with Section 7.3.3 of AIA Document A201-2017. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of this Agreement, unless the Owner has furnished the Contractor with prior approval of the form and substance of the subcontract, in which case such adjustments shall be made per that subcontract.

**§ 6.3** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 (as modified for this Project) shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee for changed Work as defined in Section 5.1.2 of this Agreement.

**§ 6.4 No Adjustments Due to Refinement of Drawings and Specifications.** It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the Drawings and Specifications that does not change the quantity or quality of the Scope of Work. No adjustments in the Cost of Work, the Contractor's Fee, the Guaranteed Maximum Price, Interim Milestone Dates, or Required Date of Substantial Completion shall be made except as otherwise specifically provided in the Contract Documents and approved by Owner in writing.

## **ARTICLE 7 COSTS TO BE REIMBURSED**

### **§ 7.1 Cost of the Work**

**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7.

**§ 7.1.1.1** Cost, as defined herein, shall be actual costs paid or incurred by the Contractor, less all discounts, rebates and salvages that are obtained by the Contractor, subject to Article 9 of this Agreement. All payments made by the Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of this Agreement, are included within the Guaranteed Maximum Price specified in Section 5.2 above. Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of reimbursable categories.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement; however, any failure to identify such costs shall not relieve the Contractor of its obligation to obtain prior written approval.

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

**§ 7.1.4 Contractor's General Conditions Costs.** Owner and Contractor agree that those certain administrative and supervisory personnel costs, direct overhead, and other on-Site costs and expenses incurred by Contractor in the performance of its administrative, supervisory, and management responsibilities under the Contract described or itemized in Contractor's General Conditions Costs Schedule attached as **Exhibit B** shall, notwithstanding the other terms of this Article 7, be reimbursable to the Contractor subject to the limitations and restrictions expressly set forth in such Schedule and in **Attachments B-1** and **B-2** thereto. **Attachment B-1** provides wage/salary, benefits, and labor burden information for the specific personnel included in the administrative, supervisory and management roles in **Exhibit B**. Contractor's General Conditions Costs shall be based on the allowable General Conditions Cost categories provided in **Attachment B-2**. Notwithstanding anything to the contrary in the Contract Documents, (a) the Contractor shall not be entitled to an increase in the General Conditions Costs for any portion of the Work as a result of errors in the Contractor's assumptions or changes to the Contractor's means and methods of performing the Work; and (b) the total cost to the Owner for all General Conditions Costs for the Work shall in no event exceed the amount set forth on **Exhibit B**, unless such amount is increased by Change Order or the Owner in its sole discretion consents to use the Contingency therefor. The Contractor's General Conditions Costs shall be billed each month in an Application for Payment based on actual costs incurred for that month. General Conditions costs shall not be duplicated in other non-General Conditions cost categories.

## § 7.2 Labor Costs

§ 7.2.1 With the Owner's prior written approval, wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the Site or at off-Site workshops. Contractor shall, at all times comply with the requirements of prevailing wage rates/requirements of *Tex. Gov't. Code § 2258* and shall pay not less than the wage schedule in compliance with same.

§ 7.2.2 With the Owner's prior approval, wages or salaries of the Contractor's supervisory and administrative personnel assigned to the Project including but not limited to an estimator, scheduler(s), safety personnel, a Project manager, a Project administrator, superintendent(s) and operations managers, but only for that portion of the time required for the Project, all of whom shall be paid as part of Contractor's General Conditions Costs set forth in **Exhibit B** and **Attachment B-1**. Supervisory and administrative personnel providing only a portion of their time to the Project shall be frequently assessed and reviewed by the Contractor, Project Manager, and Owner to agree upon the time or percentage of time portioned to the Project.

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel assigned to the Project who are engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work on the Project, which shall be paid as Contractor's General Conditions Costs set forth in **Exhibit B** and **Attachment B-1**.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for employment taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions or other incentive compensation or benefits (but not discretionary or merit bonuses) included as part of Contractor's usual compensation package, provided such costs are based on wages and salaries included in the Cost of the Work under this Section 7.2. Such costs are referred to as "Labor Burden" which are included in the rates established in **Attachment B-1** for each position as set forth therein.

§ 7.2.5 The stipulated labor costs provided in **Attachment B-1** of this Agreement shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.2.6 Any labor rates and/or Labor Burden set forth in **Exhibits B** and **Attachment B-1** are fixed and final for the duration of the Project. Owner shall be entitled to verify the calculation of the fixed rate times the applicable multiplier. Owner agrees that the rates, multipliers and other fixed percentages and amounts applicable to insurance are subject to review and audit.

## § 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

## § 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the Site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

## § 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage at the Site (subject to other provisions in the Contract regarding stored materials), installation, dismantling, maintenance, removal of materials, supplies, temporary utilities and consumption costs (including those for equipment start-up), temporary facilities, temporary bracing, support, or shoring, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the Site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or

value of the item at the time it is first used on the Site less the value of the item when it is no longer used at the Site. Costs for items not fully consumed by the Contractor shall mean fair market value.

**§ 7.5.1.1** Utility costs, which shall include all temporary hook-up and/or service charges, temporary power distribution and lighting system and equipment, and costs for coordination, installation, relocation, maintenance and removal of the temporary electrical service.

**§ 7.5.2** Rental charges for facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the Site and costs of transportation, installation, minor repairs, dismantling and removal. For tools, machinery or construction equipment owned by and rented directly from the Contractor, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by Owner and shall be in accordance with those established by (i) the "Contractor's Equipment Cost Guide," latest edition published by the Associated General Contractors of America, or (ii) the lowest of three (3) competitive bids obtained from equipment leasing companies that have been approved by the Owner before any commitments are made. Such rental costs shall in no event be charged at higher than competitive rental rates prevailing in the Dallas/Fort Worth metropolitan area for similar equipment. In no event shall the aggregate rental cost to Owner exceed the purchase price and maintenance cost of the item. No charge for idle machinery and equipment owned by Contractor shall be made by the Contractor during the period of any suspension or labor dispute. The total rental cost of any such equipment may not exceed the purchase price of any comparable item on the date that the equipment is first rented for the Project. The Contractor shall pay any excess rental charges. **Exhibit G** shall govern all Contractor-owned equipment rental rates.

**§ 7.5.3** Costs of removal of debris from the Site of the Work and its proper and legal disposal, which shall be paid as part of Contractor's General Conditions Costs as set forth in **Exhibit B**.

**§ 7.5.4** Costs of the Contractor's Site office, including general office equipment and supplies such as document reproductions, internet service, dedicated data and communication services, teleconferences, Project websites, extranets, electronic communications, delivery charges, telephone service (including cellular service) at the Site and reasonable petty cash expenses of the Site office, which shall be paid as part of Contractor's General Conditions Costs as set forth in **Exhibit B**.

**§ 7.5.5** Costs of materials and equipment suitably stored off the Site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 7.5.6** Costs of ice, water containers, cups, fire extinguishers, first aid supplies, safety equipment, fall protection, final cleaning requirements, compliance with trench safety requirements, street and sidewalk expenses, off-Site storage space or facilities, and progress photos, which shall be paid as part of Contractor's General Conditions Costs set forth in **Exhibit B**.

**§ 7.5.7** Costs necessary to maintain proper physical distancing, protection, and safety of all persons and employees who may be affected by the Work and to ensure compliance with any and all Applicable Laws, including Executive Orders by local, State of Texas, or federal government authorities, relating to COVID-19.

**§ 7.5.8** All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Owner. Costs of such losses shall not be reimbursable under this Agreement. However, this limitation is not intended to prevent the Contractor from recovering any such loss under the builder's risk insurance furnished by Contractor with respect to the Project, to the extent such loss is recoverable thereunder.

**§ 7.5.9** With Owner's advance written approval, Contractor may procure long-lead time items or large quantities of materials to be incorporated into the Work for the purpose of taking advantage of lower prices or quantity purchase discounts, or addressing potential scheduling issues. Payment for such materials shall be made at the time the materials are incorporated into the Work pursuant to Section 12.1.7.1.3 or when stored off-Site, with Owner's approval. To the extent deposits or advances are required to secure the materials, Contractor shall identify the reason and the amount of such deposits and shall seek Owner's approval of same prior to ordering. Contractor shall comply with the requirements of Section 9.3.2 of the AIA Document A201-2017, store and secure such materials in a

bonded warehouse and shall arrange and pay for, as a Cost of the Work, all shipping, storage and insurance costs for said materials.

## § 7.6 Miscellaneous Costs

**§ 7.6.1 Insurance Premiums and Deductibles.** Owner will pay that portion of premiums for Contractor's payment and performance bonds required pursuant to *Tex. Gov't. Code § 2253* and insurance required by this Agreement and specified in **Exhibit H**, that are attributable to this Project. Contractor's premium for Builder's Risk Insurance shall be charged as a Cost of the Work based on the initial Guaranteed Maximum Price and duration. Insurance deductibles and premiums for Subcontractor bonds or Subcontractor default insurance are NOT reimbursable as a General Conditions Cost or Cost of the Work.

**§ 7.6.1.1** No charges for self-insurance will be considered as a reimbursable cost under the terms of this Agreement unless the arrangements for self-insurance are first disclosed in writing to Owner and approved by Owner along with a proposed methodology for determining a fair and equitable portion of the actual cost of the self-insurance out-of-pocket costs incurred to settle claims related to Work performed in this Project. In no event shall the charges for self-insurance costs exceed the comparable costs of purchasing conventional insurance at conventional net or modified rates of similar volumes of Work performed under similar conditions.

**§ 7.6.1.2** *[Intentionally deleted].*

**§ 7.6.2** Sales, use or similar taxes imposed by Authorities Having Jurisdiction, that are related to the Work and for which the Contractor is liable, except to the extent the Owner is exempt under *Tex. Admin. Code § 3.291*, the *Texas Tax Code Ch. 151*, and/or the Internal Revenue Code.

**§ 7.6.3** Fees and assessments for any building permits, licenses, and inspections, including, but not limited to construction-related permits and approvals and expediting of such permits and approvals, including those related to, demolition, sidewalk and/or street closings, traffic control, sidewalk crossing, building and Certificates of Occupancy (permanent and temporary), Certificates of Compliance (permanent and temporary), and any other construction-related permit.

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents, including testing A/C system power, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of the A201-2017 (as modified for this Project), those related to repeated testing or inspections as a result of failed tests for which reimbursement is excluded by Section 13.4.3 of the A201-2017 (as modified for this Project), or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

**§ 7.6.5.1** *[Intentionally deleted].*

**§ 7.6.6** As set forth in **Exhibit B**, costs for communications services, electronic equipment, and software, directly related to the Work, located at the Site or used in furtherance of the Work, with the Owner's prior approval.

**§ 7.6.7** *[Intentionally deleted. See Section 7.5.4].*

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

**§ 7.6.9** *[Intentionally deleted].*

**§ 7.6.10** With the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation, and temporary living allowances, of the Contractor's personnel required for the Work.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in accordance with Owner's travel policy, and in discharge of duties connected with the Work. Such expenses incurred by employees of the Contractor not permanently stationed at the field office must be approved in advance by the Owner. Commuting expenses are specifically not reimbursable.

§ 7.6.12 Costs incurred for performing surveying, field engineering and layout services required by the Contract Documents.

§ 7.6.13 Costs relating to personnel, such as employee credentialing and identification materials, costs of the safety program, temporary barriers, signage and controls.

### § 7.7 Other Costs and Emergencies

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

§ 7.7.2 Reasonable costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of the A201–2017 (as modified for this Project).

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable; provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

### § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "Related Party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent (10%) in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a Related Party, the Contractor shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the Related Party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the Related Party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a Related Party according to the terms of Article 10.

## ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the Site office, except as specifically provided in Section 7.2;
- .2 Expenses of the Contractor's principal office and offices other than the Site office, except as to Project-related services such as scheduling, estimating or accounting and then only for such time or in such amount as relates to the Project and only as authorized in Section 7.2.2;
- .3 Overhead, bonus, profit-sharing, incentive compensation, and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence, lack of care, or failure of the Contractor, Subcontractors, and/or suppliers (or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable) to fulfill a specific responsibility of or

comply with the Contract Documents, to coordinate its Work with Owner's Separate Contractors or to fulfill a specific responsibility of the Agreement, or costs for the correction of damaged, defective or non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, costs for any re-tests or re-inspections required, and costs incurred in making good damage to property not forming part of the Work;

- .6 Any cost not specifically and expressly described in Article 7;
- .7 Costs, other than costs included in Change Orders, approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Except as provided in Section 7.6.1 above, premiums, losses and expenses for or related to (i) Contractor's insurance program, (ii) Subcontractor default insurance, (iii) Subcontractor payment and performance bonds, and (iv) lost, damaged, or stolen tools or goods not covered by insurance or items within the deductible. Insurance deductibles under insurance policies secured for the Project in accordance with **Exhibit H** are not reimbursable and will not be paid as a Cost of the Work.
- .9 Overtime wages or salaries (and fringe benefits related thereto) incurred by the Contractor as a result of the Contractor's unexcused failure to perform the Work in accordance with the Project Schedule, unless the Contractor has received the Owner's prior consent to incur such overtime;
- .10 Fines, penalties, sanctions or impositions assessed or imposed by any Authority Having Jurisdiction, instrumentality or tribunal arising from the fault of Contractor or its Subcontractors or any tier;
- .11 Costs incurred by Contractor resulting from the failure of Contractor or its Subcontractors to coordinate their Work with that of Owner and its Separate Contractors, if any, after agreeing to the schedules therefor, or failure of Contractor to comply with directives of Owner not in conflict with said schedules;
- .12 Any cost or portion thereof that duplicates in whole or in part any other cost or portion thereof that has been charged to or has been paid separately by Owner; and
- .13 Sales and use taxes from which Owner is exempt under *Tex. Admin. Code § 3.291, Tex. Tax Code Ch. 151*, and/or the Internal Revenue Code.

## **ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS**

**§ 9.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained. The Contractor shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with **seven (7)** Days prior notice of the potential discount, rebate or refund so that the Owner can take advantage of it in accordance with the requirements of this Section 9.1.

**§ 9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 9.3** Contractor shall make reasonable efforts to provide Owner with timely notice of all available discounts, rebates, refunds and returns (hereinafter referred to collectively as "discounts"). The Contractor shall not obtain for its own benefit any discounts in connection with the Work prior to providing the Owner with reasonable, prior notice of the potential discount and an opportunity to furnish funds necessary to obtain such discount on behalf of the Owner in accordance with the requirements of this Section 9.3.

## **ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 10.1** Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. Contractor shall not retain any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

**§ 10.2** When a specific Subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract

Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 10.3** Subcontracts or other agreements shall be consistent with and bind the Subcontractors to the terms and conditions of the Contract Documents and shall conform to the applicable payment provisions of this Agreement. No trade work shall be performed by Contractor, or any entity related to or affiliated with Contractor, without Contractor first submitting a bid for such self-performed Work and receipt of Owner's written authorization to proceed. If a Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11 below. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to Owner.

**§ 10.4** Value engineering or cost saving alternative proposals contained in any Contractor or Subcontractor bids must be set forth as alternates to bid required by Drawings or Specifications. Contractor shall consult with Owner before awarding any alternates to Subcontractors and shall provide Owner with a copy of each proposed alternate for Owner's review and acceptance. The term "value engineering" used in conjunction with this Agreement or the Project or the Work has its commonly accepted meaning within the construction industry and does not imply the practice of architecture or engineering with or without a license.

**§ 10.5** Contractor shall include in each Subcontract a provision permitting Contractor to assign to Owner each Subcontract upon termination of this Agreement pursuant to Section 14.2 or Section 14.4 of the A201-2017. Each Subcontract shall contain a provision that upon assignment of each Subcontract to Owner, Subcontractor shall assume toward the Owner all of the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner.

## **ARTICLE 11 ACCOUNTING RECORDS**

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, Drawings, receipts, Pencil Draws, formal Applications for Payment, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, invoices, memoranda, and other data relating to this Contract and the Work hereunder, including but not limited to all records and back-up documentation relating to reimbursable expenses and Cost of Work items. Contractor shall preserve these records for a period of **five (5)** years after final payment, or for such longer period as may be required by Applicable Law.

## **ARTICLE 12 PAYMENTS**

### **§ 12.1 Progress Payments**

**§ 12.1.1** Based upon the Schedule of Values approved by Owner, Applications for Payment submitted to the Owner and the Architect by the Contractor (including all supporting documentation, as hereinafter provided), and Certificates for Payment issued by the Project Manager, the Owner shall make progress payments to the Contractor as provided below and elsewhere in the Contract Documents.

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

### **§ 12.1.3 Application for Payment Process**

**§ 12.1.3.1 Pencil Draw.** No later than the **20<sup>th</sup> Day** of the month (or the next business day if the 20<sup>th</sup> is not a business day), the Contractor shall submit to the Architect, Project Manager, and Owner, a preliminary draft of that month's

Application for Payment (the "Pencil Draw") for review by Owner, Architect, and Project Manager. On or about the **25<sup>th</sup> Day** of the month (or the next business day if the 25<sup>th</sup> is not a business day), the Owner, Architect, Project Manager, Contractor, and other members of the Project Team as required by Owner, shall meet to review the Pencil Draw and to observe the condition of the Work to determine whether the Work is of the quality required by the Contract Documents and has progressed in quantity to the point indicated in the Application for Payment. Based on this review, the Owner, Project Manager and/or Architect may require modifications to the Pencil Draw. Contractor shall revise the Pencil Draw in accordance with any objections or recommendations of the Owner, Architect, or Project Manager that are consistent with the requirements of the Contract Documents. The Contractor shall resubmit to the Project Manager and the Architect the corrected Pencil Draw as the formal Application for Payment, which Application shall be due no later than the **last Day** of the month. All formal Applications for Payment shall be notarized. The Contractor shall also submit with each Application for Payment such supporting documentation as required in this Section 12.1.3 and a written narrative describing the basis for any item set forth in the Application for Payment that does not conform to instructions of the Owner, Project Manager, or the Architect in connection with any applicable Pencil Draw. Upon receipt of the formal Application for Payment, the Architect and Project Manager shall each certify that, based on the Architect's and Project's Manager's inspections at the Site, the data comprising the Application for Payment, and their knowledge of the Contract Documents, the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, belief and Standard of Care, the quantity and quality of the Work is in accordance with the Contract Documents. The Project Manager shall then issue the Certificate for Payment.

**§ 12.1.3.2** Provided that the final Application for Payment, including supporting documentation as required in this Section 12 and in Section 9.3 of the A201-2017 (as modified for this Project), as certified by the Project Manager, is received by the Owner not later than the **last Day** of a month, the Owner shall make payment to the Contractor of the amount certified by the Project Manager not later than the **thirtieth (30<sup>th</sup>) Day** of the following month, in accordance with *Tex. Gov't. Code § 2251*. If an Application for Payment is received by the Owner and Project Manager after the application date fixed above, payment of the certified amount shall be made by the Owner not later than **thirty (30) Days** after the Project Manager certifies the amount due and owing in the Certificate for Payment. For purposes of *Tex. Gov't. Code § 2251.021(2)* and (3), the "date of performance/receipt of invoice" is the date the Project Manager signs the formal Application for Payment. No Application for Payment is complete unless it fully reflects all required modifications, attaches all required supporting documentation, and is certified by the Project Manager. Contractor shall make payment to Subcontractors in the appropriate amounts not later than the **tenth (10th) Day** after the date Contractor receives payment or otherwise in accordance with *Tex. Gov't. Code § 2251.022*. *Tex. Gov't. Code § 2251.021* shall govern amounts certified and approved by Owner but remaining unpaid and which are overdue pursuant to said statute.

**§ 12.1.4** The Application for Payment shall be made in the AIA G702 and G703 format or other such format required by Owner based on the percentages of completion and the approved Schedule of Values set forth in **Exhibit A**. Contractor shall submit with each Application for Payment any reports, documentation, and evidence required by the Owner or Architect to substantiate the Contractor's Application for Payment, including, but not limited to, payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Contractor shall, in each Application for Payment, provide certification that, to the best of its knowledge, information and belief, the Work has been performed in accordance with this Agreement and the Contract Documents.

**§ 12.1.5** Each Application for Payment shall be based on the Schedule of Values submitted by the Contractor in accordance with the Contract Documents as approved by Owner. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee, Contractor's General Conditions Costs, any allowances, and Contingency shall be shown as separate items. With each Application for Payment, the Contractor shall also provide copies of all Subcontractors' monthly applications for payment to substantiate the Contractor's Application for Payment.

**§ 12.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work that has actually been completed and is supported by documentation required by Owner as set

forth in Sections 12.1.4, 12.1.5, and 12.1.6.1. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 12.1.6.1** In addition to other items required for payment in Section 9.3 of the A201-2017 (as modified for this Project), and as set forth above, each Application for Payment shall be accompanied by the following documentation, statements and information, as conditions precedent to payment, all in form and substance reasonably satisfactory to the Owner and in compliance with applicable state statutes:

- .1 an Excel spreadsheet identifying all Subcontractors (including vendors and material suppliers) together with a brief description of the scope of work for each (i.e., masonry, HVAC, etc.), the subcontract amount for the scope of work and any retainage agreement. Said information shall be required to be furnished with the first Application for Payment. Each Application for Payment thereafter shall identify the Subcontractor, the total contract amount and the amount requested in the particular Application for Payment for each Subcontractor and shall be accompanied by the information required in Section 12.1.4 above. Contractor may reference the latter back to the Schedule of Values by line item number or other reference point approved by Owner;
- .2 an updated Project Schedule including executive summary and all required schedule reports;
- .3 an updated Submittal Log and Change Order log;
- .4 a duly executed Unconditional Waiver and Release on Progress Payment from the Contractor on the Texas statutory form that waives all liens or claims for payment for the Work covered by the previous Application for Payment paid by Owner and a Conditional Waiver and Release on Progress Payment on the Texas statutory form that waives all liens or claims for payment for the Work by the Application for Payment being submitted, conditioned upon and to the extent of payment received;
- .5 a duly executed Unconditional Waiver and Release on Progress Payment from each Subcontractor on the Texas statutory form that waives all liens or claims for payment for the Work covered by the previous Application for Payment paid by Owner and a Conditional Waiver and Release on Progress Payment on the Texas statutory form that waives all liens or claims for payment for the Work by the Application for Payment being submitted, conditioned upon and to the extent of payment received; and
- .6 if payments are to be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored on the Site, or at some other location agreed upon in writing, such payments shall be conditioned upon submission to Owner of bills of sale or other commercially reasonable procedures reasonably satisfactory to Owner to establish Owner's title to such materials or equipment or otherwise protect Owner's interest. Any materials stored off-Site must be stored in compliance with Section 9.3.2 of the A201-2017 (as modified for this Project).

**§ 12.1.7** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 12.1.7.1** The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined in the Schedule of Values, not to exceed the actual Cost of the Work incurred by Contractor for such period. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the A201-2017 (as modified for this Project);
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the Site at a location agreed upon in writing and in conformance with Section 9.3.2 of the A201-2017 (as modified for this Project);
- .3 That portion of the Costs allocable to specially fabricated materials or other orders requiring advance deposits or interim payment before completion and/or delivery, which advances shall be made as approved by Owner;
- .4 the Contractor's Fee (subject to Section 12.1.8). The Contractor's Fee shall be computed upon the Cost of the Work described in Sections .1 and .2 above at the rate stated in Section 5.1. No Fee will

be paid on approved Change Orders to the extent Contractor has already include Fee in said Change Order.

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

- .1 Retainage as set forth in Section 12.1.8;
- .2 The aggregate of previous payments made by the Owner;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor unless the Work has been performed by others the Contractor intends to pay;
- .4 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .5 Amounts, if any, for which the Owner or Project Manager has withheld or nullified a payment as provided in Sections 9.4.3 or 9.5 of the A201–2017 (as modified for this Project).

### § 12.1.8 Retainage

§ 12.1.8.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold five percent (5%) of the total Application for Payment being submitted. Retainage will be managed in conformance with *Subchapter B, Tex. Gov't. Code § 2252*. Contractor shall not withhold retainage from Subcontractors in amounts that are any percentage greater than that withheld in this Section 12.1.8.1. Any reduction or release of retainage, or portion thereof should Owner decide to do so, shall not be a waiver of (1) any of the Owner's rights to retainage in connection with other payments to the Contractor or (2) any other right or remedy that the Owner has under the Contract Documents, at law, or in equity.

§ 12.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

N/A

§ 12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

N/A

§ 12.1.8.3 *[Intentionally deleted]*.

§ 12.1.9 *[Intentionally deleted]*.

§ 12.1.10 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the Site in accordance with Section 9.3.2 of the A201-2017 and as otherwise provided in the Contract Documents.

§ 12.1.11 As set forth in Section 12.1.6.1.1, in addition to other required items, such Application for Payment shall be accompanied by a duly executed and acknowledged Contractor's Sworn Statement showing all Subcontractors with whom the Contractor has entered into subcontracts, the amount of each subcontract, the amount requested for any Subcontractor in the Application for Payment and the amount to be paid to the Subcontractor from such progress payment; conditional lien waivers from the Contractor and all Subcontractors, all invoices received from vendors; and such other information, documentation and materials as the Owner, the Project Manager, or the Architect may reasonably require. With each Application for Payment, the Contractor shall also provide copies of all Subcontractors' monthly applications for payment to substantiate the Contractor's Application for Payment. If the Contractor fails to make timely payment of a Subcontractor Payment Amount, the Owner, at its sole election, may issue joint checks payable to the Contractor and the Subcontractor and/or may directly pay the Subcontractor, and such payments shall be deemed to be payments to the Contractor under this Contract. The Owner's right to elect to issue joint checks or make direct payments shall not give rise to an obligation of the Owner to do so for the benefit of the Contractor, a Subcontractor, a Sub-subcontractor, or anyone else.

**§ 12.1.12** In taking action on the Contractor's Applications for Payment the Owner, Architect, and Project Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Owner, Architect, or Project Manager have made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4, 12.1.5. or 12.1.6, or other supporting data; (2) that neither the Owner, Architect, nor the Project Manager have made exhaustive or continuous on-Site inspections; or (3) that the Owner, Architect, or the Project Manager has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## **§ 12.2 Final Payment**

**§ 12.2.1** Neither Final Payment nor any remaining retained amount shall become due, and the Project shall not be deemed to have reached Final Completion, until all of the following have occurred:

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of the A201–2017 (as modified for this Project), and to satisfy other requirements, if any, that extend beyond Final Payment or which otherwise necessarily survive Final Payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment and the Owner's auditors have approved same for payment;
- .3 a final Certificate for Payment has been issued by the Project Manager after completion of the audit process set forth in Section 12.2.2 below;
- .4 Owner has received satisfactory Record Drawings from Architect reflecting the location of the Work on the Site in accordance with the Drawings and Specifications as modified through Change Orders;
- .5 Owner has received confirmation of approval of such completion by the Texas Department of Health and Human Services, if required, and any Authorities Having Jurisdiction, as evidenced by a certificate of occupancy or similar final inspection certificate; provided, however, that if the Contractor may only obtain a temporary certificate of occupancy due to (i) Owner's failure to complete Owner's obligations that are conditions precedent to obtaining a permanent certificate of occupancy and (ii) additional requirements made by Authorities Having Jurisdiction covering the items not in this Contract, then Final Payment shall be made on the basis of such temporary certificate of occupancy;
- .6 Owner has received from Contractor a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least **thirty (30)** Days' prior written notice has been given to the Owner;
- .7 Owner has received 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;
- .8 Owner has received consent of surety to Final Payment;
- .9 Project Manager has provided certification that all of the requirements for Substantial Completion under Section 9.8 of the A201-2017 have been met and all Work, including all Punchlist items, commissioning of equipment, and training of Owner's staff, has been fully and finally completed;
- .10 Contractor has provided a complete list of Subcontractors and principal material and equipment suppliers, including addresses, telephone numbers, and name of individuals to contact who are familiar with the Project (including the Contractor);
- .11 Contractor has provided one (1) digital copy and two (2) hardcopies of files of all maintenance and operating manuals;
- .12 Contractor has provided hardcopy and digital files of all written guarantees and warranties in the form prescribed by the Contract Documents;
- .13 Contractor has provided one (1) copy of a quantity survey which breaks down the final Cost of the Work by square foot, by discipline or trade, by department (as defined by Owner), and by any other criteria required by the Owner at the time of Final Completion;
- .14 Owner has received a duly executed Unconditional Waiver and Release on Progress Payment from the Contractor on the Texas statutory form that waives all liens or claims for payment for the Work covered by all previous Applications for Payment paid by Owner and a Conditional Waiver and Release of Lien on Final Payment waiving the Contractor's constitutional and statutory mechanic's lien or any other claim for payment, conditioned upon receipt of payment and a bills paid affidavit which conforms to the provisions of *Tex. Prop. Code § 53.085*;

- .15 Owner has received duly executed Unconditional Waiver and Release on Progress Payment documents from all Subcontractors on the Texas statutory form that waives all liens or claims for payment for the Work covered by all previous Applications for Payment paid by Owner and Conditional Waiver and Release on Final Payment documents from each Subcontractor, waiving, upon receipt of Final Payment, any and all mechanic's liens or any other claim for payment; and
- .16 Contractor has satisfied the remaining close-out procedures and provided Owner all documentation requested by Owner and all other conditions precedent to Final Payment described in the Contract Documents have been satisfied.

All documents including scanned copies of required signed originals shall be acceptable in digital format. Payments which may otherwise become due to the Contractor at or following the point of Substantial Completion shall be withheld contingent upon receipt of the above and all other requirements for Final Payment. Owner's acceptance of these items is required for Final Payment.

**§ 12.2.2** The Owner's auditors will review and report in writing on the Contractor's final accounting within a commercially reasonable period of time after delivery of the final accounting to the Owner. Based upon such Cost of the Work as the Owner's auditor's report determines to be substantiated by the Contractor's final accounting, provided the other conditions of Section 12.2.1 have been met, the Project Manager will, within **ten (10)** Days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Project Manager's reasons for withholding a certificate as provided in Section 9.5.1 of the A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the A201–2017 (as modified for this Project).

**§ 12.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to initiate final resolution of the dispute pursuant to Article 15 of the A201-2017. Pending a final resolution of the disputed amount, the Owner may pay the Contractor the amount determined by the Owner's accountant to be due the Contractor.

**§ 12.2.4** The Owner's Final Payment to the Contractor shall be made no later than **thirty (30)** Days after satisfaction of all of the conditions set forth in Section 12.2.1 above and the issuance of the final accounting set forth in Section 12.2.2.

**§ 12.2.5** Contractor will provide Unconditional Waiver and Release on Final Payment documents, executed by Contractor and all Subcontractors within **ten (10)** Days of receipt of Final Payment from Owner or in the case of Subcontractors, from Contractor.

**§ 12.2.6** If, subsequent to Final Payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs together with the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to Final Payment, but not in excess of the Guaranteed Maximum Price.

### **§ 12.3 Interest**

Payments due and unpaid under this Agreement shall bear interest from the date payment is due at the rate stated below

*(Insert rate of interest agreed upon, if any.)*

«only as allowed under *Tex. Gov't. Code § 2251.021 et seq.*»

## **ARTICLE 13 DISPUTE RESOLUTION**

### **§ 13.1 Initial Decision Maker**

*[Intentionally deleted].*

### **§ 13.2 Binding Dispute Resolution**

For any Claim, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[  ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[  ] Litigation in a court of competent jurisdiction.

[  ] Other (*Specify*)

**§ 13.2.1 Limitation on Damages.** Notwithstanding anything contained herein or elsewhere in the Contract Documents to the contrary, the total amount of money recoverable from Owner (as a hospital district) on a claim for breach of contract is limited as set forth under Texas law. An award of damages may not include consequential damages (except as allowed pursuant to *Tex. Local Gov't Code § 271.153(b)(1)*), exemplary damages, or damages for unabsorbed home office overhead. Nothing in this Agreement shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Owner. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the under this Agreement or under Applicable Law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

## ARTICLE 14 TERMINATION OR SUSPENSION

### § 14.1 Termination

**§ 14.1.1** The parties' rights to terminate or suspend this Agreement are set forth in Article 14 of AIA Document A201–2017 (as modified for this Project).

**§ 14.1.2 Termination by the Owner for Cause** [*Intentionally deleted; See Article 14 of AIA Document A201–2017(as modified for this Project)*].

**§ 14.1.3 Termination by the Owner for Convenience** [*Intentionally deleted; See Article 14 of AIA Document A201–2017 (as modified for this Project)*].

**§ 14.2 Suspension** [*Intentionally deleted; See Article 14 of AIA Document A201–2017 (as modified for this Project)*].

## ARTICLE 15 MISCELLANEOUS PROVISIONS

**§ 15.1** Terms in this Agreement shall have the same meaning as those in the A201—2017, as modified for this Project. Where reference is made in this Agreement to a provision of the A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 15.2** The Owner's representative:  
(*Name, address, email address and other information*)

Susan O'Donnell  
**JPS Health Network**  
1500 South Main Street  
Fort Worth, Texas 76104  
Telephone: 817-702-4942  
Email: [sodonnell@jpshealth.org](mailto:sodonnell@jpshealth.org)

with a copy to:

**Daphne Walker**  
**Sr. Vice President, Chief Legal Counsel**  
1500 South Main Street  
Fort Worth, Texas 76104  
Telephone: 817-702-9988  
Email: [DWalker10@jpshealth.org](mailto:DWalker10@jpshealth.org)

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

«Morales Construction Services, Inc. »  
«990 N. Walnut Creek Drive »  
«Suite 2018 990 N. Walnut Creek Drive»  
«Mansfield, TX 76063 »  
«Rey Morales, President »  
«rey@morales-cs.com»  
«817-372-5590 »

§ 15.4 Neither the Owner's nor the Contractor's representative shall be changed without **ten (10) Days'** prior written notice to the other party.

§ 15.4.1 The Owner's representative(s) identified in Section 15.2 above shall have authority to bind the Owner with respect to certain Project matters requiring the Owner's approval or authorization, however, only to the extent previously delegated in writing by Owner. Except as otherwise provided in Section 4.2.1 of the A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative(s).

### § 15.5 Insurance and Bonds

*[AIA original language intentionally deleted. See Exhibit H for Insurance Requirements and Article 11 of the A201-2017.]*

§ 15.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017 (as modified for this Project), may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

« N/A »

### § 15.7 Other Provisions:

§ 15.7.1 **Owner's Special Terms, Conditions, and Protocols.** Owner hereby incorporates **Exhibit K – Owner's Special Conditions** and **Exhibit J– Owner-Provided Information** into this Agreement, together with all other Exhibits.

§ 15.7.2 **Independent Contractor.** In performing its obligations hereunder, Contractor shall be deemed an independent contractor and not an agent or employee of Owner.

§ 15.7.3 **Written Notices.** Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if made in writing and delivered by hand delivery, or certified mail, return receipt requested, and confirmed by first class mail, postage prepaid, or deposited in the United States Mail, postage prepaid, addressed to the respective representative and to the respective addresses set forth below:

#### **IF TO THE OWNER:**

Susan O'Donnell  
**JPS Health Network**  
1500 South Main Street  
Fort Worth, Texas 76104  
Telephone: 817-702-4942  
Email: [sodonnell@jpshealth.org](mailto:sodonnell@jpshealth.org)

with a copy to:

**Daphne Walker**  
**Sr. Vice President, Chief Legal Counsel**  
1500 South Main Street

Fort Worth, Texas 76104  
Telephone: 817.702.9988  
Email: dwalker10@jpshealth.org

**IF TO THE CONTRACTOR:**

« «Morales Construction Services, Inc. »  
«990 N. Walnut Creek Drive »  
«Suite 2018 990 N. Walnut Creek Drive»  
«Mansfield, TX 76063 »  
«817-225-6807 »  
Telephone: «817-372-5590 »  
Email: «rey@morales-cs.com »

with a copy to:

« »  
« »  
« »  
« »

The parties may change the address where or the individual to whom notice is to be given by providing notice of such change pursuant to this Section 15.7.3. Nothing contained in this Section 15.7.3 shall be construed to restrict the transmission of routine communications between representatives of the Owner and the Contractor via electronic mail so long as verification of receipt can be obtained.

**§ 15.7.4 Multiple Counterparts.** This Contract may be executed in multiple original counterparts, each of which shall be of equal dignity. Faxed or electronically scanned signatures shall be sufficient for the execution and delivery of this Contract.

**§ 15.7.5 Partial Invalidity.** The invalidity of any part or portion of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents. To the extent any provision or portion thereof in this Agreement or the Contract Documents is held to be void, voidable, invalid, or unenforceable, then the remainder of this Agreement will not be affected thereby and will remain valid and fully enforceable and the parties agree that to the extent possible, any provision that is determined void, voidable, invalid or unenforceable will be reformed to the minimum extent necessary to make it valid and enforceable and will be enforced and enforceable as reformed.

**§ 15.7.6 Survival.** All provisions of the Contract that by their nature survive termination of this Contract or Final Completion of the Work, including, without limitation, all warranties, indemnities, indemnity obligations, confidentiality obligations, and obligations to arbitrate or litigate disputes, shall remain in force and effect after Final Completion or any termination of the Contract.

**§ 15.7.7 No Waiver.** No consent or waiver, express or implied, by either party to the Agreement, or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

**§ 15.7.8 Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, the Court shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in such proceeding, but only insofar as allowed under Applicable Law.

**ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 16.1** The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2017, Standard Form of Agreement Between Owner and Contractor, as modified for this Project.

§ 16.1.2 The General Conditions are AIA Document A201–2017, General Conditions of the Contract for Construction, (as modified for this Project), attached as **Exhibit I**

§ 16.1.3 *[Intentionally deleted]*.

§ 16.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.) See List of Project Drawings and Specifications, **Exhibit E**.

§ 16.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.) See List of Project Drawings and Specifications, **Exhibit E**.

§ 16.1.6 The Addenda, if any:

§ 16.1.7 Additional documents forming part of the Contract Documents. Contractor will fully comply with the Exhibits set forth below as if copied verbatim herein:

- Exhibit A: Schedule of Values
- ~~Exhibit B: Contractor's General Conditions Costs~~
- ~~Attachment B-1: Contractor's Labor Burden~~
- ~~Attachment B-2: General Conditions Cost Template~~
- Exhibit C: Project Schedule
- Exhibit D: Contractor's Listing of Key Personnel
- Exhibit E: List of Drawings and Specifications
- ~~Exhibit F: Contractor's Assumptions and Clarifications~~
- ~~Exhibit G: Contractor's Equipment Rental Rates~~
- Exhibit H: Contractor's Insurance and Bonding Requirements
  - Attachment H-1: Form of Performance Bond
  - Attachment H-2: Form of Payment Bond
  - Attachment H-3: Form of Bid Bond
- Exhibit I: The General Conditions of the Contract AIA Document A201–2017, as modified for this Project.
- Exhibit J: Owner Provided Information
- Exhibit K: Owner's Special Conditions
- Exhibit L: Contractor's Quality Control Plan

## ARTICLE 17 INSURANCE AND BONDS

§ 17.1 As part of the Contractor's obligations and responsibilities under Article 11 of the AIA Document A201-2017 (as modified for this Project), the Contractor, for the protection and benefit of the Owner and such other persons identified as the "Indemnitees" in Section 3.18.1 of the AIA Document A201-2017 (as modified for this Project), and in satisfaction of the Contractor's obligations under Article 11 therein, shall specifically procure, pay for and maintain, in full force and effect, the policies of insurance and the bonds described in the "Contractor's Insurance and Bonding Requirements" attached hereto as **Exhibit H** and made a part hereof. To the extent the insurance or bonding requirements set forth in **Exhibit H** differ from those requirements or provisions in this Agreement or Article 11 of the AIA Document A201-2017 (as modified for this Project), the requirements in **Exhibit H** shall control.

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

**OWNER:**

**CONTRACTOR:**

TARRANT COUNTY HOSPITAL DISTRICT D/B/A  
JPS HEALTH NETWORK

[MORALES CONSTRUCTION SERVICES, INC.]

---

*(Signature)*

«Jill Farrell » «Sr EVP Chief Operations Officer »

*(Printed name and title)*

---

*(Signature)*

«Rey Morales» «President »

*(Printed name and title)*