



COMMISSIONERS COURT COMMUNICATION

COURT ORDER NUMBER _____
PAGE 1 OF 208
DATE: 1/14/2025

**SUBJECT: CONSIDERATION OF A CONSTRUCTION MANAGER AT RISK
AGREEMENT BETWEEN TARRANT COUNTY HOSPITAL DISTRICT
AND BATSON-COOK COMPANY FOR THE REPLACEMENT OF FIVE
AIR HANDLING UNITS**

COMMISSIONERS COURT ACTION REQUESTED

It is requested that the Commissioners Court consider a Construction Manager at Risk (CMAR) Agreement between Tarrant County Hospital District (TCHD) and Batson-Cook Company for the replacement of five (5) air handling units.

BACKGROUND

The JPS Patient Care Pavilion, located at 1575 S. Main Street, Fort Worth, Texas 76104, requires the replacement of five (5) air handling units currently serving the operating rooms. The current air handling units have been in operation for nineteen (19) years and have exceeded their projected life expectancy. These air handling units regulate the heating, cooling and air purification of the operating rooms but no longer function efficiently enough to meet the humidity standards required by code, without manual manipulation.

This CMAR Agreement provides the labor, material, supervision and planning necessary for the Operating Room Air Handling Unit Replacement project at the Patient Care Pavilion. This project is essential to ensure JPS can continue to deliver effective care in its OR. This Agreement involves construction in an amount exceeding \$500,000.00, which requires Commissioners Court approval.

The TCHD Board of Managers approved the attached CMAR Agreement at its December 12, 2024, 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 \$13,086,376.00 is available in TCHD's approved Capital budget.

SUBMITTED BY	Administrator	PREPARED BY:	Miriam Garza
		APPROVED BY:	Chandler Merritt



AIA® Document A133® – 2019

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

AGREEMENT made as of the _____ day of _____ in the year 2024
(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 Construction Manager:
(Name, legal status, address, and other information)

BATSON COOK COMPANY
1431 Greenway Drive, Suite 740
Irving, TX – 75038

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

PS PAVILION OR AHU REPLACEMENT
1575 S. Main Street
Fort Worth, Texas 76104

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

HOEFER WELKER

THE PROJECT MANAGER:
(Name, legal status, address and other information)
Broaddus-LeVis
916 Bryan Avenue
Fort Worth, Texas 761046

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

TABLE OF ARTICLES

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

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

(Paragraphs deleted)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The program includes work scope of replacement of current AHUs serving 13 ORs with chilled water cooling, glycol sub-cooling, and hot water heating. New ductwork will be provided within a proposed penthouse to connect new AHUs to existing duct-roof penetrations. Modification of ductwork within the second-floor ceiling. Replacement of existing air-cooled glycol chiller on ro13 of with (2) new 190 TON air cooled glycol chillers running in an N+1 configuration.

§ 1.1.2 The Project's physical characteristics:

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

The project site is on the roof and above ceiling space but not limited to other areas in order to achieve a properly functioning system.

§ 1.1.3 The Owner's Estimated Construction Cost upon which the Initial Guaranteed Maximum Price is based: \$13 million, estimated

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

.1 Design phase milestone dates, if any:

Not Applicable

.2 Construction commencement date:

January 2025

.3 Substantial Completion date or dates:

July 2026

.4 Other milestone dates:

Not Applicable

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

Not Applicable

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

Not Applicable

§ 1.1.6.1 [Intentionally Deleted].

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

Note

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

Adam Lane
Vice President, Chief Facilities Management Officer
1500 South Main Street
Fort Worth, Texas 76104
Telephone: 817-702-9998
Email: ALane02@jpshealth.org

Darrick Walls
JPS Health Network
1500 South Main Street
Fort Worth, Texas 76104
Telephone: 817-691-2062
Email: dwalls@broadususa.com

with a copy to:

Init.

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

(Paragraphs deleted)

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

(List name, address and other contact information.)

The Project Manager, who is identified on page one of this Agreement. The Project Manager shall be copied on all communications from the Construction Manager to the Owner.

(Table deleted)

(Paragraphs deleted)

§ 1.1.10 In addition to the Architect identified on the first page of this Agreement, the Owner shall retain the following consultants and contractors:

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

.1 Geotechnical Engineer:

N.A.

.2 Civil Engineer:

N.A.

.3 Other, if any:

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

N.A.

§ 1.1.11 The Architect's representative:

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

Jaron Ricketts

Hoefer Welker

500 North Akard Street, Suite 2450

Dallas, Texas 75201

Telephone: 214.445.4400

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

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

Construction Manager's representative shall be the primary point of contact during all phases of the Work of the Project. Construction Manager shall not furnish a representative over whom Owner has made reasonable and timely objection. Within **five (5)** Days of Owner's reasonable written request, Construction Manager shall replace any representative over whom Owner has made a reasonable objection.

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.4:

None.

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

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

In addition to other requirements set forth herein, Construction Manager shall comply with the requirements of *Tex. Govt. Code § 2269.255 - § 2269.257* when procuring Subcontractors for performance of the Work.

§ 1.1.15 Other Initial Information on which this Agreement is based:
None.

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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 "**A2012017**"), Supplementary and other Conditions, Owner-Provided Information and documents described in **Exhibit D** 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. Upon the Owner's acceptance of the Construction Manager's Final Guaranteed Maximum Price Proposal, the Contract Documents will also include the documents described in Section 3.2.2 and identified in the Final Guaranteed Maximum Price Amendment (**Exhibit A**). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 2.1.1 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) the Final Guaranteed Maximum Price Amendment and its Exhibits, except that any Construction Manager's Clarifications and Assumptions exhibit contained in the Final Guaranteed Maximum Price Amendment shall be given the priority reflected herein; (3) this Agreement; (4) the A201- 2017; (5) Construction Manager's Clarifications and Assumptions, if any, attached to the Final Guaranteed Maximum Price Amendment; and (6) 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 shall clearly and precisely describe the specification provision, if any, the qualification or clarification seeks to qualify or clarify.

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

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and other members of the Project Team. Construction Manager shall exercise its skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision. Construction Manager shall at all times furnish an adequate supply of workers and materials during both the Preconstruction and Construction Phases of the Work. Construction Manager shall perform the Work, including all Preconstruction and Construction Services, 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 Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. Construction Manager 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 2.2 shall be interpreted as creating a fiduciary duty between the parties.

§ 2.2.1 Construction Manager shall provide all services to the Project in a coordinated, careful and harmonious fashion. Construction Manager shall communicate promptly to Owner any and all concerns that Construction Manager 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 Construction Manager discovers a defect, inaccuracy, inadequacy or insufficiency in said documents, the Construction Manager shall promptly report to the Owner, in writing, the existence of any defect discovered, or that reasonably should have been discovered, by the Construction Manager using ordinary diligence, before, during, and after construction and in conformance with Texas law.

§ 2.3. General Conditions.

§ 2.3.1 For both the Preconstruction and Construction Phases, the General Conditions of the Contract are set forth in the A201–2017, as modified for this Project, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 [Intentionally Deleted].

§ 2.4 Construction Manager's Insurance and Bonds. The Construction Manager shall comply with and shall purchase and maintain insurance coverages and provide bonds as set forth in **Exhibit B**. To the fullest extent permitted by law, the Construction Manager shall cause Owner and Indemnitees (as provided in Section 3.18 of the A201-2017) be listed as Additional Insureds on all policies as required in **Exhibit B**. In the event of any failure by Construction Manager to comply with the provisions of **Exhibit B**, Owner may, at its option, with notice to Construction Manager, suspend or terminate this Agreement for cause. Alternatively, Owner may purchase such insurance at Construction Manager's expense.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's responsibilities are described throughout the Contract Documents. Preconstruction Phase responsibilities are further detailed in Sections 3.1 and 3.2 and in the A201-2017. The Construction Manager's Construction Phase responsibilities are further detailed in Section 3.4, in the Final Guaranteed Maximum Price Amendment, and in the A201-2017. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Services

§ 3.1.1 Notice to Proceed. The Preconstruction Services Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Preconstruction Services and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager is not entitled to reimbursement for any costs incurred for Preconstruction Services performed before issuance of the Notice to Proceed by Owner. The listing of Preconstruction Services below should not be construed as a limitation on such services should Construction Manager determine additional services are necessary to fully plan, implement, and timely complete the Work within the Contract Time and Contract Sum. Any such services must be approved by Owner in writing prior to the Services being provided. Preconstruction Services include, but are not limited to, the following:

§ 3.1.2 General. Construction Manager shall visit the proposed Site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions as required. The Construction Manager shall participate in Project Team meetings at scheduled intervals during the Preconstruction Phase and shall advise the Owner on proposed Site use and improvements, selection and availability of labor, materials, building systems and equipment. The Construction Manager shall also provide the Owner with recommendations (consistent with the Owner's Budget and Program) on constructability, availability of materials and labor, time requirements for procurement, installation and construction, use of temporary facilities, and factors related to Cost of the Work, including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions; identification and resolution of conflicts in the proposed Drawings and Specifications as they evolve; methods of delivery and handling of materials, systems, and equipment; traffic, parking and materials and equipment storage in and around the Site; safety issues and available precautions related to the Work; scheduling issues including phased construction and potential fast track scheduling; and any other matters necessary to accomplish the Project in accordance with the Project Schedule. At the Owner's request, the Construction Manager shall attend public meetings concerning the development, design, scheduling, and Work of the Project.

§ 3.1.3 Communication and Reporting. Construction Manager will establish procedures for effective communication and coordination among the Project Team throughout the Preconstruction phase of the Project and shall implement and continuously modify such procedures as necessary. To the extent of an apparent conflict in the sequencing of the Work or services with another service provider, Construction Manager shall report the concern to the Project Manager.

§ 3.1.3.1 Meetings. Construction Manager shall actively participate in all meetings and/or teleconferences to bring the full measure of Construction Manager's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline including, but not limited to, all explanatory presentations with other Project Team members as may be requested by Owner, and matters concerning the proposed Site use and improvements, selection of materials, and building systems and equipment. Construction Manager shall be responsible for preparing and distributing (on the business day preceding the meeting) to Owner and Project Manager, a written agenda for all meetings, in a form and with such content as reasonably required by Owner. Construction Manager shall attend regularly scheduled and any interim Project progress meetings and fully advise the Owner and Project Team of the Project status including progress, schedule, costs, quality, and proposed changes. Construction Manager shall be responsible for preparing and distributing (on the business day following the meeting) to Owner, Project Manager, and Architect meeting minutes for the meeting, in a form and with such content as reasonably required by Owner, which includes a status report of all pending action items during the performance of the Preconstruction Services.

§ 3.1.4 Staffing and Personnel. Within **ten (10)** Days of execution of this Agreement, Construction Manager shall provide to Owner a list of necessary personnel to assist in performing Preconstruction Services on the Project. Personnel to be utilized during the Construction Phase shall be included in **Attachment 8** to the Final Guaranteed Maximum Price Amendment. Construction Manager represents and warrants to Owner that it and its employees, and its Subcontractors are experienced in providing the Preconstruction Services required under this Agreement. Construction Manager understands the complexity involved in this type Project and the necessity of coordinating its services and its Work with the Owner, Architect, Project Manager, and Authorities Having Jurisdiction.

§ 3.1.5 BIM. The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project and shall assist the Project Team to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.6 Coordination of Design and Construction Documents. Construction Manager shall review all Drawings, Specifications, and other Construction Documents as they are developed by the Architect. Construction Manager shall consult with Owner, Architect, and Project Manager on the selection of materials, equipment, component systems, and types of construction used on the Project. Construction Manager will advise Owner on Site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination. Construction Manager shall advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents. Construction Manager shall advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the Owner's budget.

§ 3.1.7 Budget and Cost Consultation. Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect, Construction Manager, or Project Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. The Construction Manager shall provide estimates of construction costs to Owner in cost reports within **ten (10)** Days of receipt of the updated information. The cost reports shall be detailed estimates derived from cost quantity surveys and based on prices for labor, materials, equipment, supplies, overhead and profit and organized as required by Owner. The Construction Manager shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Construction Manager shall promptly identify all variances between estimated costs and actual costs during the Construction Phase, and shall promptly report such variances to the Project Team along with recommendations for action, but in any event no more than **three (3) business** days after acquiring such information.

§ 3.1.8 Constructability. Construction Manager shall implement and conduct a constructability program to identify and document Project costs and schedule savings opportunities. The Construction Manager shall prepare a "Constructability Report" that identifies items that, in the Construction Manager's opinion, may negatively impact construction of the

Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies that may generate Change Orders or Claims once Project construction commences. The Constructability Report shall be updated at least monthly during the Preconstruction Services Phase.

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

§ 3.1.10 Construction Planning/Procurement Schedule. Construction Manager shall identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items and will advise the Owner on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. Construction Manager shall make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction contracts in a manner that promotes the interests of the Project and the Owner. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-Site production costs, shipping costs, code restrictions, the Owner's goals for S/W/MBE/HUB Subcontractor participation, and other related matters. Construction Manager shall advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants (if applicable).

§ 3.1.10.1 Construction Manager shall review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the Work to be performed by the various Subcontractors or Owner's Separate Contractors. Construction Manager shall develop bidder's interest in the Project and will develop and refine a bid/proposal strategy that addresses the entire scope of the Work for each phase and stage of the Project for approval by Owner and Project Manager. Construction Manager shall provide an analysis of the types and quantities of labor required for the Project, review the appropriate categories of labor required for critical phases or stages, and make recommendations that minimize adverse effects of labor shortages. Construction Manager shall refine, implement and monitor required S/W/MBE/HUB contracting plans to promote equal employment opportunity in the provision of goods and services to the Project. Construction Manager shall provide an analysis of the types and quantities of materials required for the Project, review and monitor the cost of such materials on an on-going basis, and make recommendations to minimize the adverse effects of material shortages and price volatility of materials. Construction Manager shall consult with and make recommendations to Owner with respect to the acquisition and delivery schedules for fixtures and equipment and include such activities on the Project Schedule.

§ 3.1.10.2 Construction Manager will provide on-going value analysis studies on construction systems and major construction components, including but not limited to the mechanical systems, exterior envelope, structural systems, roofing systems, lighting and power service. The value analysis will be summarized in report format and distributed to the Owner and Project Manager.

§ 3.1.10.3 Construction Manager, with the assistance of the Owner, shall prepare and file all documents required to secure approval and receive permits of all Authorities Having Jurisdiction in a manner so as not to delay the Project Schedule. All requests for reimbursement for any direct costs associated with submitting documents to such Authorities Having Jurisdiction and for permit fees shall be included as Reimbursable Expenses and paid pursuant to Section 5.1.4 of this Agreement.

§ 3.1.11 Safety. Construction Manager shall plan, initiate, maintain, and supervise all safety precautions and programs in connection with the Work of the Project including during Preconstruction Services. Construction Manager shall develop a safety program for the performance of Work during the construction stage which shall be provided to Owner and Project Manager for approval. Construction Manager's safety program shall address activities of all Contractors and Consultants, shall consider any Applicable Laws and Owner Requirements set forth in **Exhibit C**.

§ 3.1.12 Quality Control/Quality Assurance. Construction Manager shall develop and implement a Quality Control Plan to govern all testing, inspection, and review of its Work and the Work of its Subcontractors during the Construction Phase to

ensure it complies with Applicable Laws, standards and requirements of Owner and Project Manager, and any insurance requirements. The Construction Manager's Quality Control Plan shall be attached to Final Guaranteed Maximum Price Amendment as **Attachment 12**. At a minimum, Construction Manager's Quality Control Plan shall include identification of the Quality Control supervisor, the details of the proposed Quality Control Plan and implementation of same; production and implementation of Quality Control reports; confirmation that any Quality Control Plan complies with Applicable Law and requirements set forth in any insurance requirements. Construction Manager's Quality Control Plan shall contain a methodology for incorporation of the Quality Control Plan into all subcontracts and appropriate oversight to deliver the Project such that it complies with the Contract Documents in all respects. Construction Manager shall provide Owner and Project Manager Quality Control reports for their review and approval. During the Construction Phase, Owner shall perform Quality Assurance testing.

§ 3.1.13 Scheduling.

§ 3.1.13.1 Within **ten (10)** Days of execution of this Agreement, Construction Manager shall prepare and submit for Owner's information a Preliminary Project Schedule for the Work. Similarly, for each Work Package Authorization issued, a preliminary schedule for the Work to be accomplished under that Work Package Authorization shall be prepared and submitted to the Owner with the proposal for the Work Package Authorization. The Preliminary Project Schedule will include various dates critical to the progress of the Project, including design milestones applicable to the performance of Preconstruction Services set forth in this Section 3.1, deliverables to the Owner, submission of the Final Guaranteed Maximum Price Proposal, mobilization, procurement, installation, testing, commissioning, inspection, the Required Date of Substantial Completion, the Final Completion date, any interim milestone dates, delivery of Close-out Documents, acceptance of all Work required under this Agreement, and any other details required for tracking the progress of the Work. The Preliminary Project Schedule shall be computerized Critical Path Method (CPM) with fully editable logic with adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. The Preliminary Project Schedule should address the procurement of long-lead items, Submittal activities, as well as Preconstruction Services milestones and proposed field construction activities anticipated during the Construction Phase. The Preliminary Project Schedule shall not exceed time limits current under the Contract Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by Authorities Having Jurisdiction.

§ 3.1.13.2 Construction Manager shall update the Preliminary Project Schedule monthly, or otherwise as required, during the Preconstruction Services Phase to maintain the Project Schedule. Construction Manager shall utilize the Preliminary Project Schedule to prepare the Project Schedule and Submittal Schedule required for the Construction Phase in compliance with Section 3.10 of the A201-2017 and which shall be **Attachment 7** to the Final Guaranteed Maximum Price Proposal and which shall, upon approval by Owner, become part of the Final Guaranteed Maximum Price Amendment.

§ 3.2 Initial Guaranteed Maximum Price and Development of Final Guaranteed Maximum Price Proposal

§ 3.2.1 Initial Guaranteed Maximum Price. Based on the Initial Information provided within Article 1, **50% Design Documents** and **Owner's Estimated Construction Cost**, an Initial Guaranteed Maximum Price Proposal will be provided by Construction Manager **within 30 days of issuance of the 50% Design Documents**. Through the performance of Preconstruction Services, Construction Manager will work with Owner, Architect, and other members of the Project Team to fully develop the Drawings and Specifications to enable the Construction Manager to prepare and submit to the Owner a Final Guaranteed Maximum Price Proposal with all information required in Section 3.2.2 below. Construction Manager acknowledges and understands that, other than through an Owner-approved Change Order, **the amount of the Final Guaranteed Maximum Price in the Final Guaranteed Maximum Price Amendment shall not exceed the Initial Guaranteed Maximum Price set forth in this Section 3.2.1.**

§ 3.2.2 Final Guaranteed Maximum Price Proposal. Not later than forty-five (45) Days from the Owner's written notice to proceed with the Final Guaranteed Maximum Price Proposal, the Construction Manager shall prepare and submit the Final Guaranteed Maximum Price Proposal to the Owner. The Final Guaranteed Maximum Price Proposal shall include the following documentation, with sufficient background information to establish and support each portion of the Proposal:

- .1 A list of the Construction Documents, including Drawings, Specifications, and other information, including any deviations, upon which the Final Guaranteed Maximum Price Proposal is based;
- .2 The proposed Schedule of Values/Final Guaranteed Maximum Price Breakdown that includes a written statement of estimated cost organized by trade categories, allowances, Contingency, the Construction Manager's Fee, General Conditions Costs, costs for insurance, and other items that comprise the Final

- Guaranteed Maximum Price. Any proposed allowances, Contingency and all other costs shall be accompanied with a detailed description and justification of such allowance/Contingency and/or cost amount;
- .3 A schedule of the Work consistent with the Owner's requirements based on the Preliminary Project Schedule provided pursuant to Section 3.1.13 above, and including anticipated dates of ordering and delivery of long-lead items, the proposed date the Construction Manager shall achieve the Required Date of Substantial Completion, along with any other critical Interim Milestone dates, and the date of Final Completion;
 - .4 An enumeration of any assumptions, clarifications, and qualifications if applicable;
 - .5 A list of allowances and a statement of their bases;
 - .6 A list of the Construction Manager's key personnel;
 - .7 A list of accepted alternates included in the Final Guaranteed Maximum Price;
 - .8 A list of unit prices included within the Final Guaranteed Maximum Price;
 - .9 A breakdown of Construction Manager's General Conditions Costs based on allowable General Conditions cost categories provided in **Exhibit H** including Construction Manager's labor burden schedule;
 - .10 An enumeration of Construction Manager-owned equipment rental rates;
 - .11 A list of all Work Package Authorizations included in the Final Guaranteed Maximum Price;
 - .12 Construction Manager's Final Quality Control Plan;
 - .13 The Construction Manager's Final Safety Plan;
 - .14 The proposed Final Guaranteed Maximum Amendment in draft form with all necessary information completed; and
 - .15 Any additional information requested by Owner to enable it to properly evaluate the Final Guaranteed Maximum Price Proposal.

§ 3.2.3 Contingency. In preparing the Construction Manager's Final Guaranteed Maximum Price Proposal, the Construction Manager shall include a contingency to cover those costs that are included in the Final 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 Construction Manager for unforeseen causes to which an allowance is not assigned; or (ii) items not capable of reasonable anticipation at the time the Final Guaranteed Maximum Price Amendment is executed that are not the basis for a Change Order, and then only as follows: (a) the Construction Manager 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 Construction Manager'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 Construction Manager must be approved by Owner in advance and in writing, such approval not to be unreasonably withheld. The Construction Manager 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.

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

§ 3.2.5 Acceptance of the Final Guaranteed Maximum Price Proposal. Owner shall have at least **ninety (90)** Days after receipt of the Final Guaranteed Maximum Price Proposal in which to accept or reject such proposal, unless extended by mutual agreement or in accordance with Section 3.2.6.2. Acceptance of the Final Guaranteed Maximum Price Proposal shall be by written amendment to this Agreement, duly executed by Owner and Construction Manager. The Final Guaranteed Maximum Price Amendment shall include Attachments 1-12 supporting the various items of the Final Guaranteed Maximum Price Proposal (as set forth in Section 3.2.2 above) plus any additional information reasonably required by Owner in support of the Final Guaranteed Maximum Price Amendment. Upon execution of the Final Guaranteed Maximum Price Amendment, the Amendment and its Attachments shall become part of the Contract Documents as **Exhibit A**.

§ 3.2.6 Rejection of the Final Guaranteed Maximum Price Proposal. If Owner, in its discretion, is unwilling or unable to approve the Final Guaranteed Maximum Price Proposal, Owner may, at its election, take one or more of the following actions:

- .1 terminate this Agreement by providing the Construction Manager with notice of termination in accordance with Section 13.1 below. Promptly after such termination, upon receipt of final conditional lien waivers documents from the Construction Manager, its Subcontractors and others performing Work, and the receipt of all documents reasonably requested by Owner, Owner shall pay Construction Manager for services performed and authorized in writing by Owner to the point of termination, as full payment for all Work and services performed by the Construction Manager, which shall be the exclusive and total amount due Construction Manager in connection with this Agreement and the termination thereof pursuant to this Section; or
- .2 direct the Construction Manager to continue to participate in value engineering exercises so that the Construction Manager can submit another Final Guaranteed Maximum Price Proposal at a reduced cost. Owner shall review the revised Final Guaranteed Maximum Price Proposal submitted and advise Construction Manager of the acceptance or rejection of the revised Final Guaranteed Maximum Price Proposal within **thirty (30)** Days of approval/rejection by the Owner's governing body. If approved, Owner will notify the Construction Manager. If rejected, Owner shall have the right to proceed or to terminate this Agreement as set forth herein. If Owner does not accept or reject the revised Final Guaranteed Maximum Price Proposal within the aforementioned period of time, Construction Manager may notify the Owner of its intention to terminate this Agreement, or, if the parties agree, may to continue value engineering efforts for that period of time agreed to establish another revised Final Guaranteed Maximum Price Proposal.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Final Guaranteed Maximum Price Amendment, except as the Owner may specifically authorize in an executed Work Package Authorization or the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Final Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Final Guaranteed Maximum Price Amendment and the revised Contract Documents. To the extent that the Contract Documents are anticipated to require further development, the Final Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.9 The Construction Manager shall include in the Final Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Final Guaranteed Maximum Price Amendment is executed, except those taxes from which the Project or the Owner is otherwise exempt.

§ 3.3 Work Package Authorizations. Owner may identify various portions of the Work that may be ready for construction before it is appropriate to arrive at a Final Guaranteed Maximum Price for the entire Project (a "Work Package"). If the Owner elects to proceed with any Work Packages before the parties arrive at a Final Guaranteed Maximum Price, the Construction Manager shall develop a proposal for "Work Package Authorization" for each Work Package identified by the Owner as follows: The Construction Manager shall prepare a proposal for any particular portion of the Work identified by the Owner as a candidate for a Work Package by preparing a proposed Work Package Authorization. Each proposed Work Package Authorization will include, for the particular Work Package or phase of Work, the information and supporting details set forth for the Construction Manager's Final Guaranteed Maximum Price Proposal in Section 3.2.2 above. Construction Manager will include a site-specific Safety Plan focused on the Work under the particular Work Package. When the proposal for any portion of the Work is agreed upon by the Owner and Construction Manager, the Owner and Construction Manager shall execute the Work Package Authorization that describes the specific scope of Work to be performed and details regarding that Work. Each approved Work Package Authorization will be identified in the Construction Manager's Final Guaranteed Maximum Price Proposal with an explanation of its completion status and the approved amount included within the Final Guaranteed Maximum Price and will be attached to **Exhibit A as Attachment 11**. The Work Package Authorization Template is attached as **Exhibit G**.

§ 3.4 Construction Phase

§ 3.4.1 General

§ 3.4.1.1 For purposes of the Construction Phase, the Construction Manager shall at all times comply with this Agreement, the requirements and obligations set forth in the Final Guarantee Maximum Price Amendment, and the requirements of the A201-2017, in addition to all Contract Documents.

§ 3.4.1.2 The Construction Phase shall commence upon the Owner's execution of the Final Guaranteed Maximum Price Amendment or, prior to acceptance of the Final Guaranteed Maximum Price Proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Final Guaranteed Maximum Price Amendment.

§ 3.4.2 **Contract Time, Date of Commencement, and Required Date of Substantial Completion.** The Date of Commencement, any Interim Milestone Dates, and the Required Date of Substantial Completion shall be set forth in the Final Guaranteed Maximum Price Amendment. The Contract Time shall be measured from the Date of Commencement. Construction Manager shall perform the Work in accordance with the Project Schedule and the dates of Substantial Completion and Final Completion and all Interim Milestone Dates contained in the Final Guaranteed Maximum Price Amendment.

§ 3.4.2.1 **Substantial Completion.** The Construction Manager shall proceed expeditiously with adequate forces and shall achieve Substantial Completion of the entire Work and any Interim Milestones within the Contract Time. If the Construction Manager fails to achieve Substantial Completion by the Required Date of Substantial Completion as provided in the Final Guaranteed Maximum Price Amendment, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 below. By executing the Final Guaranteed Maximum Price Amendment, the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

§ 3.4.2.2 The Construction Manager 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 B** to be furnished by the Construction Manager to the Owner. The Contract Time shall not be adjusted as a result of the Construction Manager's failure to obtain insurance required under this Contract.

§ 3.4.3 **Schedule.** The Construction Manager 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 Construction Manager, the Project Schedule shall be and remain consistent with the schedule attached to the Final Guaranteed Maximum Price Amendment as **Attachment 7**.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall, with reasonable promptness, provide Construction Manager with copies of, or reasonable access to, information and documentation regarding the Project and to the property on which the Project is located. Owner shall also provide information regarding Owner's program which shall set forth Owner's objectives, constraints, and Owner Criteria. Such information may include schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and Site requirements.

§ 4.1.2 Prior to the execution of the Final Guaranteed Maximum Price Amendment, and upon written request by the Construction Manager, the Owner shall provide to the Construction Manager reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract Documents including the information described in *Texas Business and Commerce Code §56.054(e)*.

§ 4.1.3 *[Intentionally deleted]*.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.4.1 The Owner shall provide as available, to the extent under the Owner's control and if not required by the Contract Documents to be provided by the Construction Manager, the results and reports of prior tests, inspections or investigations

conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; Hazardous Materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project Site. In addition, Owner shall provide or provide access to necessary soil reports, environmental reports, flood plain analyses, or traffic impact studies in the possession of Owner which may impact the design and/or construction of the Project.

§ 4.1.4.2 *[Intentionally Deleted]*.

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

§ 4.1.4.4 Additional Owner Provided Information and Special Conditions regarding the performance of the Work are set forth in **Exhibit C – Owner’s Special Conditions** and **Exhibit D – Owner-Provided Information**.

§ 4.1.5. During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

§ 4.1.6 *[Intentionally Deleted]*.

§ 4.2 Owner’s Designated Representative

The Owner has identified, in Section 1.1.8 above, its representative(s) authorized to act on behalf of the Owner with respect to the Project. The Owner’s representative(s) 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 A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner’s authorized representative(s).

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

§ 4.3 *[Intentionally Deleted]*.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager’s Preconstruction Phase Services described in Sections 3.1 and 3.2, the Owner shall pay the Construction Manager a Preconstruction Services Lump Sum Fee of [\$] (the "Preconstruction Services Fee"). The Preconstruction Services Fee is the total compensation payable to the Construction Manager for the performance of the Preconstruction Services set forth in this Agreement and shall include any reimbursable expenses.

§ 5.1.2 *[Intentionally deleted.]*

§ 5.1.2.1 *[Intentionally deleted]*.

§ 5.1.3 *[Intentionally deleted]*.

§ 5.2 Payments

§ 5.2.1 Payments are due and payable within **thirty (30) Days** after approval of the Construction Manager’s Preconstruction Invoice by the Owner and the Project Manager, in proportion to services performed. Invoices shall be in such form set forth in **Exhibit E** and shall categorize services provided with such level of detail as prescribed by Owner.

§ 5.2.2 *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.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager’s Fee:
(Percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

The Construction Manager’s Fee is a lump sum amount of Three Hundred Fifty-Four Thousand One Hundred and No/100 Dollars (\$354,100.00).

§ 6.1.3 The method of adjustment of the Construction Manager’s Fee for changes in the Work:
The Construction Manager’s Fee for changes in the Work shall be 2.76% whether the change results in a net increase or decrease. Such fee is agreed by Construction Manager to be reasonable reimbursement for, and in satisfaction of, any increase in indirect overhead or profit on said change. Construction Manager will not charge insurance or bond costs as a percentage increase in any Change Order unless previously approved by Owner and then only based on demonstrated increases in actual cost to Construction Manager. When both additions and deletions covering related Work or substitutions are included in any one change, the increase or decrease in the Construction Manager’s Fee shall be calculated on the basis of the net increase or decrease, if any, with respect to the change.

§ 6.1.4 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:
Any 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 the Construction Manager’s Fee set forth in Section 6.1.2 above.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed **seventy percent (70 %)** of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages.

§ 6.1.6.1 All time limits stated in the Contract Documents are of the essence. Construction Manager acknowledges and agrees that its failure to meet the deadlines set forth in this Agreement and in the Final Guaranteed Maximum Price Amendment shall be a material breach of the Agreement and that Owner will incur substantial damages due to any failure by the Construction Manager to achieve Substantial Completion on or before the Required Date of Substantial Completion and any Interim Milestone Dates. If the Construction Manager 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 Construction Manager shall pay Owner liquidated damages, **\$3,000** per Day until Substantial Completion of the Work is achieved. If the Construction Manager fails to achieve Substantial Completion of certain Interim Milestones(s) by the date(s) set forth in the Final Guaranteed Maximum Price Amendment as may bemodified in accordance with the terms of this Agreement, the Construction Manager shall pay Owner liquidated damages, and not as a penalty or forfeiture, the following:

Milestone	Amount per day
None	None

until Substantial Completion of such Milestone is achieved.

§ 6.1.6.2 Owner may deduct any liquidated damages from any amounts due the Construction Manager, and/or Owner may require the Construction Manager 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 Construction Manager. 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 Construction Manager'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 Construction Manager may be responsible pursuant to the terms of this Agreement or Applicable Law.

§ 6.1.6.3 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 Construction Manager acknowledges and agrees that as of the date this Agreement is executed (i) the amount of damages Owner will incur due to the Construction Manager'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.

§ 6.1.6.4 This Section 6.1.6 shall survive the termination of this Agreement. In the event this liquidated damage provision is held to be unenforceable or void due to a challenge to the language contained in Section 6.1.6 or to the enforceability of Section 6.1.6 by Construction Manager Owner shall be allowed to recover actual damages (both direct and consequential damages) caused by the Construction Manager's failure to achieve the applicable Contract Time requirements to the fullest extent allowed by Applicable Law. For clarity, a challenge by Construction Manager to the number of days Owner is charging to Contractor as liquidated damages shall not alone be sufficient to invalidate the liquidated damages provision so as to allow Owner to recover its actual damages as described in the preceding sentence.

§ 6.1.7 Other:

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

§ 6.2 Final Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work as provided in the A201-2017.

§ 6.3.1.1 *[Intentionally deleted].*

§ 6.3.2 Adjustments to the Final Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Final Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of the A201-2017.

§ 6.3.3 *[Intentionally deleted].*

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

§ 7.1.1.1 Cost, as defined herein, shall be actual costs paid or incurred by the Construction Manager, less all discounts, rebates and salvages that are obtained by the Construction Manager, 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 Final Guaranteed Maximum Price specified in Section 6.2 above.

Notwithstanding the breakdown or categorization of any costs to be reimbursed in Sections 7.1 – 7.7 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 Construction Manager shall obtain such approval in writing prior to incurring the cost.

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

§ 7.1.4 **Construction Manager's General Conditions Costs.** Owner and Construction Manager agree that those certain administrative and supervisory personnel costs, direct overhead, and other on-Site costs and expenses incurred by Construction Manager in the performance of its administrative, supervisory, and management responsibilities under the Contract described or itemized in Construction Manager's General Conditions Costs Schedule attached to the Final Guaranteed Maximum Price Amendment as **Attachment 5** shall, notwithstanding the other terms of this Article 7, be reimbursable to the Construction Manager subject to the limitations and restrictions expressly set forth in such Schedule and in **Attachment 5** to the Final Guaranteed Maximum Price Amendment. **Attachment 5.1** to the Final Guaranteed Maximum Price Amendment provides wage/salary, benefits, and labor burden information for the specific personnel included in the administrative, supervisory and management roles in **Attachment 5** to the Final Guaranteed Maximum Price Amendment. Notwithstanding anything to the contrary in the Contract Documents, (a) the Construction Manager 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 Construction Manager's assumptions or changes to the Construction Manager'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 Final Guaranteed Maximum Price Amendment **Attachment 5**, unless such amount is increased by Change Order or the Owner in its sole discretion consents to use the Contingency therefor. The Construction Manager'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 Construction Manager to perform the construction of the Work at the Site or at off-Site workshops. Construction Manager 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 Construction Manager'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 Construction Manager's General Conditions Costs set forth in **Attachments 5** and **5.1** to the Final Guaranteed Maximum Price Amendment. Supervisory and administrative personnel

providing only a portion of their time to the Project shall be frequently assessed and reviewed by the Construction Manager, 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 Construction Manager'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 Construction Manager's General Conditions Costs set forth in **Attachments 5 and 5.1 to the Final Guaranteed Maximum Price Amendment**.

§ 7.2.4 Costs paid or incurred by the Construction Manager, 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 Construction Manager's usual compensation package, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. Such costs are referred to as "Labor Burden" which are included in the rates established in **Attachment 5.1** to the Final Guaranteed Maximum Price Amendment for each position as set forth therein.

§ 7.2.5 The stipulated labor costs provided in **Attachment 5.1** to the Final Guaranteed Maximum Price Amendment 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 **Attachments 5 and 5.1** to the Final Guaranteed Maximum Price Amendment 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 Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

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

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

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

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

§ 7.5.1 Costs of transportation, storage 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 Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Site less the value of the item when it is no longer used at the Site. Costs for items not fully consumed by the Construction Manager 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 Construction Manager 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 Construction Manager, 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 Construction Manager shall be made by the Construction Manager 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 Construction Manager shall pay any excess rental charges. **Attachment 10** to the Final Guaranteed Maximum Price Amendment shall govern all Construction Manager-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 Construction Manager's General Conditions Costs as set forth in **Attachment 5**.

§ 7.5.4 Costs of the Construction Manager'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 Construction Manager's General Conditions Costs as set forth in **Attachment 5**.

§ 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 Construction Manager's General Conditions Costs set forth in **Attachment 5**.

§ 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 Construction Manager, and not the Owner. Costs of such losses shall not be reimbursable under this Agreement. However, this limitation is not intended to prevent the Construction Manager from recovering any such loss under the builder's risk insurance furnished by Construction Manager with respect to the Project, to the extent such loss is recoverable thereunder.

§ 7.5.9 With Owner's advance written approval, Construction Manager 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 11.1.7.1.3, or when stored off-Site, with Owner's approval. To the extent deposits or advances are required to secure the materials, Construction Manager shall identify the reason and the amount of such deposits and shall seek Owner's approval of same prior to ordering. Construction Manager shall comply with the requirements of Section 9.3.2 of the A201-2017 (as modified for this Project), 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 Construction Manager's payment and performance bonds required pursuant to *Tex. Gov't. Code § 2253* and insurance required by this Agreement and specified in **Exhibit B**, that are attributable to this Project. Construction Manager'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 Construction Manager 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 except as provided in Section 7.6.5.1 below.

§ 7.6.5.1 *[Intentionally Deleted]*.

§ 7.6.6 As set forth in **Attachment 5** to the Final Guaranteed Maximum Price Amendment, 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 Construction Manager'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 Construction Manager's standard written personnel policy for relocation, and temporary living allowances, of the Construction Manager's personnel required for the Work.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager'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 Construction Manager 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 Construction Manager, 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 Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 *[Intentionally Deleted]*

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner 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 Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Site office, except as specifically provided in Section 7.2;
- .2 Expenses of the Construction Manager'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 Sections 7.1 to 7.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, 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 Sections 7.1 to 7.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Final Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 Except as provided in Section 7.6.1 above, premiums, losses and expenses for or related to (i) Construction Manager'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 B** are not reimbursable and will not be paid as a Cost of the Work.

- .10 Overtime wages or salaries (and fringe benefits related thereto) incurred by the Construction Manager as a result of the Construction Manager's unexcused failure to perform the Work in accordance with the Project Schedule, unless the Construction Manager has received the Owner's prior consent to incur such overtime;
- .11 Fines, penalties, sanctions or impositions assessed or imposed by any Authority Having Jurisdiction, instrumentality or tribunal arising from the fault of Construction Manager or its Subcontractors or any tier;
- .12 Costs incurred by Construction Manager resulting from the failure of Construction Manager 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 Construction Manager to comply with directives of Owner not in conflict with said schedules;
- .13 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
- .14 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 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager 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 Construction Manager shall make provisions so that they can be obtained. The Construction Manager 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 8.1.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 8.3 Construction Manager 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 Construction Manager 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 8.3.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Final Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall 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 Construction Manager, or any entity related to or affiliated with Construction Manager, except as provided in *Tex. Govt' Code 2269.255*. If a Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 11 below. Construction Manager shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Construction Manager 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 Construction Manager 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 Construction Manager in the same manner in which Construction Manager is bound to Owner.

§ 9.3 If Construction Manager intends to (i) perform Work itself or (ii) award a subcontract to any entity related to or affiliated with Construction Manager, other than supervision of the Work, the Construction Manager or its affiliated or related entity shall include such self-performance in the bid/proposal strategy. Construction Manager shall bid the Work at least twenty-four (24) hours prior to receiving bids from other parties. Construction Manager must also obtain at least three (3) additional competitive bids from Subcontractors and from suppliers of materials or equipment fabricated for the Work and shall deliver such bids to the Owner for review and approval unless the Owner directs otherwise. The Owner may be present when all bids are received. If the Owner determines that the Construction Manager's bid or proposal provides the best value for the Owner, the Owner may allow the Construction Manager to self-perform Work. Construction Manager must perform such Work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Construction Manager shall account for self-performed Work in the same manner as it does all other Subcontractor costs. In the event an adjustment is required to the cost of any awarded self-performed Work the awarded amount shall be treated as a lump sum amount and any adjustment to said amount must be approved through the Change Order process identified in Section 7.2 of the A201-2017.

§ 9.4 Value engineering or cost saving alternative proposals contained in any Construction Manager or Subcontractor bids must be set forth as alternates to bid required by Drawings or Specifications. Construction Manager 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.

§ 9.5 Construction Manager shall include in each Subcontract a provision permitting Construction Manager to assign to Owner each Subcontract upon termination of this Agreement pursuant to Section 14.2 or Section 14.4 of the A2012017. 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 Construction Manager, by the Contract Documents, assumes toward the Owner.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, Drawings, receipts, Pencil Draws, formal Applications for Payment, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract and the Preconstruction Services, Construction Services, and Work hereunder, including but not limited to all records and back-up documentation relating to reimbursable expenses and Cost of Work items. The Construction Manager 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 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Application for Payment Process

§ 11.1.3.1 Pencil Draw. No later than the **20th Day** of the month (or the next business day if the 20th is not a business day), the Construction Manager 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 **25th**

Day of the month (or the next business day if the 25th is not a business day), the Owner, Architect, Project Manager, Construction Manager, 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. Construction Manager 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 Construction Manager 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 Construction Manager shall also submit with each Application for Payment such supporting documentation as required in this Section 11.1.3 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.

§ 11.1.3.2 Provided that the final Application for Payment, including supporting documentation as required in this Article 11 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 Construction Manager of the amount certified by the Project Manager not later than the **thirtieth (30th)** 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. Construction Manager shall make payment to Subcontractors in the appropriate amounts not later than the **tenth (10th)** Day after the date Construction Manager receives payment or otherwise in accordance with *Tex. Gov't. Code § 2251.022*.

§ 11.1.4 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 **Attachment 1 to Exhibit A**, the Final Guaranteed Maximum Price Amendment. Construction Manager shall submit with each Application for Payment any reports, documentation, and evidence required by the Owner or Architect to substantiate the Construction Manager'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 Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Construction Manager 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.

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

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the 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 11.1.4, 11.1.5, and 11.1.6.1. Applications for Payment shall not include requests for payment for portions of the Work for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Construction Manager intends to pay.

§ 11.1.6.1 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 11.1.4 above. Construction Manager 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 Construction Manager 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).

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

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

- .1 That portion of the Final 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 Construction Manager 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 Final 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 Construction Manager's Fee (subject to Section 11.1.8). The Construction Manager'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 Construction Manager has already include Fee in said Change Order.

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

- .1 Retainage as set forth in Section 11.1.8;
- .2 The aggregate of previous payments made by the Owner;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor unless the Work has been performed by others the Construction Manager intends to pay;

- .4 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .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).

§ 11.1.8 Retainage

§ 11.1.8.1 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*. To that end, Owner in its sole discretion may elect to pay retainage applicable to a Subcontractor thirty (30) days after the Subcontractor properly completes its entire scope of Work for the Project, and only if the Subcontractor (1) is not in default; (2) has fully and finally completed all Work under the applicable subcontract in accordance with the Contract Documents; (3) has provided Contractor and Owner with all closeout documentation including as-built drawings, maintenance manuals, and guarantees and warranties; and (4) Subcontractor has submitted a conditional final lien waiver in such form as to release all of the Subcontractor's claims against the Project, conditioned only on Subcontractor's receipt of payment. Construction Manager shall not withhold retainage from Subcontractors in amounts that are any percentage greater than that withheld in this Section 11.1.8.1. 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 Construction Manager or (2) any other right or remedy that the Owner has under the Contract Documents, at law, or in equity.

§ 11.1.8.1.1 The following items are not subject to retainage:

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

N/A

§ 11.1.8.2 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

§ 11.1.8.3. *[Intentionally Deleted]*.

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

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

§ 11.1.11 As set forth in Section 11.1.6.1.1, in addition to other required items, such Application for Payment shall be accompanied by a duly executed and acknowledged Construction Manager's statement showing all Subcontractors with whom the Construction Manager 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 Construction Manager 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 Construction Manager shall also provide copies of all Subcontractors' monthly applications for payment to substantiate the Construction Manager's Application for Payment. If the Construction Manager fails to make timely payment of a Subcontractor Payment Amount, the Owner, at its sole election, may issue joint checks payable to the Construction Manager and the Subcontractor and/or may directly pay the Subcontractor, and such payments shall be deemed to be payments to the Construction Manager 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 Construction Manager, a Subcontractor, a Sub-subcontractor, or anyone else.

§ 11.1.12 In taking action on the Construction Manager'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 Construction Manager, 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 11.1.4, 11.1.5. or 11.1.6, 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 Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 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 Construction Manager has fully performed the Contract, except for the Construction Manager'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 Construction Manager 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 11.2.2 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 Construction Manager 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 Construction Manager 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 Construction Manager 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** Construction Manager 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 Construction Manager);
- .11** Construction Manager has provided one (1) digital copy and two (2) hardcopies of files of all maintenance and operating manuals;
- .12** Construction Manager has provided hardcopy and digital files of all written guarantees and warranties in the form prescribed by the Contract Documents;
- .13** Construction Manager 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 Construction Manager 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 Construction Manager'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 Construction Manager 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 Construction Manager 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.

§ 11.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days 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 Construction Manager's final accounting, provided the other conditions of Section 11.2.1 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 Construction Manager, or notify the Construction Manager 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 11.2.2 supersede those stated in Section 9.4.1 of the A201–2017 (as modified for this Project).

§ 11.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager 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 Construction Manager the amount determined by the Owner's accountant to be due the Construction Manager.

§ 11.2.4 The Owner's Final Payment to the Construction Manager shall be made no later than **thirty (30)** Days after satisfaction of all of the conditions set forth in Section 11.2.1 above and the issuance of the final accounting set forth in Section 11.2.2.

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

§ 11.2.6 If, subsequent to Final Payment and at the Owner's request, the Construction Manager incurs costs described in Section 7.1-7.7 and not excluded by Section 7.9 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs together with the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to Final Payment, but not in excess of the Final Guaranteed Maximum Price.

§ 11.3 Interest

Payments due and unpaid under this Agreement shall bear interest from the date payment is due at the rate stated below, only as allowed under *Tex. Gov't. Code § 2251.021 et seq.*

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

[Intentionally deleted].

§ 12.2 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)*

§ 12.2.1 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

Init.

/

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:48:24 ET on 10/08/2024 under Order No.3104242835 which expires on 11/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1397124943)

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 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Final Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Final Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than **ten (10) Days'** written notice to the Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase Services performed to the date of the notice of termination together with Reimbursable Expenses then due. Under no circumstances will Owner be responsible for any damages disallowed under Texas law given Owner's status as a hospital district and Owner specifically reserves all rights, remedies and defenses allowed under Texas law. Further, in no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Final Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than **seven (7) Days'** written notice to the Construction Manager for the Owner's convenience and without cause.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase Services and Work performed prior to receipt of a notice of termination together with Reimbursable Expenses then due. Under no circumstances will Owner be responsible for any damages disallowed under Texas law given Owner's status as a hospital district and Owner specifically reserves all rights, remedies and defenses allowed under Texas law. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Final Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1** Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1; and
- .3** Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 *[Intentionally Deleted]*.

§ 13.1.7 If the Owner suspends the Project, the Construction Manager shall be compensated for the Work performed prior to notice of such suspension. The Construction Manager's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.2 Termination or Suspension Following Execution of the Final Guaranteed Maximum Price Amendment

The Contract may be terminated or suspended by the Owner or terminated by the Construction Manager as provided in

Article 14 of the A201–2017.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

[AIA original language intentionally deleted. See Section 13.2 of the A201.]

§ 14.3 Insurance and Bonds

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

§ 14.4 Written Notice. 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:

Jill Farrell
Sr. Vice President, Chief Operations Officer
1500 South Main Street
Fort Worth, Texas 76104
Telephone: 817.702.9998
Email: JFarrell@jpshealth.org

with a copy to:

Daphne Walker
Executive Vice President, Chief Legal Officer
1500 South Main Street
Fort Worth, Texas 76104
Telephone: 817.702.9988
Email: dwalker10@jpshealth.org

IF TO THE CONSTRUCTION MANAGER:

Neha Dugal
Senior Vice President and General Manager
1431 Greenway Drive, Suite 740 Irving, TX – 75038
Telephone: 617.593.5755
Email: ndugal@batson-cook.com

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 14.4. Nothing contained in this Section 14.4 shall be construed to restrict the transmission of routine communications between representatives of the Owner and the Construction Manager via electronic mail so long as verification of receipt can be obtained.

§ 14.5 Capitalization

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

§ 14.6 Attorneys' Fees and Severability. 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.

§ 14.7 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.

§ 14.8 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.

§ 14.9 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.

§ 14.10 Owner's Special Terms, Conditions, and Protocols. Owner hereby incorporates Exhibit C – Owner's Special Conditions and Exhibit D – Owner-Provided Information into this Agreement, together with all other Exhibits.

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

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133TM–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified for this Project;
- .2 The following Exhibits:
 - Exhibit A**, Final Guaranteed Maximum Price Amendment, once executed
 - Attachment 1**: Final Guaranteed Maximum Price Breakdown
 - Attachment 2**: Accepted Alternates
 - Attachment 3**: Unit Prices
 - Attachment 4**: Assumptions/Clarifications/Qualifications
 - Attachment 5**: Construction Manager's General Conditions Costs
 - Attachment 5.1**: Construction Manager's Labor Burden Schedule
 - Attachment 6**: Allowances
 - Attachment 7**: Project Schedule
 - Attachment 8**: List of Key Personnel
 - Attachment 9**: List of Drawings and Specifications
 - Attachment 10**: Construction Manager-Owned Equipment Rental Rates
 - Attachment 11**: Approved Work Package Authorizations in Final Guaranteed Maximum Price
 - Attachment 12**: Construction Manager's Quality Control Plan
 - Exhibit B**: Insurance and Bonding Requirements
 - Exhibit B-1**: Form of Performance Bond
 - Exhibit B-2**: Form of Payment Bond
 - Exhibit B-3**: Form of Bid Bond
 - Exhibit C**: Owner's Special Conditions
 - Exhibit D**: Owner-Provided Information
 - Exhibit E**: Preconstruction Invoice Format

Exhibit F: Preconstruction Hourly Rates/Salaries/Wages
Exhibit G: Work Package Authorization Template
Exhibit H: General Conditions Cost Template

.3 AIA Document A201TM–2017, General Conditions of the Contract for Construction, as modified for this Project

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

OWNER:

CONSTRUCTION MANAGER:

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

BATSON COOK COMPANY

(Signature)

(Signature)

(Printed Name and title)
(Paragraphs deleted)

(Printed Name and title)

Init.

/

EXHIBIT A
FINAL GUARANTEED MAXIMUM PRICE AMENDMENT

(TO BE ATTACHED UPON OWNER'S APPROVAL)
(WITH ATTACHMENTS 1-12)

EXHIBIT B
INSURANCE AND BONDING REQUIREMENTS

EXHIBIT B

INSURANCE AND BONDING REQUIREMENTS

A. INSURANCE REQUIREMENTS

Construction Manager shall purchase, maintain, and keep in full force and effect, and shall require its Subcontractors to purchase, maintain and keep in full force and effect at all times during the term of this Agreement such lines of insurance coverage with policy limits set forth in this **Exhibit B**. Each policy shall be written with limits not less than those set forth in this **Exhibit B**. Construction Manager will comply, and will require its Subcontractors to comply, fully with all requirements of this **Exhibit B** prior to the commencement of any services or Work for the Project. “Owner,” “Indemnatee,” “Indemnitees,” “Construction Manager,” and “Subcontractor” shall each have the meanings set forth in the Agreement.

1. Required Coverages. The Construction Manager and all Subcontractors will obtain the following policies with the policy limits as indicated below:

Insurance	Construction Manager Limits	Subcontractor Limits
Worker’s Compensation	Statutory	Statutory
Employer’s Liability Insurance:		
Bodily Injury by Accident (accident)	\$1,000,000	\$1,000,000
Bodily Injury by Disease (policy limit)	\$1,000,000	\$1,000,000
Bodily Injury by Disease (each employee)	\$1,000,000	\$1,000,000
Commercial General Liability (“CGL”)	\$1,000,000 per occurrence \$2,000,000 annual general aggregate \$2,000,000 products-completed operations aggregate	\$1,000,000 per occurrence \$2,000,000 annual general aggregate \$2,000,000 products-completed operations aggregate
Automobile Liability	\$1,000,000 each accident	\$1,000,000 each accident
Excess Liability	\$10,000,000 per occurrence \$10,000,000 aggregate	\$2,000,000 per occurrence \$2,000,000 aggregate
Asbestos Abatement	\$5,000,000 combined single limit for BI and PD. Employer’s liability for asbestos abatement is: \$5,000,000 each accident/disease each employee/disease policy limits	If a Subcontractor is engaged by Construction Manager to perform asbestos abatement: \$5,000,000 combined single limit for BI and PD. Employer’s liability for asbestos abatement is: \$5,000,000 each accident/disease each employee/disease policy limits

Insurance	Construction Manager Limits	Subcontractor Limits
Cyber/Privacy Liability	\$2,000,000 per claim/\$2,000,000 aggregate	\$1,000,000 per claim/\$1,000,000 aggregate
Pollution Liability	\$2,000,000 per occurrence \$2,000,000 aggregate	\$1,000,000 per occurrence \$1,000,000 aggregate
Professional Liability	\$2,000,000 per claim \$2,000,000 annual aggregate	\$1,000,000 per claim \$1,000,000 annual aggregate
Builder's Risk	Total value of the Project on a replacement cost basis	

2. Worker's Compensation/Employer's Liability. Worker's Compensation insurance coverage must be provided for all workers at all tier levels and shall meet the statutory requirements of *Tex. Labor Code §401.011(44)* and, specific to construction projects for public entities, as required under *Tex. Labor Code §406.096*. Employer's Liability insurance must be provided as required in the chart above. In addition:

(a) **Certifications.** Construction Manager hereby certifies, pursuant to *Tex. Labor Code §406.096(a)*, that Construction Manager provides or will provide at, or prior to, execution of the Agreement, workers' compensation and employers' liability insurance for employees employed on this public project with limits as indicated above. Pursuant to *Tex. Labor Code § 406.096(b)*, Construction Manager shall require its Subcontractors to certify in writing to the Construction Manager that said entity provides workers' compensation and employers' liability insurance for its personnel employed on this public project. Construction Manager shall forward said certifications to Owner within **ten (10)** Days of the Effective Date of the Agreement.

(b) **Endorsements.** This policy must include an Other States Endorsement to include the Owner and Tarrant County, Texas if Construction Manager's business is domiciled outside the State of Texas. The policy will be endorsed to name Owner as the alternate employer.

(c) All policies shall be endorsed to include Waiver of Subrogation in favor of Owner and all Indemnitees.

(d) ***Workers' Compensation Insurance Coverage.***

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

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

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the project, regardless of whether that person contracted directly with the Construction Manager and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, Consultants, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Construction Manager shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Construction Manager providing services on the project, for the duration of the project.
- C. The Construction Manager must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the Construction Manager's current certificate of coverage ends during the duration of the project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The Construction Manager shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the Construction Manager, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The Construction Manager shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The Construction Manager shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Construction Manager shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers' Compensation informing all

persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

- I. The Construction Manager shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Construction Manager, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the Construction Manager, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Construction Manager:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Construction Manager is representing to the governmental entity that all employees of the Construction Manager who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-

insured, with the division. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- K. The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager which entitles the governmental entity to declare the contract void if the Construction Manager does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

3. Commercial General Liability. Commercial General Liability coverage ("CGL") shall be provided by Construction Manager and all Subcontractors with the policy limits set forth in the chart above. Coverage shall be provided on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). The CGL insurance general aggregate limit shall apply separately to this Project and the Construction Manager and all Subcontractors shall provide evidence of same through ISO Endorsement CG 25 03 05 09. The policy shall include endorsement CG2503, Amendment of Aggregate Limits of Insurance (per Project), or its equivalent. CGL insurance shall cover liability including, but not limited to, liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, electronic data liability (under endorsement ISO CG 04 37), property damage, and personal injury and death resulting therefrom. This policy shall provide for full separation of insureds and shall **not** include any insured v. insured exclusions or limitations. The following is a non-exclusive list of additional prohibited exclusions and limiting endorsements:

- Liability assumed by Construction Manager and all Subcontractors under a written agreement, including any contractual liability limitation endorsement restricting coverage to only liability that would exist in the absence of a contract, such as the ISO CG 21 39 or its equivalent, or any amendment of insured contract definition endorsement such as the ISO CG 24 26 or its equivalent.
- Explosion, collapse, underground property damage, blasting, blowouts, cratering, or the like, including any Explosion, Collapse and Underground Property Damage Hazard endorsement such as the ISO CG 21 42 or ISO CG 21 43 endorsements, or their equivalent.
- Cross-liability on claims between any insureds, other than claims between named insureds.
- Injury to independent contractors and employees of independent contractors.
- Any exclusion relating to damage to work performed by any Subcontractor on behalf of Construction Manager (or sub-subcontractors on behalf of a Subcontractor) such as the ISO CG 22 94 or ISO CG 22 95, or their equivalent.
- Any type of classification or business description limitation endorsement.
- Any type of endorsement excluding coverage for construction defects in the completed operations phase.
- Any type of endorsement modifying the employer's liability exclusion.
- Any type of habitation or residential exclusion.
- Any type of punitive, exemplary or multiplied damages exclusion.

- Any type of subsidence exclusion if Construction Manager or any Subcontractor is engaged in any type of earth movement work, including but not limited to soil compaction, fill, or installation of storm or sewer drains.

Owner reserves the right to notify Construction Manager of any additional prohibited exclusions or endorsements in advance of placing the insurance. A copy of the CGL Schedule of Forms and Endorsement page(s) of the policy shall be provided to verify the coverages required, that the Endorsements required by these insurance requirements are included, and that none of the prohibited exclusions exist in the policy. Owner may require additional exclusions be removed. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Owner. CGL insurance must be kept in force at all times during the course of this Agreement and until all claims arising out of the Work are barred by the statute of repose provided under Texas law.

4. Automobile Liability Insurance. Automobile liability insurance policies shall be provided by Construction Manager and all Subcontractors with policy limits as stated in Paragraph 1 above. This policy shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with the Work on the Project and shall include coverage for loading and unloading hazards. Automobile liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. No aggregate shall be permitted.

5. Umbrella/Excess Liability Insurance. An Excess or Umbrella liability insurance policy shall be provided by Construction Manager and all Subcontractors with policy limits as indicated in Paragraph 1. This policy shall be excess of the CGL, automobile liability, and employer's liability insurance on a "following form" basis of underlying policies. This policy shall be excess over and be no less broad than the CGL, Automobile Liability, Employer's Liability as described in these insurance requirements, including but not limited to the required additional insured status, designated project(s) and/or location(s), general aggregate, waiver of subrogation, notice of cancellation, and prohibited exclusions or limitations. The policy shall provide coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss. Any excess or umbrella policy shall be kept in force at all times during the course of this Agreement and until all claims arising out of the Work are barred by the statute of repose provided under Texas law.

6. Asbestos Abatement Liability Insurance. Asbestos Abatement Liability coverage shall be provided by Construction Manager and Subcontractors with policy limits as stated in Paragraph 1 above if the Work or the Project includes asbestos containing materials. This policy shall provide coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

7. Cyber/Privacy Liability Coverage. Cyber/Privacy liability insurance shall be provided by Construction Manager and each Subcontractor with policy limits as stated in Paragraph 1 above to cover risk of loss to electronic data. Each policy must include coverage for electronic vandalism to electronic data, including coverage for a third party's willful alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, and denial of service to website or email destinations.

8. Pollution Liability Coverage. Construction Manager and each Subcontractor will provide a pollution liability policy with limits as stated in Paragraph 1 above that covers a pollution event or release on the Project resulting from their activities under and during the term of this Agreement and for completed operations. The Pollution Liability policy shall provide coverage for "sudden & accidental" and gradual

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

occurrences arising from the Work performed under this Agreement. The annual aggregate shall apply separately to this Project. Pollution liability insurance with coverage as specified herein shall be maintained until all claims arising out of the Work are barred by applicable statutes of limitation and repose.

Purchase of an extended discovery period or an extended reporting period will not be sufficient to comply with each entity's obligations hereunder. This policy shall include coverage for: (i) the full scope of the particular entity's operations (on-going and completed), as described in this Agreement or in any subcontract or separate agreement concerning the Project; (ii) losses arising from pollutants, including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall; (iii) third party liability for bodily injury, property damage, clean up expenses, and defense costs arising from the entity's operations; (iv) diminution of value and natural resources damages; (v) contractual liability; (vi) claims arising from use of any owned or non-owned disposal sites arising out of the insured entity's activities in connection with this Agreement; (vii) bodily injury to include physical injury, sickness, disease, death, mental anguish, medical monitoring and emotional distress sustained by any person; and (viii) all attorneys' fees, expenses and other costs that are related to or that arise out of or from the investigation or adjustment of any claim or in connection with any court, arbitration, mediation, state administrative hearing, or other proceeding of any kind that arise out of or that are related to a Pollution Condition(s). Coverage under this policy shall include a **seven (7)-Day** minimum occurrence period for emergency response costs. The Pollution Liability insurance policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from any of the following:

- Insured vs. insured actions (however, an exclusion for claims made between insureds within the same economic family is acceptable).
- Impaired property that has not been physically injured.
- Materials supplied or handled by the named insured; any exclusionary language pertaining to materials supplied by the insured is subject to the Owner's review and approval.
- Property damage to the work performed by Construction Manager or any Subcontractor.
- Faulty workmanship as it relates to clean up costs.
- Punitive, exemplary or multiplied damages.
- Work performed by Subcontractors or sub-subcontractors of any tier.
- Contractual liability incurred as a result of an injury to an employee of the insured.

"Pollution Condition(s)" means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, sewage, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, mold, silt, sedimentation, low-level radioactive material and waste materials into or upon land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered.

9. Professional Liability Coverage. Construction Manager and each Subcontractor will provide Professional liability coverage ("PL") with policy limits as set forth in Paragraph 1 above as will insure from and against all negligent acts, errors, and omissions in any services performed by Construction Manager and each Subcontractor, and their agents, representatives, employees, and lower-tier sub-subcontractors. PL coverage shall provide full prior acts coverage or a retroactive date not later than the

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

date the services are first performed by the entity in connection with the Project. This policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of Subcontractors; (ii) habitational or residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; (v) professional liability of the Construction Manager arising out of the negligence of Construction Manager; or (vi) design/build services. This insurance shall be maintained until all claims arising out of the Work are barred by applicable statutes of limitation and repose.

10. Builder's Risk Coverage. Builder's Risk coverage shall be purchased by the Construction Manager for the entire Project on an "all risk" completed value form at 100% of the Final Guaranteed Maximum Price with coverage automatically increasing to provide constant limits of insurance at full 100% of all insurable values as they are created during construction and to cover the amount of any Change Orders, Owner Change Directives, or Modifications that increase the replacement value of the Project. Coverage shall be at least as broad as an unmodified ISO Special Causes of Loss Form ISO CP 10 30 06 95 and shall include coverage for fire, extended coverage, vandalism and malicious mischief, theft, collapse, flood and earth movement, and named storm. Any exclusions to this Builder's Risk coverage form require Owner approval. Such insurance shall (a) designate the Owner and Indemnitees, Construction Manager, and all Subcontractors of any tier (as their interests appear), and all loss payees and mortgagees (as their interests appear) as insureds on the policy and Owner and Indemnitees as loss payees; and (b) be primary and non-contributing to any other insurance coverage available to the insureds, as to whom their other insurance shall be excess, secondary and noncontributing to losses covered by Builder's Risk insurance. The Builder's Risk insurance shall not include any requirement that protective safeguards are in-place or maintained on the Project. The termination of coverage provision shall be endorsed to permit coverage to continue during any interim period of occupancy of the covered property while being constructed. This insurance shall be maintained in effect until the earlier of the following dates: (i) the date on which termination of coverage has been approved after Final Payment has been issued to and accepted by the Construction Manager, as provided for in the Contract Documents; or (ii) the date on which the insurable interests in the covered property of all insureds other than the Owner have ceased. Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds. Such insurance shall cover at a minimum the following:

- All structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling.
- All temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site.
- All property including materials and supplies on-site for installation and at other locations but intended for use at the site.
- All property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit.
- The cost of debris removal equal to the lesser of: (i) 25% of the amount of loss, or (ii) \$5,000,000 per occurrence.
- Other property for which an insured is liable in connection with the Project, including Owner furnished or assigned property.

- .1 For renovation projects or projects that involve portions of Work contained within an existing structure, the policy must also include coverage in the additional sum of \$1,000,000.00, or the value of the Final Guaranteed Maximum Price, whichever is less. These policy limits are in addition to the Builder's Risk policy limit that is equal to the Final Guaranteed Maximum Price for Existing Property and Owner-furnished items, if any, specified by Owner. For purposes herein, "Existing Property" means existing buildings or structures, as well as, all personal property contained therein, but does not include personal property owned or operated by Construction Manager or any Subcontractors.
- .2 For Owner-furnished items or materials that will be in care, custody or control of Construction Manager, Construction Manager shall be responsible for any and all damages and losses thereto.
- .3 **Sublimits.** For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits as specified by Owner. For those properties in flood prone areas, floor insurance coverage must be provided with limits specified by Owner. Owner may specify additional sublimits applicable to the Project in the Owner's Special Conditions set forth in **Exhibit C**.
- .4 The policy shall include the following endorsements:
 - i. Builder's Risk insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property;
 - ii. The policy shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the site and before the parties have determined Substantial Completion; and
 - iii. Valuation of any loss for the renovation and any existing property (exclusive of building and existing structures) shall be at replacement cost.
- .5 **Deductibles.** Deductibles shall not exceed the following:
 - i. All risks of direct damage, \$25,000 per occurrence.
 - ii. Delayed Opening Waiting Period: 5 Days.
 - iii. Earthquake and Earthquake Sprinkler Leakage, \$100,000 per occurrence.
 - iv. Flood. The deductible per occurrence shall be 5% of the value-at-risk-at-time-of-loss ("VARTOL") with a minimum VARTOL of \$250,000. If flood insurance is purchased through National Flood Insurance Program, the deductible shall be the maximum amount of insurance purchased thereunder.
- .6 The Builder's Risk policy shall remain in effect until the time Owner has approved the transfer of the risk of loss from the Project.
- .7 Additional requirements may be specified by Owner.

11. Insurance Required of Subcontractors. Each Subcontractor must provide all coverages identified above with limits as set forth in Paragraph 1 above. The limits of such insurance may be adjusted in

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

accordance with the nature of each Subcontractor's operations but, if such adjustment is requested, it must be submitted to Owner for approval before the Subcontractor enters into an agreement or any Work commences under the agreement in question.

12. Inclusion of Insurance Information in Bid Packages. Construction Manager shall include required insurance information in trade bid/proposal packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their responses. The Construction Manager shall not commence any phase of the Work under this Agreement until it has obtained all insurance required for that phase and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review and approval of the insurance shall not affect the liability of either party.

13. General Terms for All Insurance Policies. All insurance coverages must be placed with carriers acceptable to Owner, licensed to do business in Texas and rated A-/VII or better by A.M. Best, confirmed by one or more insurance certificates on an Acord 25 form, with all information fully provided as required by the form. All insurance coverages shall be written on an occurrence basis (except Professional Liability) and shall be primary and not excess insurance vis-à-vis any coverage, any self-insurance, or other policy of insurance maintained by Owner. Any coverage underwritten on a claims-made basis must include a retroactive date for the policy and all renewals must be coincident with the effective date of the Agreement. Any premiums for this extended reporting period shall be paid by Construction Manager. Certificates of insurance and additional insured endorsements required herein shall provide that the policies shall be primary without right of contribution from any insurance carried by Owner. Each policy, other than Worker's Compensation/Employer's Liability and Professional Liability, shall contain a severability of interest clause stating *"it is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability."* Each policy shall provide for full separation of insureds and include no insured v. insured limitations or exclusions.

14. Additional Insured Status. Owner and Indemnitees (as defined in the Agreement) and their officers, directors, agents, and employees shall be included as additional insureds on policies procured by Construction Manager and all Subcontractors, except Worker's Compensation and Professional Liability, using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (Completed Operations) or their equivalent, as approved by Owner. Insured requirements for the Builder's Risk coverage are contained in Paragraph 10 above wherein Owner and the Indemnitees shall be listed as insureds and loss payees. Construction Manager and all Subcontractors shall provide additional insured endorsements demonstrating the insured status of Owner and the Indemnitees as provided herein on such forms as required by Owner.

15. Waivers of Subrogation. All Worker's Compensation, Employers' Liability, Automobile Liability, Commercial General Liability, Excess Liability, Builder's Risk, and Pollution Liability insurance policies (including those procured by Subcontractors) must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against Owner and Indemnitees and their officers, directors, agents, and employees. With respect to all such policies, Construction Manager waives any and all rights of recovery or subrogation against Owner and its Indemnitees and their officers, directors, agents, and employees.

16. Evidence/Proof of Insurance/Endorsements. Evidence of the insurance coverage required of the Construction Manager must be furnished to Owner before commencement of the Work (or, with respect to Subcontractors, before such entity begins its portion of the Work) and as coverage renews. Evidence of coverages shall be provided in certificates of insurance with a copy of the Commercial General Liability policies and all endorsements. The insurance policies shall provide or be endorsed to include a requirement for each insurer to give Owner notice at least **thirty (30)** Days prior to any (i) non-renewal; (ii) cancellation;

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

or (iii) material change. “Material Change” includes, without limitation (i) a change in the policy period; (ii) a material revision to, or removal of, a coverage section; (iii) a reduction of the amount of limits of insurance, provided such reduction is not the result of payment of damages, medical expenses, or claim expenses; or (iv) an increase of the amount of any self-insured retentions. Similarly, the Commercial General Liability policy shall be endorsed to include a **ten (10)-Day Notice of Non-Payment of Premium** in favor of Owner.

17. Notification to Owner. Any and all policies, endorsements, approvals, certificates of insurance and/or notifications of cancellation, non-renewal, or material change shall be transmitted to:

Jill Farrell
Sr. Vice President, Chief Operations Officer
1500 South Main Street
Fort Worth, Texas 76104
Telephone: 817.702.9998
Email: JFarrell@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

18. Deductibles, Retentions & Exclusions. Insurance deductibles shall be paid by Construction Manager or Subcontractors without reimbursement by Owner. Any under-insurance, self-insurance, self-insured retentions (SIR), deductibles, and exclusions in coverage in the insurance policies required under this agreement to the extent applicable, shall be assumed by, for the account of and at the sole risk of Construction Manager and Subcontractors. All deductibles and self-insured retentions shall be disclosed to Owner before the placement of any insurance or commencement of the Work under the Agreement.

19. If Construction Manager elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding the foregoing deductible amounts, Construction Manager shall be obligated to grant Owner all rights against Construction Manager to the same extent as if Construction Manager had maintained the insurance required hereunder with a commercial insurer, including but not limited to additional insured status (as to liability policies other than Workers’ Compensation Insurance and Professional Liability Insurance), primary and non-contributory liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. Construction Manager shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney’s fees and necessary litigation expenses at least to the same extent all of the foregoing would have been covered had Construction Manager maintained the insurance required hereunder with a commercial insurer.

20. Construction Manager’s Duty to Review. Construction Manager represents and acknowledges it has carefully reviewed its insurance program with its legal and risk advisors and believes its insurance policies comply with the insurance requirements in this Agreement, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. Within 48 hours of a written request by Owner, Construction Manager shall submit true and complete copies of Construction Manager’s policies of insurance in electronic form by emailing true and complete of such policies to Owner’s insurance analyst. The true and complete copies of all applicable insurance policies shall be submitted in a timely manner, as

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

no contract will be executed without the receipt, review, negotiation, and Owner acceptance, of the submitted policies. The policies shall include therewith a letter provided by Construction Manager's broker, agent, or its applicable insurance carrier representative for each policy, certifying that the electronic copies of the policies as furnished are true and correct copies. In addition, upon conducting such review, if Owner's insurance analyst determines Construction Manager's insurance policies contain deficiencies that cause such policies to fail to comply with the insurance requirements of this Agreement, Construction Manager agrees to reimburse Owner for all costs and fees incurred in attempting to resolve such policy deficiencies by modification or special endorsement thereof. Construction Manager shall not cause or permit any required insurance to cancel or lapse prior to the expiration of all warranty periods, provided however, policy duration for Builder's Risk (or as applicable, an installation floater) is not governed by this provision. Construction Manager must update all expired policies prior to submission of any pay application.

21. Right to Review. Owner reserves the right to review all insurance requirements and to require deletion, revision, and/or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulations that are binding upon Owner, Construction Manager, or the underwriter) on any such policies when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry and/or of Construction Manager, provided however, such modifications must be commercially available to Construction Manager. Owner shall make an equitable adjustment to the Final Guaranteed Maximum Price for any additional cost resulting therefrom.

22. Failure to Obtain or Maintain. Failure to timely obtain and maintain the insurance coverages as required under this Agreement may subject Construction Manager to disqualification from eligibility to participate in any other or future projects with Owner and/or suspension or termination of Work for cause pursuant to the Contract Documents. Construction Manager shall provide Owner **thirty (30) Days'** written notice of erosion of any aggregate limits below the minimum amounts required by this Agreement. In the event Construction Manager fails to timely renew or pay any of the renewal premiums for any expiring policies, Owner shall have the right (but not the obligation) to: (i) make such payments; and/or (ii) acquire replacement coverage, and set off the amount(s) or costs thereof against the next payment(s) coming due to Construction Manager under this Agreement or under any other contract between Owner and Construction Manager. Owner may withhold any payments due to Construction Manager from this Project or any other Owner project until satisfaction is achieved.

23. Enforceability of Requirements. None of the requirements contained herein as to types, limits, or Owner's approval of insurance coverage to be maintained by Construction Manager or any Subcontractor is intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Construction Manager under the Agreement or otherwise provided by law. All insurance coverages required by the Agreement, as amended by Owner, shall be written in strict conformance with these requirements to provide complete and full coverage to Owner for Construction Manager's and Subcontractors' operations and completed operations. If coverages and/or specified endorsements are not available due to a change in Texas law, Construction Manager shall secure equivalent coverages, which shall be subject to approval by Owner. To the extent any provision of these insurance requirements is held to be void, voidable, invalid, or unenforceable, the remainder of these insurance requirements shall not be affected thereby and shall remain valid and fully enforceable.

24. Losses Paid by Construction Manager. Actual losses not covered by insurance as required by this Agreement shall be paid by Construction Manager. Construction Manager hereby waives all rights of recovery and releases, and shall cause all Subcontractors to release Owner from any and all claims or causes of action whatsoever which Construction Manager and/or Subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by Construction Manager or Subcontractors pursuant to the Agreement.

25. Owner a Third-Party Beneficiary. It is hereby acknowledged and agreed that, based on the Agreement into which this **Exhibit B** is incorporated, Owner is intended to be and hereby is a third-party beneficiary of any agreement(s) between Construction Manager and any and all Subcontractors and persons who procure, or cause to be procured any insurance policy and any renewals thereof, for the Project.

26. Required Insurance Coverages No Effect On Indemnification. The insurance and insurance limits required herein shall not be deemed as a limitation on Construction Manager's liability under the indemnifications granted to Owner.

27. No Warranty That Insurance Limits Will Be Adequate to Fully Protect Construction Manager. The insurance requirements set out herein shall not be interpreted as any representation or warranty that the insurance coverage and limits will necessarily be adequate to fully protect Construction Manager.

B. BONDING REQUIREMENTS

1. Security/Bid Bond. Construction Manager shall provide a Security Bond/Bid Bond on the form provided by Owner in **Exhibit B-3** in the amount of **five percent (5%)** of the Owner's budget for the Project. The surety for a Security Bond shall meet the same requirements as set forth for payment and performance bonds. The Security/Bid Bond will be issued for a period not to exceed six (6) months and will be automatically renewed unless cancelled by written notice to Construction Manager and Owner, received by Owner within **sixty (60)** Days prior to the applicable expiration date. If the Bid Bond is cancelled, Construction Manager shall replace the Bid Bond, or provide other financial security under terms substantially the same as the Bid Bond and otherwise acceptable to Owner, in Owner's sole discretion, within **thirty (30)** Days of Owner's receipt of the surety's notice of cancellation, failing which, Construction Manager shall be deemed to be in default of its obligations under and to have committed a material breach of this Agreement and Owner may proceed in accordance with the provisions of the Contract Documents, and/or be entitled to enforce any other remedy or right the Owner may have hereunder.

2. Performance and Payment Bonds. Construction Manager shall provide Performance and Payment Bonds, each with penal sums in the amount of one hundred percent (100%) of the value of the Final Guaranteed Maximum Price upon Owner's execution of the Agreement, unless it has not been established at the time the Agreement is executed and then in conformance with the amount equal to the construction budget specified in the RFQ/RFP, in accordance with the requirements of *Tex. Gov't. Code § 2269.258* and *§ 2253.001 et seq.*, and in such form attached hereto as **Exhibit B-1**, and **Exhibit B-2**, respectively. No Notice to Proceed shall be issued until the bonds are received and approved by Owner. At all times, Construction Manager's Performance and Payment Bonds will cover the approved Work Package amounts and the Final Guaranteed Maximum Price as set forth in the Final Guaranteed Maximum Price Amendment. To the extent a Work Package is issued under Section 3.3 of the Agreement, and Construction Manager has not provided a performance and payment bond under *Tex. Gov't. Code § 2269.258*, Payment and Performance bonds with penal sums equal to the authorized dollar amount of the Work Package Authorization shall be provided. Without limiting any other requirements or obligations of the surety, the Performance Bond shall cover Construction Manager's warranty obligations for a period not less than two (2) years from the date of the issuance of the Certificate of Substantial Completion, and shall include coverage for any liquidated damages for which Construction Manager may be liable under this Agreement.

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

3. In addition to the above requirements, all bonds shall be issued with the Owner as the named obligee and shall be executed by a corporate surety company authorized to do business in the State of Texas and which shall hold a certificate of authority from the United States Department of Treasury to qualify as a surety on obligations permitted or required under federal law. All bonds shall have a Power of Attorney attached. Performance and Payment bonds shall be provided before any Work is performed.

4. Costs, premiums or other charges for or relating to Subcontractor bonds and/or Subcontractor default insurance are not reimbursable as Costs of the Work or as General Conditions Costs and will not be reimbursed.

EXHIBIT B-1
FORM OF PERFORMANCE BOND

(SEE ATTACHED)

CONTRACT NO. _____

BOND NO. _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we _____ as Principal, hereinafter referred to as "Principal" and _____, a corporate surety/sureties, duly authorized to do business in the State of Texas, hereinafter referred to as "Surety" (whether one or more), are held and firmly bound unto **Tarrant County Hospital District d/b/a JPS Health Network**, a hospital district and political subdivision of the State of Texas, hereinafter referred to as "**JPS**" in the penal sum of _____ (\$ _____), lawful money of the United States, to be paid in Fort Worth, Tarrant County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain contract with JPS, dated the _____ day of _____ 20____, attached hereto and incorporated herein for all purposes as if fully set forth herein, to furnish all materials, equipment labor and other accessories as defined by law, in the prosecution of the work provided for said contract.

NOW THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform said contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions, and agreements in and by said contract, agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said contract and the plans and specifications therein referred to, and as well during any period of extension of said contract that may be granted on the part of JPS, as during the original terms of same, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, venue shall lie in Tarrant County, Texas.

AND PROVIDED FURTHER, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder.

This bond is executed in compliance with the provisions of Chapter 2253 of the Texas Government Code as amended.

**PERFORMANCE BOND
(Continued)**

IN WITNESS WHEREOF, the Principal and the Surety have signed this instrument by duly authorized agents and officers and affixed corporate seals hereto on the _____ day of _____ 20____.

Principal: _____

By: _____

Title: _____

Surety: _____
(Print First Name and Seal)

By: _____

Title: Attorney in Fact

Surety Contact Information where any notice of
claim should be sent:

Name: _____

Mailing
Address: _____

Physical
Address: _____

Telephone
Number: _____

The address of the Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free number: 1-800-252-3439.

[ATTACH POWER OF ATTORNEY FOR SURETY'S ATTORNEY-IN FACT]

EXHIBIT B-2
FORM OF PAYMENT BOND

(SEE ATTACHED)

CONTRACT NO. _____

BOND NO. _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we _____ as Principal, hereinafter referred to as "Principal" and _____, a corporate surety/sureties, duly authorized to do business in the State of Texas, hereinafter referred to as "Surety" (whether one or more), are held and firmly bound unto Tarrant County Hospital District d/b/a JPS Health Network, a hospital district and political subdivision of the State of Texas, hereinafter referred to as "JPS" in the penal sum of _____ (\$_____), lawful money of the United States, to be paid in Fort Worth, Tarrant County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain contract with JPS, dated the _____ day of _____, 20____, attached hereto and incorporated herein for all purposes as if fully set forth herein, to furnish all materials, equipment labor and other accessories as defined by law, in the prosecution of the work provided for in said contract.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal, shall pay all sub-contractors, workmen, laborers, mechanics, furnishers of material and claimants (as defined in Chapter 2253 of the Texas Government Code, as amended) supplying labor and material to him or sub-contractor in the prosecution of the work provided for in said contract, all monies to them owing by Principal for sub-contracts, work, labor, and materials furnished for the construction of such improvements for JPS, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, venue shall lie in Tarrant County, Texas.

AND PROVIDED FURTHER, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed hereunder.

This bond is executed in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended.

PAYMENT BOND
(Continued)

BOND NO. _____

IN WITNESS WHEREOF, the Principal and Surety have signed and sealed this instrument by duly authorized agents and officers and affixed corporate seal hereto on this the ____ day of _____, 20 ____.

Principal: _____

By: _____

Title: _____

Surety: _____
(Print First Name and Seal)

By: _____

Title: Attorney in Fact

Surety Contact Information where any notice of
claim should be sent:

Name: _____

Mailing
Address: _____

Physical
Address: _____

Telephone
Number: _____

The address of the Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free number: 1-800-252-3439.

[ATTACH POWER OF ATTORNEY FOR SURETY'S ATTORNEY-IN FACT]

EXHIBIT B-3
FORM OF BID BOND

(SEE ATTACHED)

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

KNOW ALL PERSONS BY THESE PRESENTS,

That we, (Bidder Name) _____ hereinafter referred to as "Principal," and (Surety Name) _____, a corporation or firm duly authorized to transact surety business in the State of Texas, hereinafter called the Surety, are held and firmly bound unto **Tarrant County Hospital District d/b/a JPS Health Network**, a hospital district and political subdivision of the State of Texas, hereinafter referred to as "JPS", in the sum of _____ Dollars (\$ _____), the payment of which sum will be well and truly, made, and the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Proposal to perform work for the following project of JPS, identified as _____.

NOW, THEREFORE, if JPS shall award the Contract for the foregoing project to the Principal, and the Principal shall satisfy all requirements and conditions required for the execution of the Contract and shall enter into the Contract in writing with JPS in accordance with the terms of such proposal, then this bond shall be null and void. If the Principal fails to execute such Contract in accordance with the terms of such Proposal or fails to satisfy all requirements and conditions required for the execution of the Contract in accordance with the Proposal, this Bond shall become the property of JPS, without recourse of the Principal and/or Surety, not as a penalty but as liquidated damages.

Signed this _____ day of _____, 20____.

Principal Name: _____

By: _____

Its: _____

Surety: _____

By: _____

Its: Attorney-in-Fact

[ATTACH POWER OF ATTORNEY FOR SURETY'S ATTORNEY-IN-FACT]

EXHIBIT C
OWNER'S SPECIAL CONDITIONS

EXHIBIT C

OWNER'S SPECIAL CONDITIONS

Capitalized terms as used herein such as "Owner", "Construction Manager", "Subcontractor", "Project", and "Agreement" are used as defined in that certain *Standard Form of Agreement between Owner and Construction Manager as Constructor*, AIA Document A133 – 2019 ed., as modified for this Project, and shall each have the meanings set forth in the Agreement. Definitions set forth in Section 1.1 of the *General Conditions of the Contract for Construction*, AIA Document A201-2017 ed., as modified for this Project, are hereby fully incorporated into this **Exhibit C** as if copied verbatim herein.

1. Confidentiality

1.1 Protection of Confidential Information. Construction Manager hereby acknowledges, understands and agrees: (i) that in the course of conducting its due diligence regarding the provision of services to Owner, certain Confidential Information will be disclosed to Construction Manager; and (ii) that whether developed by Owner or others employed by or associated with Owner, all Confidential Information is, and shall remain, the exclusive and confidential property of Owner, and shall be at all times regarded, treated and protected as such by Construction Manager in accordance with the Agreement. Failure to mark any information "Confidential" shall not affect the confidential nature of such information.

1.2 Confidential Information. Confidential Information includes the information set forth in Section 1.1.8 of the A201-2017, and includes the following:

1.2.1 Work product resulting from, or related to the business and/or operations of Owner, including but not limited to, methods, processes, procedures, analysis, techniques, and audits used by Owner in connection therewith.

1.2.2 Computer software of any type or form in any stage of actual or anticipated research and development, including, but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, and system designs.

1.2.3 Information relating to Owner's proprietary rights prior to any public disclosure thereof, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights, and trade secrets).

1.2.4 Internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services, and agreements), customer lists and contacts, business plan(s), purchasing and internal cost information, internal services and operational manuals, pricing, marketing, and all other manner and methods of conducting Owner's business.

1.2.5 Marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and

methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of Owner which have been or are being discussed.

1.3 Covenants. As a consequence of Construction Manager's acquisition or anticipated acquisition of Confidential Information, Construction Manager will occupy a position of trust and confidence to Owner with respect to Owner's affairs and business. In view of the foregoing and of the mutual consideration to be provided to each party, Construction Manager agrees that it is reasonable and necessary that it make the following covenants:

1.3.1 Both during and forever after the performance of any due diligence investigation, Construction Manager will not disclose Confidential Information to any person or entity other than as necessary in carrying out its duties on behalf of Owner and/or due diligence investigation, without first obtaining Owner's prior, written consent, and Construction Manager will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against Construction Manager's disclosure of Confidential Information includes, but is not limited to, disclosing the fact that any similarity exists between the Confidential Information and information independently developed by another person or entity, and Construction Manager understands that such similarity does not excuse Construction Manager from abiding by its covenant or other obligations pursuant to the Agreement.

1.3.2 Both during and after the conduct of its due diligence investigation, Construction Manager will not use, copy, or transfer Confidential Information other than as necessary in carrying out its duties on behalf of Owner and/or due diligence investigation, without first obtaining prior written consent of Owner, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against Construction Manager's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing, or otherwise exploiting, directly or indirectly, any products or services, including software in any form, that embody or are derived from Confidential Information.

1.4 Use. Construction Manager agrees not to make any written use of or reference to Owner's name or registered or unregistered trademarks (or any names under which Owner conducts business or operations) for any marketing, public relations, advertising, display or other business purpose or make any use of Owner's facilities for any activity related to the express business purposes and interests of Owner pursuant to the Agreement, without the prior written consent of Owner, which consent may be withheld or granted in Owner's sole and absolute discretion. Construction Manager agrees not to utilize, either directly or indirectly, any Confidential Information in order to facilitate or create direct business relationships with business customers of Owner.

1.5 Open Records Request or Similar Requests for Information. In the event that Construction Manager receives a request to disclose all or any part of the Confidential Information under the terms of the Texas Public Information Act, a subpoena or other order issued by a court of competent jurisdiction or by another governmental agency, Construction Manager shall: (i) notify Owner of the existence, terms, and circumstances surrounding such a request within one (1) business day of the receipt of the request; (ii) notify the entity requesting the information that such a request for information should be submitted to Owner, not Construction Manager; (iii) provide the entity requesting the information the contact information of Owner's public information coordinator; and (iv) forward all responsive information to Owner within two (2) business days of the receipt of the request.

1.6 Confidentiality Provisions Applicable to Owner. Subject to the provisions of Section 1.7 below, Owner shall keep confidential all information, in whatever form, produced, prepared, or observed by Construction Manager to the extent that such information is stamped "Confidential Information" or otherwise determined to be confidential by Applicable Laws.

1.7 Public Records. Notwithstanding any provisions of the Agreement to the contrary, Construction Manager understands that Owner will comply with the Texas Public Information Act, Tex. Gov't. Code Ch. 552. If contacted by Owner, Construction Manager will cooperate with Owner in the production of documents responsive to the request. Construction Manager agrees to provide the documents responsive to the request in the format and within the time frame specified by Owner. Construction Manager may request that Owner seek an opinion from the Office of the Attorney General of Texas. However, the final decision whether to seek a ruling from the Office of the Attorney General of Texas will be made by Owner in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, Construction Manager will notify Owner's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with the Agreement and/or any amendment to the Agreement. The Agreement and/or any amendment to the Agreement and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Construction Manager agrees to maintain the confidentiality of information received from Owner during the performance of the Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Construction Manager is required to make any information created or exchanged with the State pursuant to the Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by Owner at no additional charge to the Owner.

2. Suspension and Debarment. Construction Manager, on behalf of itself and its employees, agents, representatives, and Subcontractors, represents that as of the date of, and at all times during the term of, the Agreement, the following shall be true, complete, and correct:

2.1 Construction Manager is in compliance or will comply with, to the extent applicable, Owner's compliance program and all applicable federal and state laws and regulations therein, including, but not limited to, federal and state healthcare fraud and abuse provisions;

2.2 Construction Manager is not a target or subject of a federal or state criminal, civil, or administrative investigation;

2.3 Construction Manager is not a party to any actual or threatened criminal, civil, or administrative action or proceeding concerning a potential violation of federal or state laws including, but not limited to, federal or state healthcare fraud and abuse provisions;

2.4 Construction Manager has not been convicted of any crime relating to any federal and/or state program; and

2.5 Construction Manager is not, and has not previously been, excluded, debarred, suspended, or otherwise deemed ineligible from participating in any federal or state healthcare program or other federal or state program.

During the term of the Agreement, Construction Manager shall immediately give Owner written notice if Construction Manager is not in compliance with any provision of this Section 2. Upon the occurrence of

such event, whether or not notice is given to Owner, Owner may terminate the Agreement effective immediately upon written notice to Construction Manager.

3. Historically Underutilized Businesses. Construction Manager will proactively comply with Owner's established policies regarding the utilization of S/W/MBE/HUB entities and goals, and all other applicable administrative rules and statutes relating to utilization of S/W/MBE/HUB entities for the Project.

4. Equal Opportunity. Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Construction Manager shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion, or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. Construction Manager shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination Section. Construction Manager shall include this Section in all subcontract agreements pertaining to the services to be provided under the Agreement.

5. Nondiscrimination. In their execution of the Agreement, the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of the Agreement.

6. Immigration Reform. The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. Owner is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors, subcontractors, and consultants who contract with the Owner. Construction Manager shall not place any employee of Construction Manager at a worksite, nor shall Construction Manager permit any employee, nor any Subcontractor, to perform any work on behalf of, or for the benefit of, Owner without first confirming said employee's authorization to lawfully work in the United States. Construction Manager states that Construction Manager: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with Applicable Law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to Construction Manager's senior management; and (iv) is without knowledge of any fact that would render any employee or any Subcontractor ineligible to legally work in the United States. Construction Manager further acknowledges, agrees, and states that it: (i) has complied, and shall at all times during the term of the Agreement comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement, including, without limitation, the completion and maintenance of the Form I-9 for each of Construction Manager's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, Construction Manager

shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by Owner or any state or county agency of Construction Manager or any of its employees. Construction Manager acknowledges, agrees, and represents that all Subcontractors permitted by it to perform services hereunder will be required to agree to these same terms as a condition to being awarded a contract for the performance of such services.

7. E-Verify. By entering into the Agreement, Construction Manager certifies and ensures that it utilizes and will continue to utilize, for the term of the Agreement, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: (i) all persons employed to perform duties within the State of Texas, during the term of the Agreement; and (ii) all persons (including all Subcontractors) assigned by the Construction Manager to perform services pursuant to the Agreement, within the United States of America. Construction Manager shall provide, upon request of Owner and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Construction Manager and Subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be immediately terminated, at the discretion of Owner, and at no fault to Owner, with no prior notification. Construction Manager shall also be responsible for the costs of any re-solicitation that Owner must undertake to replace the terminated Agreement. For persons not eligible for E-Verify screening, Construction Manager (along with all Subcontractors) shall provide, upon request by Owner, another form of documentation of proof of eligibility to work in the United States of America.

8. Entities that Boycott Israel. Pursuant to *Tex. Gov't. Code §2271.002*, Construction Manager certifies that either (i) it meets an exemption criteria under *Tex. Gov't. Code §2271.002*; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Construction Manager shall state any facts that make it exempt from the boycott.

9. Entities that Boycott Energy Companies. Pursuant to *Tex. Gov't. Code §2274.002*, Construction Manager certifies that either (i) it meets an exemption criteria under *Tex. Gov't. Code §2274.002*, or (ii) it does not boycott companies that engage in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and do not commit or pledge to meet environmental standards beyond applicable federal and state law ("Energy Companies") and will not boycott Energy Companies during the term of the Agreement. "Boycott Energy Company" has the meaning provided in *Tex. Gov't. Code §809.001*. Construction Manager shall state any facts that make it exempt from verification.

10. Entities that Discriminate against Firearms Entities or Trade Associations. Pursuant to *Tex. Gov't. Code §2274.002*, Construction Manager certifies that either (i) it meets an exemption criteria under *Tex. Gov't. Code §2274.002*, or (ii) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association (as defined under *Tex. Gov't. Code §2274.001*) and will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. Construction Manager shall state any facts that make it exempt from verification.

11. Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or other Foreign Terrorist Organizations. In accordance with *Tex. Gov't. Code §2252.152*, Owner is prohibited from entering into a governmental contract (as defined in *Tex. Gov't. Code §2252.151(3)*) with a company that is identified on a list prepared and maintained under *Tex. Gov't. Code §§806.051, 807.051, or 2252.153*. If Construction Manager is on the above-referenced list, the Agreement will be considered void or voidable and Owner will not be responsible to pay Construction Manager for any services performed.

12. Excluded Parties. Construction Manager certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

13. No Conflicts. Construction Manager represents that Construction Manager has no actual or potential conflicts of interest in providing services to Owner under the Agreement and that Construction Manager's provision of services under the Agreement would not reasonably create an appearance of impropriety.

14. Deceptive Trade Practices Act; Unfair Business Practices Disclosures. Construction Manager represents and states that it has not been found liable of Deceptive Trade Practices Act violations under *Tex. Bus. & Com. Code Ch. 17* or of any unfair business practice in any administrative hearing or court suit. Construction Manager further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under *Tex. Bus. & Com. Code Ch. 17* or of any unfair business practices against either Construction Manager or any of Construction Manager's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then Construction Manager has disclosed all such matters to Owner and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

15. Disclosure of Interested Parties. Construction Manager certifies that, if the value of the Agreement or the anticipated value of the Agreement exceeds One Million Dollars (\$1,000,000), it has complied with *Tex. Gov't. Code §2252.908* and *1 Tex. Admin. Code §§46.1* through *§46.3* as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Construction Manager.

16. General and Criminal Background Checks

16.1 Construction Manager represents that Construction Manager and Construction Manager's employees have not been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, Construction Manager has fully advised Owner as to the facts and circumstances surrounding the conviction.

16.2 Construction Manager, and all of Construction Manager's employees and Subcontractors that will perform any work or services on-Site at a county-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Construction Manager.

16.3 All criminal background check forms for the Construction Manager and all of Construction Manager's employees and Subcontractors that will initially commence any work on-Site must be fully completed and submitted to Owner within **fifteen (15)** Days of the date of the appropriate notice of award, and the process thereafter must be diligently pursued by Construction Manager. All criminal background checks must be completed before the Construction Manager, or any employee or Subcontractor, performs any services at the Site.

16.4 All criminal background checks must be accomplished by the Texas Department of Public Safety (the "DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of the Construction Manager and Construction Manager's employees and Subcontractors, DPS, or Owner, will adjudicate the results of the criminal background searches in accordance with Owner's background check requirements

and guidelines. The failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the performance of the services hereunder.

17. Use of Owner Property. Construction Manager is prohibited from using Owner Property for any purpose other than performing services authorized under the Agreement. "Owner Property" includes, but is not limited to: Owner's office space, identification badges, Owner information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Owner issued software, the Owner's Virtual Private Network (VPN client)) information, and any other resources of Owner. Construction Manager shall not remove Owner Property from the Owner's campus. Construction Manager may not use any computing device to access Owner's network or e-mail. Construction Manager shall not perform any maintenance services on Owner's Property unless the Agreement expressly authorizes such services. During the time that Owner Property is in the possession of Construction Manager, Construction Manager shall be responsible for (i) all repair and replacement charges incurred by Owner that are associated with loss of Owner Property or damage beyond normal wear and tear; and (ii) all charges attributable to Construction Manager's use of Owner Property that exceeds the scope of the Agreement. Construction Manager shall fully reimburse such charges to Owner within **ten (10) Days** of Construction Manager's receipt of Owner's notice of amount due. Use of Owner Property for a purpose not authorized by the Agreement shall constitute breach of the Agreement and may result in termination of the Agreement and the pursuit of other remedies available to Owner under contract, at law, or in equity.

18. Drug-Free Work Place. Construction Manager, Construction Manager's employees, and Subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Construction Manager, Construction Manager's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

19. No Smoking. All facilities where Work is to be performed or services rendered are nonsmoking buildings. Construction Manager, Subcontractors, and all of their employees are prohibited from smoking in all areas except in areas designated for smoking.

20. Signage. Neither Construction Manager, nor any Subcontractor, shall display or distribute any advertising signs or notices of any kind whatsoever upon Owner's premises without the prior written permission of Owner.

EXHIBIT D

OWNER-PROVIDED INFORMATION

Owner shall, with reasonable promptness, provide Construction Manager a copy of, or reasonable access to, the following information and documentation regarding the Project:

1. Owner's Construction, Renovation and Maintenance Activity Safety Policy dated 06/07/2021.
2. Owner's Rules and Regulations for Construction.
3. Owner's HIPAA Policy.

EXHIBIT E
PRECONSTRUCTION INVOICE FORMAT

EXHIBIT F
PRECONSTRUCTION HOURLY RATES/SALARIES/WAGES

NOT USED.

EXHIBIT G

WORK PACKAGE AUTHORIZATION TEMPLATE

WORK PACKAGE AUTHORIZATION NO. _____

Project: _____ (the “Project”)

Date: _____, 202__

To: _____ (“Construction Manager”)

Agreement: **Standard Form of Agreement Between Owner and Construction Manager as Constructor – AIA Document A133 – 2019, dated _____, 202__ (the “Agreement”)**

Capitalized terms as used herein such as “Owner”, “Construction Manager”, “Subcontractor”, and “Project” shall each have the meanings set forth in the Agreement. Definitions set forth in Section 1.1 of the A201-2017 are hereby fully incorporated into this Work Package Authorization as if copied verbatim herein.

Pursuant to Section 3.3 of the Agreement, the following scope of Work is authorized as a Work Package in connection with the above-referenced Project:

1. Scope of Work:

- (a) Construction Manager is authorized to proceed with the following scope of Work:

[Describe scope of Work]

- (b) Construction Manager intends to utilize the following Subcontractors in connection with the Work Package:

Subcontractor	Scope of Work	Contract Amount

Total: \$ _____

- (c) Construction Manager intends to self-perform the following scope of Work:

[Describe scope of Work]

2. Notice to Proceed:

Construction Manager is hereby given Notice to Proceed with the scope of Work described above as of the ____ day of _____, 202__.

3. Authorized Amount:

The authorized amount of this Work Package Authorization (“Authorized Amount”), subject to approved Change Orders, shall not exceed (*check one*):

☐	A lump sum amount of \$_____, which sum is inclusive of all labor, materials, equipment, fees, and profit/mark-ups.
☐	\$_____, which includes (a) the Cost of the Work, plus (b) Construction Manager’s Fee of [\$_____/____%], plus (c) a Contingency of [\$_____/____%].

The Authorized Amount shall not be exceeded without the express written authorization of Owner.

4. Allowances:

The following Allowances are included in the Authorized Amount:

- (a)
- (b)
- (c)

5. Alternates:

The following Alternates have been accepted by Owner and are included in the Authorized Amount:

- (a)
- (b)
- (c)

6. Unit Prices:

The Authorized Amount is based upon the following Unit Prices:

Item	Units and Limitations	Price Per Unit (\$0.00)
1.		
2.		
3.		
4.		

Supporting Documentation Attached (Check if Applicable):

- ☐ Construction Manager's Schedule of Values is attached hereto as **Attachment 1**.
- ☐ A breakdown of Construction Manager's General Conditions Costs is attached hereto as **Attachment 2**.
- ☐ Construction Manager's Labor Burden Schedule is attached hereto as **Attachment 3**.
- ☐ A list of Drawings and Specifications is attached hereto as **Attachment 4**.
- ☐ A schedule for the scope of Work authorized herein is attached hereto as **Attachment 5**.
- ☐ Assumptions, Clarifications, and Qualifications for the scope of Work authorized herein are attached hereto as **Attachment 6**.
- ☐ A list of the Construction Manager's Key Personnel is attached hereto as **Attachment 7**.
- ☐ A list of Construction Manager-Owned Equipment Rental Rates is attached hereto as **Attachment 8**.
- ☐ Construction Manager's Quality Control Plan for the scope of Work authorized herein is attached hereto as **Attachment 9**.
- ☐ Construction Manager's Performance and Payment Bonds for the Work covered under this Work Package Authorization.

****In accordance with the requirements of *Tex. Gov't. Code § 2269.258 and § 2253.001 et seq.* and **Exhibit B** to the Agreement, the performance and payment bonds must be in penal sums equal to 100% of the Work Package authorized and in the form required by Owner, attached as **Attachment 10**.**

- ☐ Certificates of Insurance (Subcontractors):

(No Work shall be performed unless and until Construction Manager has verification that the Subcontractors performing Work under this Work Package Authorization have provided the insurance coverages with the designated policy limits required under **Exhibit B** to the Agreement. Construction Manager shall send evidence of Subcontractors' insurance coverage to Owner.)

The Authorized Amount of this Work Package Authorization will be included in the Final Guaranteed Maximum Price as set forth in Section 3.3 of the Agreement. Any fee included in this Work Package Authorization shall be deducted from the Work Package Authorization if, upon determination of the Final Guaranteed Maximum Price, the Work under the Work Package Authorization is incomplete. Fee shall be included in the Final Guaranteed Maximum Price only once. All terms and conditions of the Agreement shall continue in full force and effect and shall apply to the scope of Work to be performed under this Work Package Authorization.

OWNER:

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

CONSTRUCTION MANAGER:

[_____]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT H

GENERAL CONDITIONS COST

Construction Manager's General Conditions Costs for the Project shall not exceed Three Million Six Hundred Fifty Thousand Eight Hundred Sixty-Eight and No/100 Dollars (\$3,650,868.00).

*Construction Manager shall submit specific justification and all estimated costs to Owner for approval prior to incurring any such costs.

Items that the Construction Manager intends to keep after the completion of the Project shall not be included in the General Conditions. Examples include, but are not limited to, company computers, laptops, projectors, iPads, printers, and furniture.



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

PS PAVILION OR AHU REPLACEMENT

1575 S. Main Street
Fort Worth, Texas 76104

THE OWNER:

(Name, legal status and address)

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

1500 South Main Street
Fort Worth, Texas 76104

THE ARCHITECT:

(Name, legal status and address)

HOEFER WELKER

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

BATSON COOK COMPANY

1431 Greenway Drive, Suite 740
Irving, TX – 75038

THE PROJECT MANAGER:

(Name, legal status, address and other information)

Broaddus-LeVis
916 Bryan Avenue
Fort Worth, Texas 761046

TABLE OF ARTICLES

- | | |
|---|--|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
| 3 | CONTRACTOR |
| 4 | ARCHITECT |
| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
| 8 | TIME |

ADDITIONS AND DELETIONS:

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

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

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

Init.

/

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:45:14 ET on 10/08/2024 under Order No.3104242835 which expires on 11/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1853443436)

9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	TERMINATION OR SUSPENSION OF THE CONTRACT
15	CLAIMS AND DISPUTES

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

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

Access to Work

3.16, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

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

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

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

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,

3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

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

Architect, Limitations of Authority and Responsibility

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

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

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

Architect's Inspections

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

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

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

Architect's Relationship with Subcontractors

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

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

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

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

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

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

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

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

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

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

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

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

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

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

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

Claims for Additional Time

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

Concealed or Unknown Conditions, Claims for

3.7.4

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

Claims Subject to Arbitration
15.4.1

Cleaning Up

3.15, **6.3**

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

Commencement of the Work, Definition of

8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND

9

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

Compliance with Laws

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

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

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

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

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

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

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

Contract Documents, Definition of

1.1.1

Contract Sum

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

Contract Sum, Definition of

9.1

Contract Time

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

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal

Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

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

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, **15.1.5**
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

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

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

Faulty Work
(See Defective or Nonconforming Work)

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

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1
Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, **10.3**

Identification of Subcontractors and Suppliers
5.2.1

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

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

Initial Decision
15.2

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

Injury or Damage to Person or Property
10.2.8, 10.4

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

Instructions to Bidders
1.1.1

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

Instruments of Service, Definition of
1.1.7

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

Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability
11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS
11

Insurance Companies, Consent to Partial Occupancy
9.9.1

Insured loss, Adjustment and Settlement of
11.5

Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest
13.5

Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written
4.2.11, 4.2.12

Judgment on Final Award
15.4.2

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

Labor Disputes
8.3.1

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

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

Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1

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

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

Materials, Hazardous
10.2.4, **10.3**

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

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

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

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

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

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

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

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

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

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

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

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

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

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

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

Owner's Authority

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

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

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

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

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

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

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

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

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

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

Payment, Certificates for

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

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

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

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.2

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, 13.3, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of

6.1.1

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

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

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,

9.9.1, 9.10.2, 9.10.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.3

Substances, Hazardous

10.3

Substantial Completion

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

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers

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

Surety

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

Surety, Consent of

9.8.5, 9.10.2, 9.10.3

Surveys

1.1.7, 2.3.4

Suspension by the Owner for Convenience

14.3

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor

14.1, 15.1.7

Termination by the Owner for Cause

5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience

14.4

Termination of the Architect

2.3.3

Termination of the Contractor Employment

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

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

TIME

8

Time, Delays and Extensions of

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

Time Limits

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

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

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

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

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

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 Agreement. The "Agreement" means the *Standard Form of Agreement Between Owner and Construction Manager as Constructor* where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed *Maximum Price*, AIA A133, as modified for the Project.

§ 1.1.2 Applicable Law. "Applicable Law" or "Applicable Laws" means any and all laws, statutes, rules, regulations, ordinances, codes, permits, or orders of any federal, state, or local Authorities Having Jurisdiction (including but not limited to the City of Fort Worth) over the Project, all as in effect as of the date of the Agreement and as amended during the term of the Contract including those governing labor, equal employment opportunity, safety, and environmental protection, and further including, without limitation, (i) all applicable zoning ordinances, building codes, and fire and life safety codes; (ii) all accessibility laws and codes including but not limited to the Texas Accessibility Standards of the Architectural Barriers Act (TAS), *Chapter 469 of the Texas Government Code*, Elimination of Architectural Barriers, the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101), the 2010 ADA Standards for Accessible Design, and current ADAAG Standards; (iii) all standards relating to construction, inspection, and safety of hospitals set forth in *Tex. Admin. Code §133* particularly including, but not limited to Subchapter F, H and I, and *Tex. Admin. Code § 135*, particularly including, but not limited to Subchapters B and C, excluding the development, implementation, or enforcement of any operational policy or plan, periodic inspection requirements following the issuance of the Certificate of Occupancy, and any "reporting" required of Owner by *Tex. Admin. Code §135*; (iv) occupational safety acts and requirements applicable to the Project, including United States Occupational Safety and Health Administration requirements and related federal and state regulations; (v) requirements of the Fair Labor Standards Act and applicable state wage and hour laws including *Tex. Gov't. Code § 2258.001 et seq.*; (vi) any laws respecting the assumption of liability for taxes, contributions and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities or other similar benefits for Construction Manager's and its Subcontractors' employees; (vii) applicable laws relating to civil/human rights, including but not limited to (a) requirements under Titles VI and VII of the Civil Rights Act of 1964, as amended, (b) the Equal Pay Act of 1963, (c) the Rehabilitation Act of 1973, and (d) the Age Discrimination in Employment Act requirements; (viii) green building policies and regulations and sustainable building codes, including those implemented by the City of Fort Worth; (ix) all Environmental Laws, applicable storm water, street, utility and other related infrastructure requirements, requirements related to the use, removal, storage, transportation, disposal and remediation of Hazardous Materials and lead based paint, and all related health laws and regulations; (x) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and (xi) The Facilities Guidelines Institute Guidelines for Design and Construction of Outpatient Facilities (2018 edition) and Guidelines for Design and Construction of Hospitals (2018 edition); (xii) Centers for Medicare and Medicaid Services (CMS.gov) State Operations Manual for Ambulatory Surgical Centers and State Operations Manual for Hospitals; and (xiii) any other applicable local, state, and federal laws respecting the Project, including, but not limited to those listed in **Exhibit C** and **Exhibit D** hereto.

§ 1.1.3 Architect. The "Architect" is the professional architect or engineer employed by the Owner to perform all or part of the design services and the construction administration services, as detailed in that certain agreement between Owner and Architect and discussed herein in Article 4.

§ 1.1.4 As-Built Documents. "As-Built Documents" means the Drawings, Specifications, and other materials maintained by the Construction Manager that document all addenda, Architect's supplemental instructions, Change Orders, responses to Requests for Information, and other postings and markings that record the as-constructed conditions of the Work and all changes made to the Construction Documents during construction.

§ 1.1.5 Authority/ies Having Jurisdiction. "Authority Having Jurisdiction" or "Authorities Having Jurisdiction" means a federal, state, local, or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.

§ 1.1.6 Building Information Model. "Building Information Model" or "BIM" means the computable, digital, multi-dimensional representation of the physical and functional characteristics of the Project's facilities and their related life-cycle information in Autodesk Revit format and Autodesk Civil 3D, to be used as a repository of design and construction information for use by the Project team during the design, bidding and construction phases of the Project,

and for Owner's use throughout the life-cycle of the Project. Members of the Project Team are required to coordinate all efforts with respect to the BIM in accordance with the protocols established by the Owner.

§ 1.1.7 Close-Out Documents. "Close-out Documents" means the product brochures, Submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, As-Built Documents, Record Drawings, waiver and release of lien documents, consent of surety, and any other document required of the Construction Manager as a condition to Final Payment as set forth in more detail in Section 11.2 of the Agreement and Section 9.10 herein.

§ 1.1.8 Confidential Information. "Confidential Information" shall mean all information, whether or not originated by Owner, which is used in, or a part of, Owner's business and operations and is: (i) proprietary to, about, or created by Owner; (ii) gives Owner some competitive advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of Owner; (iii) designated as "Confidential Information" by Owner, or from all the relevant circumstances should reasonably be assumed by Construction Manager to be confidential and proprietary to Owner; or (iv) not generally known by Construction Manager. "Confidential Information" shall not include information that: (i) is or becomes available to the public generally, other than as a result of disclosure by Construction Manager in breach of the terms of this Agreement; (ii) becomes available to Construction Manager from a source (other than Owner) which source is not, to the best of Construction Manager's knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by Construction Manager.

§ 1.1.9 Construction Document(s). "Construction Document(s)" means, collectively, the Drawings, Specifications, details, Submittals, and other documents prepared by the Architect or Architect Consultants, that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements required for construction of the Project.

§ 1.1.10 Construction Services. "Construction Services" means and includes methods, techniques, sequences and procedures provided or to be provided to the Construction Manager in connection with the Work, all of which shall be performed in a good and workmanlike manner, in strict accordance with the Contract Documents and all Applicable Laws, within the Contract Time, and not to exceed the Final Guaranteed Maximum Price as provided in **Exhibit AA** Also referred to in the Contract Documents as the "Construction Phase" and/or the "Construction Services Phase".

§ 1.1.11 Contingency. The "Contingency" is a separately identified amount agreed to by Owner and Construction Manager included in the Cost of the Work as set forth in the Final Guaranteed Maximum Price Amendment (**Exhibit A**) to be used only in the limited circumstances described in Section 3.2.3 of the Agreement and only with prior written approval of the Owner.

§ 1.1.12 The Contract. The Contract Documents form the "Contract" for Construction. The Contract includes the Agreement, this AIA Document A201-2017 (as modified for this Project), and all other Contract Documents and represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. A Modification is a (1) written amendment to the Contract signed by both parties, (2) a Change Order, or (3) an Owner Change Directive. The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between the Construction Manager and the Architect or the Architect's consultants, (b) between the Owner and a Subcontractor or a Sub-subcontractor, (c) between the Owner and the Architect or the Architect's consultants, (d) between the Project Manager and Construction Manager, or (e) between any persons or entities other than the Owner and the Construction Manager. The Project Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Project Manager's and Architect's duties. Conflicts or inconsistencies in the Contract Documents shall be resolved as set forth in Section 2.1.1 of the Agreement.

§ 1.1.13 Contract Documents. "Contract Documents" shall have the meaning assigned to it in Article 2 of the Agreement.

§ 1.1.14 Contract Sum. The "Contract Sum" is the amount to be paid to the Construction Manager for performance of the Work, as identified in Article 6 of the Agreement.

§ 1.1.15 Contract Time. Unless otherwise provided, the "Contract Time" is the period of time, including authorized adjustments, as set forth in the Final Guaranteed Maximum Price Amendment for Substantial Completion of the Work.

§ 1.1.16 Day. "Day" means calendar day, unless otherwise stated herein.

§ 1.1.17 Drawings. The "Drawings" are the plans, drawings, profiles, cross-sections, and supplemental drawings, or reproductions thereof, prepared by the Architect and approved by Owner, which show the locations, character, dimensions, elevations, sections, and details of the Work for the Project.

§ 1.1.18 Environmental Laws. "Environmental Laws" shall mean any and all federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Project or Owner's property, including without limitation the following, as now or hereafter amended: (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613; (ii) the Resource, Conservation and Recovery Act, 42 U.S.C.A. § 6901 *et seq.* as amended by the Used Oil Recycling Act of 1980 (Pub. L. No. 96-463, 94 Stat. 2055 (1980)), the Solid Waste Disposal Act Amendments of 1980 (Pub. L. No. 96-482, 94 Stat. 2334 (1980)), and the Hazardous and Solid Waste Amendments of 1984 (Pub. L. No. 98-616, 98 Stat. 3221 (1984)), and regulations promulgated thereunder; (iii) the Toxic Substances Control Act, 15 U.S.C.A. § 2601 *et seq.*; (iv) Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C.A. § 11001 *et seq.*; (v) the Clean Water Act, 33 U.S.C.A. § 1251 *et seq.* and National Pollutant Discharge Elimination System (NPDES) regulations; (vi) the Clean Air Act, 42 U.S.C.A. § 7401 *et seq.*; (vii) 2008 Lead Based Paint Renovation, Repair and Painting Program Rule, 40 CFR Part 7445, Subpart E; and (viii) any corresponding state laws or ordinances including, without limitation, the (a) Texas Water Quality Control Act; (b) the Texas Water Code Chapter 26; (c) Texas Solid Waste Disposal Act; (d) Texas Health & Safety Code Chapter 361; (e) Texas Clean Air Act, THSC Chapter 382; and (ix) regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, rules, guidelines, and standards as are amended from time to time.

§ 1.1.19 Final Completion. "Final Completion" shall mean the date when the Work of the Project has been fully performed pursuant to the Contract Documents, including completion of any Change Orders and Owner Change Directives, but excluding warranty or repair work, and all requirements of Section 9.10 herein and Section 11.2 of the Agreement have been satisfied.

§ 1.1.20 Final Payment. "Final Payment" shall mean the final payment made to the Construction Manager following achievement of Final Completion of the Work in accordance with Section 9.10 herein and Section 11.2 of the Agreement.

§ 1.1.21 General Conditions Costs. "General Conditions Costs" shall mean the Construction Manager's allowed reimbursable expenses, including dedicated on-Site management, administrative, and supervisory personnel costs, insurance, bonds, equipment, utilities and incidental work, including minor field labor and materials and other on-Site costs and expenses incurred by the Construction Manager in the performance of its administrative, supervisory, and management responsibilities under the Contract as further described in Section 7.1.4 of the Agreement and as set forth in the Final Guaranteed Maximum Price Amendment **Exhibit A** and **Attachment 5 to Exhibit A**.

§ 1.1.22 Final Guaranteed Maximum Price or Final GMP. "Final Guaranteed Maximum Price" or "Final GMP" means that certain not-to-exceed amount, proposed and guaranteed by Construction Manager and accepted by Owner, for construction of the Project in accordance with and as reasonably inferred by the Contract Documents, as such amount may be adjusted pursuant to the terms of the Contract Documents, including authorized Change Orders, as set forth in the Final Guaranteed Price Amendment (**Exhibit A**).

§ 1.1.23 Hazardous Materials. "Hazardous Material(s)" or "Hazardous Substance" shall mean any flammables, explosives, radioactive materials, petroleum-based materials exceeding applicable federal, state, or local regulatory limits, asbestos, polychlorinated biphenyl (PCB), radon, and other toxic substances or related materials, including without limitation substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," "toxic substances," or "solid wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 2601, *et seq.*; and any other Applicable Law, including Environmental Laws, and all amendments and revisions

thereto. The term "Hazardous Materials" shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils, or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to, asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, fuels, lubricating oils and solvents, urea formaldehyde, flammable materials, explosives, PCBs, radon, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment or which may impair the beneficial use of property.

§ 1.1.24 Instruments of Service. "Instruments of Service" are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect, the Architect's consultants, Owner's Consultants, or Construction Manager's consultants under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, BIM Models, sketches, Drawings, Specifications, and other similar materials.

§ 1.1.25 Notice to Proceed. A "Notice to Proceed" is written authorization from the Owner to the Construction Manager specifying the date Preconstruction Services and Construction Services shall begin and any conditions regarding the commencement of such services and/or Work.

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

§ 1.1.27 Owner Consultant. An "Owner Consultant" is a person or entity providing professional services for the Owner directly for a portion of the Work. "Owner Consultant" is referred to throughout the Contract Documents as if singular in number. To the extent required by the relevant jurisdiction, an Owner Consultant shall be lawfully licensed to provide the required professional services.

§ 1.1.28 Owner's Estimated Construction Cost. The Owner's Estimated Construction Cost is that amount the Owner estimates as the Costs of construction of the Project not including Construction Manager's General Conditions Costs or Fee.

§ 1.1.29 Preconstruction Services. "Preconstruction Services" are those set forth in Section 3.1 of the Agreement to be provided by Construction Manager prior to the execution of the Final Guaranteed Maximum Price Amendment and as designated in writing by Owner. Also referred to in the Contract Documents as the "Preconstruction Phase" and the "Preconstruction Services Phase".

§ 1.1.30 The Project. The "Project" is identified on the first page of this AIA Document A201-2017 (as modified for this Project) and the first page of the Agreement. The Project includes the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.31 Project Manager. "Project Manager" means the entity identified in Section 1.1.9 of the Agreement, and, comprised of licensed professionals retained by the Owner to provide general oversight within its professionals' licensed capabilities, including but not limited to project management services for the Project, strategic Project planning, Site planning, operational planning, budgetary impact analysis, scheduling analysis, review and approvals of Applications for Payment, and Project controls, all as detailed in that certain agreement between Owner and Project Manager.

§ 1.1.32 Project Schedule. The "Project Schedule" is that certain schedule prepared by Construction Manager Based on the Preliminary Schedule provided by Construction Manager, and included as **Attachment 7** to the Final Guaranteed Maximum Price Amendment (**Exhibit A**).

§ 1.1.33 Project Team. "Project Team" means the Owner, Construction Manager, Architect, Project Manager, Owner's designated design consultant(s), any Separate Contractors employed by Owner, and other consultants employed by any of them for the purpose of programming, design, construction, and commissioning of the Project. The constitution

of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from time to time by Owner.

§ 1.1.34 Quality Assurance. "Quality Assurance" means the review, inspection, and testing of materials and Work by Owner through its Project Manager in accordance with Section 3.1.12 of the Agreement during construction of the Work to verify Construction Manager's compliance with the Contract Documents as to performance, effectiveness, and freedom of the Work from defects or errors.

§ 1.1.35 Quality Control. "Quality Control" means a program of testing, coordination, start-up, operational checkout and commissioning of all items of Work included in the Project by Construction Manager that ensures conformance of the Work with the Contract Documents.

§ 1.1.36 Record Drawings. "Record Drawings" are those final, compiled drawings, prepared by the Architect and approved by the Architect and Construction Manager after review of the As-Built Documents and Construction Manager's notes, drawings, and markings thereupon, wherein Architect verifies, in accordance with its Standard of Care, the as-built conditions of the Work.

§ 1.1.37 Request for Information or RFI. "Request for Information" or "RFI" means a written request by Construction Manager directed to the Architect for a clarification of the information contained in the Contract Documents, any Specification, or any Drawing or requesting direction concerning information necessary to perform the Work that may not be contained in the Contract Documents.

§ 1.1.38 Site. "Site" means the property on which the Project is located and surrounding environs otherwise affected or impacted in performing the Work.

§ 1.1.39 Specifications. The "Specifications" are those portions of the Contract Documents prepared by the Architect consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.40 Subcontractor. A "Subcontractor" is a person or entity that has a direct contract with the Construction Manager or a Subcontractor of any tier to perform a portion of the construction required in connection with the Work on the Project. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" includes sub-subcontractors and lower tier contractors (entities who have contracts with sub-subcontractors) but does not include a Separate Contractor retained by Owner.

§ 1.1.41 Submittal. A "Submittal" is any submission by the Construction Manager to the Owner for review and approval, demonstrating how the Construction Manager proposes to conform to the Contract Documents for those portions of the Work for which the Contract Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples.

§ 1.1.42 Substantial Completion. "Substantial Completion" shall have the meaning set forth in Section 9.8.1 herein and Section 1.1.4.3 of the Agreement.

§ 1.1.43 The Work. The term "Work" means the Preconstruction Services and Construction Services required under the Agreement and as further detailed in the Contract Documents (including the Final Guaranteed Maximum Price Amendment), whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations thereunder. The Work may constitute the whole or a part of the Project. The Work includes all labor, parts, supplies, skill, supervision, transportation, services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items needed to produce, construct, and fully complete the Work items shown by the Contract Documents.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Construction Manager shall be required only to the extent

consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition at the time of Contract execution shall apply. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents will be reported to and timely resolved by the Architect after presentation of an RFI by the Construction Manager.

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

§ 1.2.4 The Drawings and Specifications are correlative and have equal authority and priority. Should there be a conflict of terms within themselves, or with each other, base the bids on (and furnish) the most efficient combination of quality and quantity of work indicated. The Architect will clarify the Project requirements in the event of the above mentioned conflicts.

- .1 Figures take precedence over scale measurements.
- .2 Large scale details take precedence over smaller scale details.
- .3 Architectural Drawings take precedence in regard to dimensions, when in conflict with Mechanical and Structural Drawings, except for the size of the structural members.
- .4 Specifically titled Drawings and sections of the Specifications take precedence over indication of the item in a collateral way.
- .5 Existing conditions take precedence over Drawings and Specifications for dimensions.
- .6 Note entries take precedence over graphic indications.

§ 1.3 Capitalization

Terms capitalized in this AIA Document A201–2017 (as modified for this Project) include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

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

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

§ 1.5.1 Copyrights/Trademarks/Instruments of Service. Drawings, Specifications and other documents prepared by Architect, its consultants, other consultants retained by Owner for the Project, or by Construction Manager or its Subcontractors, that describe the Work to be executed by the Construction Manager are Instruments of Service and shall remain the property of their authors (or Owner, as may be provided in the respective contractual agreements between Owner and the respective design professional). These documents are for use on the Project only and the Construction Manager and its Subcontractors shall not use the documents on any other projects. The Construction Manager shall be permitted to retain one record set of such documents. All other copies of the documents shall be returned to their respective authors or owners or otherwise suitably accounted for. The Construction Manager and its Subcontractors are authorized to reproduce and use portions of the documents as necessary and appropriate for the execution of the Work. Submission or distribution of the documents to meet official regulatory requirements or for other purposes in connection with the Project shall not diminish the author's or owner's rights.

§ 1.5.1.1 Construction Manager agrees that all Instruments of Service prepared by Construction Manager pursuant to this Agreement are subject to the rights of Owner in effect on the date of execution of this Agreement. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of the instruments of service in response to a public information request pursuant to *Tex. Gov't. Code Ch. 552*. If the instruments of service produced by Construction Manager are subject to copyright protection, Construction Manager hereby grants to Owner a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. Owner shall be further authorized to make subsequent use of any instruments of service for any and all future renovations, modifications, alterations, maintenance, repairs, and the like, of the Project. Construction Manager shall include appropriate provisions to achieve these purposes in all Subcontracts entered into that produce information subject to copyright protection. All Instruments of Service, including Shop Drawings and Drawings and Specification, shall be stamped "Confidential Information" by the Architect and/or Architect's Consultants, Construction Manager, or Subcontractors.

§ 1.5.1.2 Construction Manager shall promptly provide copies of all Instruments of Service in Construction Manager's possession to Owner upon completion, termination, or cancellation of this Agreement for any reason, including all copies in any form or medium specified by Owner in this Agreement, whether written, digital, or electronic.

§ 1.5.1.3 No Use of Owner's Name or Trademark. Construction Manager agrees not to make any written use of or reference to Owner's name or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of Owner's facilities for any activity related to the express business purposes and interests of Owner pursuant to this Agreement, without the prior written consent of Owner which consent may be withheld or granted in Owner's sole discretion. Construction Manager shall not advertise that it is doing business with Owner or use this Agreement as any sort of marketing or sales tool without the prior written consent of Owner.

§ 1.5.2 Works Made for Hire. All Work performed by Construction Manager and its Subcontractors shall constitute the exclusive property of Owner. All right, title and interest in and to said Work shall automatically and without further notice or action vest in Owner upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Agreement. To the extent that title to any such Work may not, by operation of law, vest in Owner, or such Work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably and unconditionally assigned to Owner. Owner shall also have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Construction Manager must give Owner, as well as any person designated by Owner, all assistance reasonably necessary to effectuate the intent of this section and to perfect the rights and interests defined herein without any charge or expense to Owner beyond those amounts payable to Construction Manager for the services rendered under this Agreement.

§ 1.5.3 The Owner may provide the Construction Manager with pre-existing drawings, documents, designs, and other information which the Construction Manager may use in connection with performance of the Work under this Contract. The Construction Manager confirms and agrees that the Owner has and shall retain all rights, title, and interest in and to such drawings, documents, designs and information, including, without limitation, any copyright or other intellectual property rights, and that by use of such drawings, documents, designs and information, the Construction Manager shall not acquire any right, title, or interest in such drawings, documents, designs and information, including, without limitation, any copyright or other intellectual property rights.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed as set forth in Section 14.4 of the Agreement and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed as set forth in Section 14.4 of the Agreement by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.8 Building Information Models Use and Reliance

Pursuant to Section 3.1.5 of the Agreement, Construction Manager shall coordinate efforts with the Owner, Project Manager, and the Architect to successfully implement the BIM plan for the Project. Construction Manager will provide personnel, including a BIM Coordinator, and appropriate services to ensure the proper flow of information is provided to enable appropriate input into and output from the BIM, including, but not limited to, importing information into the BIM, providing updated information on changes to the Project Drawings and Specifications during construction, assisting on conflict resolution, coordinating the sharing of information, facilitating file exchange, and other deliverables as assigned to it in the BIM plan. Construction Manager will provide reports and other BIM deliverables as designated by Owner on a recurring basis.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner's representative(s) who is authorized to act on Owner's behalf with respect to all matters with respect to the Project is set forth in Sections 1.1.8 and 4.2 of the Agreement; provided, however, the scope of such representative(s) authority shall be limited to the extent previously delegated in writing by Owner. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. Owner shall provide Construction Manager notice of any change in any representative within **ten (10)** Days of such change.

§ 2.1.2 The Owner shall, with reasonable promptness, provide Construction Manager with copies of, or reasonable access to information and documentation regarding the Project and to the property on which the Project is located, including but not limited to the information set forth in Sections 2.2 and 2.3 below, as well as information regarding Owner's Project program which shall set forth Owner's objectives, constraints, and Owner Criteria. Such information may include schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and Site requirements.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 In accordance with *Tex. Bus. & Comm. Code §56.054(e)*, Owner will provide Construction Manager with reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract if requested in writing by the Construction Manager.

§ 2.2.2 *[Intentionally deleted]*.

§ 2.2.3 *[Intentionally deleted]*.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 The Owner shall cooperate with the Construction Manager in securing building and other permits, licenses and inspections. Except for permits and fees that are the responsibility of the Construction Manager under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 *[Intentionally Deleted]*.

§ 2.3.3 *[Intentionally deleted]*.

§ 2.3.4 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding Site utilization where essential to the execution of the Project. The Owner shall furnish, as available, maps, surveys describing physical characteristics, legal limitations and utility locations for the Site, and Drawings in the possession of Owner that reflect or depict Site boundaries, recorded easements, geological formation/conditions, test borings/reports, topography, and utility locations and any related document reflecting Site conditions.

§ 2.3.5 *[Intentionally deleted]*.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Construction Manager such copies of Contract Documents, including Drawing and Specifications, bidding information and instructions, payment and performance bond forms, schedules, communications, health screenings, credentialing protocols, HIPAA compliance information, Owner provided information as set forth in **Exhibit D** and any other information relevant to the performance of the Work as are reasonably necessary for execution of the Work. Construction Manager shall comply with such information.

§ 2.3.7 The Owner may arrange for the services of a Commissioning Agent as is necessary for the Project. The Owner's hiring of such Commissioning Agent shall in no event relieve Construction Manager from its commissioning obligations under Section 3.7.6 herein and in the Contract Documents.

§ 2.3.8 The Owner may request that the Project Manager perform inspections at the Project on behalf of Owner. Construction Manager shall give Project Manager access to the Work as need to perform such inspections. The performance of inspections by the Project Manager shall not lessen or reduce Construction Manager's responsibility for the Work. Construction Manager shall remain fully and solely responsible for constructing the Work in strict accordance with the Contract Documents.

§ 2.3.8.1 Visits to the Site by the Owner or Project Manager shall not be construed to create an obligation on the part of the Owner to make on-Site inspections to check the quality or quantity of the Work. Neither the Owner nor the Project Manager shall have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Construction Manager's rights and responsibilities under the Contract Documents.

§ 2.3.8.2 Neither the Owner nor the Project Manager shall be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Owner nor the Project Manager shall have control over nor charge of, and will not be responsible for acts or omissions of the Construction Manager, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Construction Manager.

§ 2.3.9 While not obligated to do so, and in addition to the observations of the Architect and Project Manager, if Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Construction Documents, the Owner may give written notice thereof to the Construction Manager. Notwithstanding the foregoing, no review by Owner shall relieve Construction Manager of its responsibilities for the performance of its obligations under this Agreement of the accuracy, adequacy, fitness, suitability or coordination of the Work.

§ 2.3.10 The Owner shall approve the date of Substantial Completion in accordance with Section 9.8 and the date of Final Completion in accordance with Section 9.10.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a **ten (10)** Day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Construction Manager the reasonable cost of correcting such deficiencies, including, without limitation, Owner's expenses and compensation for the Architect's and Project Manager's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Construction Manager shall be reasonable and necessary. If payments then or thereafter due the Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference

to the Owner. The rights of the Owner hereunder shall not give rise to any duty on the part of the Owner to exercise same for the benefit of the Construction Manager or any other person or entity. If providing the above-referenced prior notice to the Construction Manager is not reasonable because of emergency or exigent circumstances, the Owner shall provide only such prior notice that is reasonable under the circumstances.

§ 2.5.2 After the Work is complete, the Owner may make emergency repairs to the Work if necessary to prevent further damage, or if the Construction Manager does not promptly respond to a notice of a condition requiring repairs. Construction Manager shall be responsible to Owner for this cost if the reason for the repairs is defects in the Work. If payments then or thereafter due the Construction Manager are not sufficient to cover such costs, the Construction Manager shall pay the difference to the Owner.

§ 2.6 Acceleration for Owner's Convenience

§ 2.6.1 In the event Owner desires to accelerate the Project Schedule, Owner shall so notify the Construction Manager in writing.

§ 2.6.2 Upon receipt of such written instruction, Construction Manager shall require its personnel and its Subcontractors to work such overtime hours and/or to increase their respective work forces as may be reasonably necessary to meet Owner's acceleration goals.

§ 2.6.3 Unless a Change Order is issued and approved by Owner, such written acceleration instructions shall be considered an Owner Change Directive and Construction Manager shall respond in accordance with Section 7.3 herein.

§ 2.7 Project Manager

§ 2.7.1 The Project Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Project Manager" means the Project Manager or the Project Manager's designated representative identified in the Agreement. The Project Manager has authority to act on the Owner's behalf only to the extent provided in Section 2.7.4.

§ 2.7.2 Notices to Project Manager

All notices or information to be provided under the Contract Documents to the Owner are also required to be provided, contemporaneously, to the Project Manager, unless Owner expressly notifies the Construction Manager in writing to the contrary. This obligation to furnish all such notices or information to the Project Manager exists whether or not these General Conditions or any other Contract Documents expressly provide for notice to the Project Manager.

§ 2.7.3 Rights of Project Manager

Project Manager shall have the same rights of access to the Site as Owner and Architect and shall participate in all meetings or conferences in which Owner designates the Project Manager to participate, unless Owner expressly notifies the Construction Manager in writing to the contrary.

§ 2.7.4 Authority of Project Manager

The Project Manager is an independent contractor retained by the Owner to assist it as a consultant and advisor to the Owner on the Project until Final Completion, unless otherwise designated by Owner. Notwithstanding the presence of the Project Manager at the Project and in Project meetings, the Owner directly employs representatives who will actively participate in Project meetings and be authorized to provide any approval, grant any consent, assert any objection, or make any decision required by the Contract Documents. Unless Construction Manager has been provided with written notice from one of the Owner's designated representatives granting specific authority to the Project Manager, Project Manager shall not be authorized to bind the Owner as to any approval, consent, objection, or decision except to the extent expressly authorized by the Contract Documents. Such limitation of authority, however, shall not obviate or limit Construction Manager's obligation to provide notices to the Project Manager as required by Section 2.7.2 above and to provide access to the Project Manager as required by Section 2.7.3 above.

§ 2.7.5 Project Manager's Duties

§ 2.7.5.1 The Project Manager shall perform the duties required of it as directed by Owner which shall include, but not be limited to planning, management, and coordination the Project, providing an initial Project program scope and strategy, review of request for proposals/request for qualification and other solicitation documents, review of responses received to request for proposals/request for qualifications, including creating a due diligence process for

such review, development and maintenance of a Project cost control system, collaboration with Construction Manager and monitoring of the Project Schedule, oversight and creation of a Quality Assurance program to monitor and report to Owner with respect to the quality of the Construction Manager's Work, functional and space programming services, coordination of BIM systems and protocols, review of Construction Manager's Site-specific safety program, peer review of designed systems, reporting on Project progress, and other such deliverables as assigned by Owner.

§ 2.7.5.2 Quality Assurance. Project Manager shall perform Quality Assurance testing as necessary to ensure the Work and materials and systems incorporated into the Work are in compliance with the performance requirements of the Contract Documents, the Specifications and Applicable Law. The Owner may request that the Project Manager perform inspections at the Project on behalf of Owner as part of Project Manager's Quality Assurance responsibilities.

ARTICLE 3 CONSTRUCTION MANAGER

§ 3.1 General

§ 3.1.1 The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Construction Manager shall comply, and shall require its Contractors, Subcontractors, and consultants to comply with any applicable licensing requirements in the jurisdiction where the Project is located. The Construction Manager's representative(s) who is authorized to act on Construction Manager's behalf with respect to the Project is set forth in Section 1.1.12 of the Agreement. Construction Manager's representative(s) shall be the primary point of contact during the Work of the Project and shall have express authority to bind the Construction Manager with respect to all matters under this Contract. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative.

§ 3.1.2 The Construction Manager shall perform the Work and provide all labor, materials, equipment, tools, transportation, and supplies necessary to complete the Work described in, reasonably inferable from, and in accordance with the Contract Documents and in strict compliance with Applicable Law. Construction Manager shall supervise, direct and perform the Work in a good and workmanlike manner and shall exercise the degree of care, skill, and diligence in the performance of the Work in accordance and consistent with industry standards for similar projects and circumstances and in furtherance of the interests of Owner. To this end, Construction Manager shall deliver the Work on time and within the Final Guaranteed Maximum Price and will provide cost-effective capital solutions, innovation and resource stewardship while completing the Work under this Agreement, including complete coordination and cooperation with the Owner and Project Manager. Construction Manager shall furnish efficient business administration and supervision to and for the Project in accordance with Section 3.1.2. Construction Manager shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract. Construction Manager shall at all times use reasonable measures to protect the Work from damage caused by weather and casualties. Construction Manager shall communicate promptly to Owner any and all concerns that Construction Manager 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.

§ 3.1.3 The Construction Manager accepts this level of trust and confidence between the Construction Manager and Owner established by the Contract Documents. The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Project Manager, or the Architect in the Architect's administration of the Contract, or by tests, inspections, duties, or approvals required or performed by persons or entities other than the Construction Manager.

§ 3.1.4 The Construction Manager represents and warrants to Owner that it and its employees, Subcontractors, and material suppliers are experienced in the type of construction necessary to perform and complete the Work required under this Agreement. Construction Manager understands the complexity involved in this type of construction and the necessity of coordination of its Work with Owner, Project Manager, Owner's Separate Contractors, and Authorities Having Jurisdiction.

§ 3.2 Review of Contract Documents and Field Conditions by Construction Manager

§ 3.2.1 Execution of the Contract by the Construction Manager is a representation that the Construction Manager has visited the Site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Construction Manager and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be

performed, including, without limitation (1) the location, condition, layout and nature of the Site and surrounding areas including all access requirements, hoisting requirements and conditions, and Site logistics; (2) prevailing climatic conditions; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools and equipment; (5) any applicable policies, procedures, rules and restrictions of Owner relating to construction on the real property, including but not limited to any credentialing, HIPAA, and health screening protocols required by Owner, including all requirements of Owner's Special Terms and Conditions attached hereto as **Exhibit C** and Owner-Provided Information in **Exhibit D** and any other Owner provided information or documents; (6) Applicable Law; (7) Executive Orders by local, State of Texas, or federal government authorities or other Authorities Having Jurisdiction relating to COVID-19; and (8) other similar issues. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Construction Manager or any Subcontractor to comply with the requirements of this Section. Construction Manager and its Subcontractors shall be solely responsible for providing a safe place for the performance of the Work.

§ 3.2.2 The Construction Manager shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 4.1.4 of the Agreement, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Construction Manager and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. Notwithstanding any limitations in *Tex. Bus. & Comm. Code § 59.00* et. seq. regarding Construction Manager's responsibilities for defects in plans, Drawings and Specifications, Construction Manager acknowledges that it is responsible for the consequences of design defects in, and does warranty the accuracy, adequacy, sufficiency, and suitability of plans, Drawings, Specifications, or other design documents that it provides and that are provided to the Construction Manager by its agents, contractors, Subcontractors, fabricators, or suppliers, or its consultants of every tier. Further, Construction Manager is responsible where Construction Manager provides input and guidance on plans, Drawings, Specifications or other design documents through work product signed and sealed by a licensed professional that is incorporated into plans, Drawings, Specifications, or other design documents used in the Work.

§ 3.2.2.1 The Construction Manager acknowledges the Owner does not represent or warrant the accuracy or completeness of information provided by the Owner related to existing conditions and locations of existing utilities and services. Such information if provided, is provided to the Construction Manager as a matter of convenience and does not substitute for the Construction Manager using due diligence to reasonably observe and or to access space to determine errors, inconsistencies or omissions. Construction Manager shall verify the exactness of grades, elevations, dimensions, or locations given on any drawings issued by Architect. In all cases of interconnection of the Work with existing conditions, Construction Manager shall verify at the Site all dimensions relating to such existing conditions.

§ 3.2.3 Recognizing the limitations under *Tex. Bus. & Comm. Code § 59.00* et. seq., and as indicated in Section 3.2.2 above, if upon review of the plans, Drawings, Specifications, or other design documents, the Construction Manager discovers a defect, inaccuracy, inadequacy or insufficiency in the plans, Drawings, Specifications or other design documents, the Construction Manager shall promptly report to the Owner, in writing, the existence of any defect in the plans, Drawings, Specifications, or other design documents that is discovered by the Construction Manager, or that reasonably should have been discovered by the Construction Manager, using ordinary diligence, before or during construction. If the Construction Manager performs any construction activity when it knew or reasonably should have known it was not in accordance with Applicable Law without such notice to the Architect and Owner and instruction to proceed, the Construction Manager shall be liable for any damages, costs or liability resulting therefrom, including, without limitation, any fines, Architect's fees, consulting fees, and costs of correction of the Work.

§ 3.2.4 If the Construction Manager believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Construction Manager's notices or Requests for Information pursuant to Sections 3.2.2 or 3.2.3, the Construction Manager shall submit a Claim as provided in Article 15. If the Construction Manager fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Construction Manager shall pay such costs and damages to the Owner as would have been avoided if the Construction Manager had performed such obligations. The Construction Manager shall not implement any such change without written direction from Owner in the form of a Change Order or Owner Change Directive, as appropriate.

§ 3.2.5 Prior to performing any affected Work, Construction Manager shall locate all utility lines, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried

pipelines and buried telephone cables, as shown and located on the Drawings and Specifications and the survey (if any) furnished pursuant to Section 4.1.4 of the Agreement and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines. Construction Manager shall be responsible, if, during the performance of the Work it or its Subcontractors negligently or intentionally damage said lines, cables, pipes and pipelines. In addition, Construction Manager shall review any applicable Hazardous Materials surveys for the particular buildings, if any, involved in the Project(s), and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Construction Manager shall perform all Work in such a manner as to comply with all Environmental Laws concerning remediation of Hazardous Materials found on the Site or identified and located in any Hazardous Material surveys.

§ 3.2.6 Neither any oral representation by or oral agreement with the Owner, Project Manager, Architect, or any representative, consultant, officer, agent, or employee of any of them before execution of this Contract shall affect or modify any of Construction Manager's rights or obligations hereunder, all such prior oral representations, understandings, and agreements being superseded by this Contract. Construction Manager is not aware of any facts that are misleading or inaccurate in any material respect, or any information Owner, Project Manager, or Architect or any of their representatives, consultants, officers, agents, or employees have furnished to Construction Manager which would have a material, adverse effect on the Contract Time or Final Guaranteed Maximum Price and if, during the course of the performance of the Work, Construction Manager learns of any such facts, it will so advise each of said parties.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention. Construction Manager shall commence, diligently prosecute, and complete the Work in accordance with the Contract Documents and within the Contract Time set forth in the Agreement. The Construction Manager shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Construction Manager shall evaluate the Site safety thereof and, except as stated below, shall be fully and solely responsible for the Site safety of such means, methods, techniques, sequences or procedures. If the Construction Manager determines that such means, methods, techniques, sequences or procedures may not be safe, the Construction Manager shall give timely written notice to the Owner, Project Manager, and Architect and shall not proceed until resolution of any such concerns.

§ 3.3.2 CONSTRUCTION MANAGER IS RESPONSIBLE TO OWNER FOR ALL ACTS AND OMISSIONS OF CONSTRUCTION MANAGER'S EMPLOYEES, SUBCONTRACTORS AND THEIR AGENTS AND EMPLOYEES, AND ANY OTHER PERSONS PERFORMING ANY OF THE WORK UNDER A CONTRACT WITH CONSTRUCTION MANAGER OR ITS SUBCONTRACTORS OR ANYONE OVER WHOM CONSTRUCTION MANAGER OR ITS SUBCONTRACTORS EXERCISE CONTROL.

§ 3.3.3 The Construction Manager shall be responsible for inspection of portions of the Work already performed to determine that such portions are in proper condition to receive subsequent Work. Construction Manager shall provide competent supervision of all phases of the Work and inspect the Site at intervals appropriate to the stage of construction and the status of the Project. Construction Manager will keep the Owner informed of the progress of the Work and potential for delays foreseeable by Construction Manager, and shall guard the Owner against defects and deficiencies in the Work. Construction Manager shall be responsible for correction of any Work rejected as not being in accordance with the Construction Documents.

§ 3.3.4 Construction Manager has the responsibility to ensure that all Subcontractors, and their agents and employees, adhere to the Contract Documents and that they order and provide materials to the Site on time, taking into account the current market and delivery conditions. Construction Manager shall coordinate its performance of the Work with that of all others on the Project, including deliveries, storage, installations and construction of utilities.

§ 3.3.5 As between Owner and Construction Manager, the Construction Manager: (a) assumes full responsibility for the safety of all persons employed or utilized by the Construction Manager or under the Construction Manager's control and supervision; (b) shall maintain complete supervision and control over the Construction Manager's agents, employees, and Subcontractors; and (c) agrees to perform all of the Construction Manager's obligations under this Agreement in accordance with the Construction Manager's own methods subject to compliance with this Agreement.

In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

§ 3.3.6 Quality Control/Quality Assurance. Construction Manager shall develop, implement, and at all times comply with, the Quality Control Plan prepared during Preconstruction and approved through the approval of the Final Guaranteed Maximum Price Amendment (**Exhibit A**) as **Attachment 12**. The Quality Control Plan shall govern all testing, inspection, and review of the Work to ensure the Work complies with Applicable Law, standards and requirements of Owner and Project Manager, and any insurance requirements. At a minimum, Construction Manager's Quality Control Plan shall include identification of the Quality Control supervisor, the details of the proposed Quality Control Plan and implementation of same; production and implementation of Quality Control reports; confirmation that any Quality Control Plan complies with Applicable Law and requirements set forth in any insurance requirements. Construction Manager's Quality Control Plan shall contain a methodology for incorporation of the Quality Control Plan into all subcontracts and appropriate oversight to deliver the Project such that it complies with the Contract Documents in all respects. Construction Manager shall provide Owner and Project Manager Quality Control reports for their review and approval. Pursuant to Section 2.7.5, Project Manager shall perform Quality Assurance testing on behalf of Owner at the Project, as necessary.

§ 3.3.7 Budget Control. To provide for timely and detailed control of costs and expenditures, Construction Manager will:

- .1 maintain cost accounting records in good form on expenditures for materials, labor, or for any other expenditures;
- .2 promptly identify all variances between estimated costs and actual costs during construction and report such variances, and recommend to the Project Team measures to counter any adverse cost movements, no more than **five (5)** Days after acquiring such information;
- .3 comply with requirements for submission of progress and final pay applications and related documents as provided in Article 11 of the Agreement and Article 9 herein;
- .4 prepare and administer its Schedule of Values and all Subcontractors' Schedule of Values together with sworn statements and waivers of lien, contract and disbursement summaries, Change Order logs, Change Orders, and budget cost summary reports and submit same to Owner on a monthly basis;
- .5 identify all variances (increases or decreases) between estimated costs and actual costs and report such variances to Owner within **five (5)** Days, along with recommendations for corrective action; and
- .6 notify Owner within **five (5)** Days of identification of any item or portion of the Project that Construction Manager contends is not within the scope of the Project, or if Construction Manager contends that an adjustment to the Final Guaranteed Maximum Price or the Contract Time.

§ 3.3.8 Communication and Reporting. Construction Manager will establish procedures for effective communication and coordination among the Project Team, Subcontractors, and others regarding the construction of the Project, and implement and continuously monitor such procedures as necessary. To the extent of an apparent conflict in the sequencing of the Work or services with another service provider, Construction Manager shall report the concern to the Project Manager. Construction Manager shall coordinate delivery and installation of Owner-procured material and equipment and shall cooperate with any commissioning agent, consultant, vendor, or service provider engaged by Owner.

§ 3.3.8.1 Meetings. Construction Manager shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work. Construction Manager shall actively participate in all meetings and/or teleconferences to bring the full measure of Construction Manager's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline including, but not limited to, all explanatory presentations with other Project Team members as may be requested by Owner, and matters concerning the proposed Site use and improvements, selection of materials, and building systems and equipment. Construction Manager shall attend regularly scheduled and any interim Project progress meetings and fully advise the Owner and Project Team of the Project status including progress, schedule, costs, quality, and proposed changes. Construction Manager shall be responsible for preparing and distributing (on the business day preceding the meeting) to Owner, Project Manager, and Architect a written agenda for the meeting, in a form and with such content as reasonably required by Owner, which includes a status report of all pending Submittals, RFIs, known or anticipated impediments to construction, accidents and injuries, and pending business/action items (with a designation of who is

responsible for each pending item), and all other information required by Section 3.3.8.2 below. When it appears to Owner or Construction Manager that a contract milestone or completion date cannot be met for reasons not the fault of the Construction Manager, Owner may request a plan and a budget from Construction Manager that will provide input on any schedule revisions and/or increased costs, if any, to accelerate or suspend the Work.

§ 3.3.8.2 Reporting.

§ 3.3.8.2.1 Monthly. The Construction Manager shall keep the Owner informed of the progress and quality of the Work. On a weekly basis, or as otherwise agreed to by Owner and Construction Manager, the Construction Manager shall submit written progress reports to Owner, Project Manager, and Architect, reporting Construction Manager's assessment of the progress of the Work, estimated percentages of completion, and other information identified below:

- .1 Work completed for the period and any discrepancies with its conformance with the Contract Documents;
- .2 Project Schedule status and any look-ahead schedules;
- .3 Submittal Schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to Requests for Information;
- .5 Approved Change Orders and Owner Change Directives;
- .6 Pending Change Order and Owner Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 15;
- .10 Cumulative total of the Cost of the Work to date including the Construction Manager's Fee;
- .11 Current Project cash-flow and forecast reports;
- .12 Storage inventory, purchase order status, equipment, and material supply issues identified;
- .13 Weather condition log in accordance with Section 8.3.1.1; and
- .14 Additional information as agreed to by the Owner and Construction Manager.

§ 3.3.8.2.2 In addition, the Construction Manager shall include the following additional information in its progress reports:

- .1 Construction Manager's work force report and Daily Log reporting including weather conditions, any delay impacts, Work performed, number of workers by company and by trade, and any other information requested by Owner;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates;
- .4 Construction Manager invoices supporting the costs billed for the period;
- .5 Executed Conditional Waiver and Release on Progress Payment documents for current draws from Construction Manager and Subcontractors (of every tier); and
- .6 Any other evidence reasonably required by Owner to assist in the confirmation and validation of the Cost of the Work.

§ 3.3.8.2.3 Daily Log. Unless and until instructed otherwise in writing by Owner, Construction Manager shall also prepare a daily log (the "Daily Log") containing: (i) a record for each Day's weather; (ii) a statement of which Days since the previous monthly report are claimed by Construction Manager to be subject of a weather delay; (iii) portions of the Work in progress and accomplished; (iv) identification of Subcontractors on the Site; (v) identification of all equipment on the Site; (vi) problems or anticipated delays that might affect progress of the Work; and (vii) all accidents or injuries that may have occurred; and (viii) any other information that may be requested by Owner or Project Manager. The log shall be made available to Owner, Project Manager, and Architect.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Construction Manager shall check all materials entering into the Work and shall keep full accounts thereof. Construction Manager shall cause all labor, materials and other such items and services to be readily available as and when required in or needed for the orderly and timely progress of the Work.

§ 3.4.2 Substitutions. When a material or system is specified in the Contract Documents, the Construction Manager may make substitutions only with the consent of the Owner and in accordance with a Change Order or Owner Change Directive in accordance with Article 7. The Owner may approve or deny substitutions in its sole discretion. No approved substitution shall change the requirements of the Contract Documents until it has been approved by Owner and incorporated into the Contract Documents.

§ 3.4.2.1 Construction Manager may submit for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents via a "Request for Substitution." A Request for Substitution must be made in writing at such time as not to delay the Work and should contain sufficient information to allow Owner, with assistance from Architect and Project Manager, to determine if the proposed substitution is, in fact, equal to or better than the requirements of the Contract Documents. Notwithstanding the foregoing, a Request for Substitution shall include, at a minimum, the following:

- .1 Product identification: product name, product type, manufacturer's name, manufacturer's address, supplier's name, and supplier's address;
- .2 Product Data: description, performance and test data, reference standards, finishes, and colors;
- .3 Samples: finishes, colors, styles, patterns, thicknesses, etc.;
- .4 The name and address of similar projects on which the product was used as well as the date of installation;
- .5 Complete and accurate Drawings indicating construction revisions, if any, required to accommodate the substituted product;
- .6 Any problems, peculiarities, or other matters of concern known to the Construction Manager at the time it proposes the substitution. Relevant concerns include, by way of example and not limitation, any and all matters related to the environment, legal requirements affecting the Site, building codes, safety of persons on the Site, and/or Hazardous Materials; and
- .7 The basis for the substitution and the adjustment, if any, in the Contract Time and Final Guaranteed Maximum Price, in the event that the substitution is accepted.

§ 3.4.2.2 In submitting a Request for Substitution, Construction Manager represents to the Owner that (1) the Construction Manager has investigated the proposed substitution and has determined that it conforms to and meets or exceeds all the requirements of the specified product and other requirements of the Contract Documents; (2) the warranty conditions, obligations, and representations of the proposed substitution meet or exceed those of the specified product and evidence of such conditions, obligations, and representations shall be submitted in triplicate to the Architect and Owner in sufficient time for the Architect and Owner to review; (3) the Construction Manager accepts the warranty and correction obligations in connection with the proposed substitution; (4) the Construction Manager shall coordinate installation and make other changes that may be required for proper integration of the proposed substitution; and (5) the Construction Manager waives and releases the Owner from any and all Claims for adjustments in the Final Guaranteed Maximum Price and/or Contract Time arising from or related to the proposed substitution to the extent such adjustments are not otherwise stated in the Request for Substitution.

§ 3.4.2.3 The Construction Manager shall submit Requests for Substitution as soon as practicable after the need for the substitution is determined to allow for adequate consideration of such request and to minimize delay in the progress of the Work. The Owner, with assistance from the Architect and Project Manager, shall review proposed substitutions within a reasonable time. Each proposed substitution shall require the written approval of the Owner before its incorporation into the Work. Construction Manager acknowledges that no product proposed for substitution shall be ordered, purchased, installed, or otherwise utilized in any way without the Owner's prior written acceptance. Owner shall promptly act on such request so as to also minimize delay in the progress of the Work. Notwithstanding Section 3.2.2 above, Construction Manager acknowledges its responsibility for the accuracy, adequacy, sufficiency, and suitability of the substitution it proposes and that *Tex. Bus. Comm. Code § 59.002(d)* applies to the substitution. Construction Manager shall procure and furnish to Owner any design certifications required to include the substitution in the Drawings or Specifications.

§ 3.4.2.4 When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for proper functioning shall also be provided, but not including any manufacturers' options on any particular device, which device is specified in the Contract Documents.

§ 3.4.3 The Construction Manager shall at all times furnish an adequate supply of qualified and legal workers and proper materials and shall enforce strict discipline and good order among the Construction Manager's employees and other persons carrying out the Work. The Construction Manager shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 Prevailing Wage Requirements.

Construction Manager and each Subcontractor shall, at all times, comply with *Tex. Gov't. Code § 2258* with respect to the payment of wages for the Work performed under the Contract. All persons employed in the performance of the Work under the Contract or any subcontracts hereunder, shall be paid not less than the general prevailing rates of per diem, holiday, and overtime wages prevailing in the locality for Work of a similar character as shown on the prevailing wage schedule provided by Owner. The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by any Construction Manager because the Construction Manager pays wages in excess of the applicable minimum rate. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates. Failure to comply with this provision shall subject the Construction Manager to the penalties prescribed in *Tex. Gov't. Code § 2258*.

§ 3.4.4.1 Notification to Workers. Pursuant to *Tex. Gov't Code § 2258.022*, Owner has determined the prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to perform the Work on the Project and the prevailing rate for legal and holiday overtime work by utilizing the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.). Construction Manager shall post the prevailing wage schedule in a place conspicuous to all workers on the Site. Pursuant to *Tex. Gov't Code § 2258.024*, Construction Manager shall keep, on-Site, true and accurate records showing the name and occupation of each worker employed by the Construction Manager or subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the Project Manager at all reasonable hours for the duration of the Contract. When requested by Owner, Construction Manager shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.

§ 3.4.4.1.1 With each Application for Payment, Construction Manager shall make available upon request certified payroll records, including from Subcontractors of any tier level, on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format, along with copies of any and all Contract Documents between Construction Manager and any Subcontractors. Pursuant to *Tex. Penal Code §§ 37.02 and 37.10*, employees of Construction Manager and any Subcontractors shall be subject to prosecution for submitting certified payroll records that contain materially false information.

§ 3.4.4.1.2 The prevailing wage schedule is in compliance with *Tex. Gov't. Code § 2258*. Should Construction Manager at any time become aware that a particular skill or trade not reflected on the wage schedule will be or is being employed in the Work, whether by Construction Manager or by Subcontractor, Construction Manager shall promptly inform Project Manager of the proposed wage to be paid for the skill along with a justification for same and Project Manager shall promptly concur with or reject the proposed wage and classification.

§ 3.4.4.1.3 Construction Manager is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers. Pursuant to *Tex. Labor Code § 214.008*, Owner requires Construction Manager and all Subcontractors properly classify individuals as employees or independent contractors.

§ 3.4.4.2 Complaints and Violations.

§ 3.4.4.2.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation of *Tex. Gov't. Code § 2258*, Owner will conduct an investigation and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties in accordance with *Tex. Gov't. Code § 2258.023*, such amounts being subtracted from successive progress payments pending a final decision on the violation.

§ 3.4.4.2.2 No Extension of Time. Construction Manager shall not be entitled to an extension of Contract Time for any delay arising directly or indirectly from any investigation of a violation if Owner's investigation reveals good cause

existed for the investigation or arising out of a determination pursuant to Section 3.4.4.2.4 below that wages were not appropriately paid by Construction Manager or any Subcontractor.

§ 3.4.4.2.3 Cooperation with Owner's Investigation. Construction Manager shall cooperate with Owner during any investigations hereunder. Such cooperation shall include, but not necessarily be limited to, timely providing the information and/or documentation requested by Owner, which may include certified payroll records on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format and copies of any and all Contract Documents between Construction Manager and any Subcontractors.

§ 3.4.4.2.4 Appeals. In the event Construction Manager or Subcontractor elect to appeal an initial determination made pursuant to Section 3.4.4.2.1, Construction Manager or Subcontractor may do so in accordance with *Tex. Gov't. Code* § 2258.023. The Construction Manager and/or Subcontractor, as applicable, shall deliver notice of said appeal to Owner.

§ 3.4.4.2.5 Penalty for Violation. Construction Manager or any Subcontractor who violates *Tex. Gov't Code* § 2258 shall pay to the Owner a penalty of sixty dollars (\$60) for each worker employed for each Day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.

§ 3.5 Warranty

§ 3.5.1 The Construction Manager warrants to the Owner that the Work will be performed in a good and workmanlike manner and that materials and equipment furnished under the Contract will be of specified quality, recent manufacture, and new. The Construction Manager further warrants that the Work will conform to the requirements of the Contract Documents, will be complete in all parts and with the required finishes, in accordance with approved practices and customs, and will be free from defects. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Construction Manager's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranties set out in this subsection are in addition to and not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or implied under Applicable Law, or the Construction Manager's obligations under the corrective period set out in Article 12 below. Construction Manager's obligation to perform the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute and no actions of Owner or Project Manager shall act to waive Construction Manager's obligations hereunder.

§ 3.5.2 Construction Manager shall furnish individual written warranties to the Owner for each product, building component, system, or equipment specified to have a written warranty and incorporating the warranty of this Section 3.5. Such separate warranties shall be deemed to run from Substantial Completion regardless of whether the product, building component, system or equipment was placed into service prior to Substantial Completion.

§ 3.5.3 If extended warranties in addition to those required by the Contract Documents are available from Subcontractors, manufacturers, or suppliers, Construction Manager shall advise Architect and Owner of such availability and the cost thereof and, if requested by Change Order, shall purchase the extended warranty for Owner's benefit, in which event the Change Order shall reflect an increase in the Final Guaranteed Maximum Price equal to the cost of the extended warranty submitted to and accepted by Owner.

§ 3.5.4 All guarantees and warranties of materials and services furnished to Construction Manager or Subcontractors by any Subcontractor, manufacturer, or supplier shall be assigned to Owner and be deemed to run for the benefit of the Owner. Construction Manager hereby assigns to Owner the benefits of all guarantees and warranties of all Subcontractors, manufacturers, and suppliers engaged for the Project, but such assignment shall not relieve Construction Manager of its warranty obligations to Owner under the Contract Documents or Applicable Law. During the **two (2)** year period set forth in Section 12.2, Construction Manager shall enforce the Subcontractors', manufacturers' and suppliers' warranties for the benefit of Owner or its assigns. After expiration of such period, the Construction Manager shall continue to aid Owner in enforcing any continuing warranties assigned to Owner. The Construction Manager further agrees to perform the Work in such a manner so as to preserve any and all such guarantees and warranties. Construction Manager's warranties shall be in addition to any warranties, indemnities,

claims, rights, actions or remedies that Owner may have in the Contract Documents, or at law, or in equity, for defective Work or breach of the Contract Documents, or otherwise provided under any repose period.

§ 3.6 Taxes

Owner is a hospital district and political subdivision of the State of Texas. Materials and services utilized in the construction of the Project may be exempt from state and local sales and use taxes pursuant to Texas Tax Code § 151.309(5). Construction Manager is responsible for compliance with all tax exemptions applicable to the Project. Owner will process all invoices submitted by Construction Manager to ensure the invoices comply with the Owner's tax-exempt status.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permit as well as any other trade permits, fees, licenses, and inspections by Authorities Having Jurisdiction necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required.

§ 3.7.2 The Construction Manager shall comply with and give notices required by Applicable Laws, statutes, ordinances, codes, rules and regulations, and lawful orders Authorities Having Jurisdiction, applicable to performance of the Work.

§ 3.7.3 If the Construction Manager performs Work knowing it to be contrary to Applicable Laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of Authorities Having Jurisdiction, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Construction Manager encounters conditions at the Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist, the Construction Manager shall promptly provide notice to the Owner, Project Manager, and the Architect before conditions are disturbed and in no event later than **seven (7) Days** after the first observance of the conditions. The Architect and/or Project Manager will promptly investigate such conditions and, if the Architect and Project Manager determine that they differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the Work, may recommend an equitable adjustment in the Final Guaranteed Maximum Price or Contract Time, or both, the actual adjustment of which is subject to Owner approval. If the Owner and Construction Manager cannot agree on an adjustment in the Final Guaranteed Maximum Price or Contract Time, the Construction Manager may make a Claim pursuant to Article 15. If the Architect or Project Manager determine that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect and/or Project Manager shall promptly notify the Owner and Construction Manager in writing, stating the reasons. Notwithstanding the foregoing, no adjustment in the Final Guaranteed Maximum Price or Contract Time shall be allowed to the extent that the Construction Manager knew, or reasonably should have known of those conditions prior to the date of this Agreement. If Construction Manager disputes the Architect or Project Manager's determination or recommendation, the Construction Manager may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Construction Manager encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Construction Manager shall immediately suspend any operations that would affect them and shall notify the Owner, Project Manager, Architect and any required Authorities Having Jurisdiction. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain authorization from Authorities Having Jurisdiction required to resume the operations. The Construction Manager shall continue to suspend such operations until otherwise instructed by the Owner or permitted by applicable Authorities Having Jurisdiction but shall continue with all other operations that do not affect those remains or features to the extent permitted by Applicable Law. The Final Guaranteed Maximum Price and Contract Time may be equitably adjusted due to delays or increased costs arising from the existence of such remains or features. Notwithstanding the foregoing, no adjustment in the Final Guaranteed Maximum Price or Contract Time shall be allowed to the extent that (a) the Construction Manager knew of those conditions prior to the date of this Agreement, or (b) information was given to the Construction Manager by Owner or Architect from which

those conditions could have been discovered prior to the date of the Construction Manager's execution of the Agreement.

§ 3.7.6 Commissioning. The Construction Manager shall assist the Owner in obtaining commissioning of the Work as may be required by Owner's commissioning agent and all Authorities Having Jurisdiction over the Project including, but not limited, to TDHHS, the City of Fort Worth, Authorities Having Jurisdiction responsible for ensuring compliance with the ADA and TAS, and any other applicable Authorities Having Jurisdiction, organization, or other public authority.

§ 3.8 Allowances

§ 3.8.1 To the extent included in the Final Guaranteed Maximum Price Amendment, items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Construction Manager shall not be required to employ persons or entities to whom the Construction Manager has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Construction Manager of materials and equipment delivered at the Site, costs for unloading and handling at the Site, labor, installation costs, and all required taxes (except for those from which Owner is exempt), less applicable trade discounts;
- .2 Construction Manager's costs for indirect overhead and profit for stated allowance amounts shall be included in the Construction Manager's Fee but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Final Guaranteed Maximum Price shall be adjusted accordingly by Change Order. No adjustments will be made unless Owner approves such adjustment. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Construction Manager's Fee under Section 3.8.2.2. Construction Manager shall keep separate and adequate records of all allowances and shall submit such records to Owner and Project Manager no less than on a monthly basis. Owner shall be responsible for costs incurred in excess of allowance amounts only to the extent approved by Owner in writing.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness in sufficient time to avoid delay in the Work.

§ 3.9 Key Personnel

§ 3.9.1 The Construction Manager's representative(s) designated in Section 1.1.12 of the Agreement, shall be those responsible for the day-to-day management of the Work. Construction Manager shall keep a competent superintendent in attendance at the Project site at all times, fully authorized to act on behalf of the Construction Manager. The Construction Manager's superintendent shall be designated in accordance with Section 3.9.2 below. Other key personnel shall be designated in the Final Guaranteed Maximum Price Amendment (**Exhibit A**) as **Attachment 8**. Each person shall be designated with a title and a brief description of the obligations and limitations (if any) of each representative's authority. Construction manager shall not change representatives/assignments without the Owner's written consent, which consent shall not be unreasonably withheld. The Construction Manager's superintendent shall represent the Construction Manager, and written communications given to the superintendent shall be as binding as if given to the Construction Manager. Construction Manager shall employ a competent safety professional and necessary assistants who shall be in attendance at the Site during performance of the Work pursuant to Section 10.1.4 herein. The safety professional shall be designated as required by Section 10.1.4 and shall enforce all applicable construction safety standards, develop a progressive discipline program, monitor employee safety compliance, and document safety violations. Construction Manager 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 Construction Manager. If the Construction Manager changes any of the personnel, Subcontractors, or suppliers identified in the Contract Documents, the Construction Manager shall notify the Owner and provide the name and qualifications of the new personnel, Subcontractor or supplier. The Construction Manager's Superintendent, safety professional, and other key personnel for Construction Services shall be designated in Attachment 8 of Exhibit A, the Final Guaranteed Maximum Price Amendment.

§ 3.9.2 The Construction Manager, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the name and qualifications of a proposed Superintendent.

§ 3.9.3 The Construction Manager shall not employ a proposed Superintendent, safety professional, or any other senior project personnel to whom the Owner has made reasonable and timely objection.

§ 3.9.4 If Owner reasonably determines that any employee of Construction Manager (including but not limited to its Superintendent or other administrative or supervisory personnel) or of its Subcontractors or their Sub-subcontractors is careless or not qualified to perform the Work or responsibilities assigned to him or is otherwise not competently performing the Work or responsibilities assigned to him in accordance with the standards required by the Contract Documents, upon Owner's written request, the Construction Manager shall promptly remove such employee from the Work and replace such employee or cause such employee to be replaced in accordance with any requirements hereof.

§ 3.10 Construction Manager's Construction and Submittal Schedules

§ 3.10.1 Based on the Preliminary Schedule provided during the Preconstruction Phase, Construction Manager shall update and submit, as **Attachment 7** to the Final Guaranteed Maximum Price Amendment (**Exhibit A**) a Project Schedule for the Work. The Project Schedule will include various dates critical to the progress of the Project, including deliverables to Owner, critical milestone dates, mobilization, procurement, installation, testing, inspection, the Required Date of Substantial Completion, the Final Completion Date, any Interim Milestone Dates, delivery of Close-Out Documents, acceptance of all the Work required under this Agreement, and any other details required for tracking the progress of the Work. The Project Schedule shall be computerized Critical Path Method (CPM) with fully editable logic with adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. The Project Schedule and all monthly updates should address Submittal activities as well as actual field construction activities. The Project Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by Authorities Having Jurisdiction. All Project Schedule updates shall address the subject of how the Construction Manager intends to address any critical path delays previously encountered.

§ 3.10.2 Prior to submission of any Submittals, the Construction Manager shall also submit a "Submittal Schedule" for the Architect's and the Owner's approval which shall not be unreasonably delayed or withheld. The Submittal Schedule shall (1) be coordinated with the Construction Manager's Project Schedule, (2) allow the Owner, Architect, and Project Manager reasonable time to review Submittals; (3) be periodically updated to reflect the progress of the Work. If the Construction Manager fails to submit a Submittal Schedule, or fails to provide Submittals in accordance with the approved Submittal Schedule, the Construction Manager shall not be entitled to any increase in the Final Guaranteed Maximum Price or extension of Contract Time based on the time required for review of Submittals.

§ 3.10.3 The Construction Manager shall perform the Work in accordance with the most recent schedules submitted to and accepted by the Owner and the Architect. Revisions by the Construction Manager to the Project Schedule shall not amend, change or otherwise affect the Required Date of Substantial Completion, Date of Final Completion, any Interim Milestone Date, or any other significant dates unless approved by appropriate Change Order. Failure of the Work to proceed in the sequence scheduled by Construction Manager shall not alone serve as the basis for a Claim for additional compensation or Contract Time. In the event there is interference with the Work which is beyond its control, Construction Manager shall attempt to reschedule the Work in a manner that will hold resulting additional Contract Time and costs to a minimum.

§ 3.10.4 The Project Schedule shall provide for the most expeditious and practicable execution of the Work. The Construction Manager shall also work closely with the Project Team to confirm that the Project Schedule accurately reflects the status of the Project. The Construction Manager's Project Schedule shall be updated every month by the Construction Manager and submitted to the Owner and Project Manager. The Construction Manager is responsible for expediting the Work, identifying potential conflicts and coordination problems that could affect the Contract Time and proposing measures to avoid such problems.

§ 3.10.4.1 Whenever it becomes apparent from the updated Project Schedule or progress report that any critical date previously established by the Project Schedule is more than **ten (10)** Days behind schedule and may not be met, the Construction Manager shall, at the Owner's request, take any or all of the following actions with no increase to the

Final Guaranteed Maximum Price or Contract Time (unless the delay is otherwise approved by Owner with an increase in the Final Guaranteed Maximum Price or Contract Time via Change Order):

- a. Increase construction manpower and perform overtime to substantially eliminate the back-log of work and return the Project to schedule;
- b. Increase the number of working hours per shift, shifts per Day, working Days per week, the amount of construction equipment, or any combination of the foregoing which will substantially eliminate the back-log of work and return the Project to schedule;
- c. Reschedule activities to concurrently accomplish activities, to the maximum degree practicable, in the time required by the Contract Documents;
- d. Take such other action as may be requested or directed by the Owner to return the Project to Schedule.

If the Construction Manager fails to take any of these actions within **three (3) Days** after receiving notice from the Owner, the Owner may in addition to its other rights and remedies (i) take action to attempt to return the Project to schedule, and (ii) deduct the cost of such actions from the monies due or to become due to the Construction Manager, unless the delay is an Excusable Delay and the Owner requests the Construction Manager shall submit a recovery plan to resolve the effects of said delay. Construction Manager shall not be entitled to compensation from the Owner or any increase in the Final Guaranteed Maximum Price for the scheduled recovery efforts, except as to causes of delay to the critical path as allowed under Section 8.3 herein, and not caused by the Construction Manager or any Subcontractor or supplier. No approval or consent by the Owner of any plan for re-sequencing or acceleration of the Work submitted by Construction Manager pursuant to this Section shall constitute a waiver by Owner of any damages or losses which Owner may suffer and for which Construction Manager is liable hereunder by reason of such re-sequencing or the failure of Construction Manager to meet the Required Date of Substantial Completion, Interim Milestone Dates, or other requirements of the Agreement with regard to the Contract Time. The Owner may exercise the rights furnished pursuant to this Section 3.10.4.1 as frequently as the Owner deems necessary to facilitate the Construction Manager's performance of the Work's compliance with the Required Date of Substantial Completion, Final Completion Date, Interim Milestone Dates, and other critical dates set forth in the Contract Documents or accepted Project Schedule.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Construction Manager shall maintain at the Site for the Owner one hard copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes (including changes in the field and selections made during construction). At the end of construction, the As-Built Documents shall be provided to Architect with a request to complete Record Drawings. The Construction Manager shall further maintain at the Site and available for Owner's inspection one record hard copy of approved shop drawings, product data, samples and similar required Submittals, along with the Submittal Log. These shall be available to the Owner, Architect, and Project Manager, and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed, at a time and place designated by Owner. These documents shall be available to Architect, Owner, and Project Manager during the progress of the Work. As-Built Documents shall contain, but not be limited to: (i) the actual location of the underground utilities and appurtenances as referenced to permanent surface improvements; (ii) the location of internal utilities and appurtenances concealed in building structures; and (iii) changes during the construction process. The As-Built Documents are to be kept accurately and no Work shall be permanently concealed until the required information has been recorded. As part of the Project Close-out Documents, and prior to release by Owner of Final Payment, Construction Manager shall submit two (2) sets of accurate and complete As-Built Documents and Record Drawings, in electronic form, to Owner and Project Manager in accordance with *Tex. Gov't Code § 2269.310* with Construction Manager's representation that the documents show complete "as-built" conditions of the Work.

§ 3.11.2 Construction Manager shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Construction Manager shall make such reports and records available to inspection by the Owner, Project Manager, Architect, or their representative agents, within **five (5) Days** of request by Owner, Project Manager, Architect, or their agents.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Prior to the submission of any Submittals, Construction Manager shall prepare and submit to Owner, Project Manager, and Architect a Submittal log organized by specification section, listing all items to be furnished for review and approval by Architect and Owner (the "Submittal Log"). The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials Samples, materials, colors, guarantees, and all other items identified throughout the Specifications. Informational Submittals upon which the Owner and Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect and Owner without action.

§ 3.12.4.1 Submittal Log. Construction Manager shall indicate the type of item, contract requirements reference, and Construction Manager's scheduled dates for submitting the item along with the requested dates for approval answers from Architect and Owner in the Submittal Log. The Submittal Log shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates and included with each monthly Application for Payment. Construction Manager's Submittal Log must be reasonable in terms of the review time for complex Submittals and shall be consistent with the Project Schedule. The Submittal Log shall be used to confirm status and disposition of particular items submitted, including approval or other action taken on the submittal. Construction Manager will not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related Submittal.

§ 3.12.5 The Construction Manager shall review for compliance with the Contract Documents, approve, and submit to the Architect, Owner, and Project Manager, Shop Drawings, Product Data, Samples, and similar Submittals required by the Contract Documents, or subsequently required by a Change Order, in accordance with the Submittal Schedule and Submittal Log, or if not contained therein, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors taking into account the time the Architect and Owner need to review the Submittals. Construction Manager shall allow a minimum of **fourteen (14) Days** duration after receipt by Owner and Architect for review and approval of any Submittal and shall show the duration of each Submittal in the Submittal Log. If resubmittal is required, Construction Manager shall allow a minimum of an additional **ten (10) Days** for review. Owner may establish routine review procedures and schedules for Submittals at an initial construction conference and/or elsewhere in the Contract Documents. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Construction Manager may be returned by the Architect without action.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar Submittals, the Construction Manager represents to the Owner that the Construction Manager has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so if Work is not yet in place, and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

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

§ 3.12.8 Review of Submittals. Architect's, Project Manager's, or Owner's review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to Submittals will be in writing. The Work shall be in accordance with approved Submittals except that the Construction Manager shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Contract Documents by the Architect's, Project Manager's, or Owner's approval of Shop Drawings, Product Data, Samples or similar Submittals, unless the Construction Manager has specifically informed the Architect, Owner, and Project Manager in writing of such deviation at the time of Submittal and a Change Order or Owner Change Directive has been issued authorizing

the deviation. The Construction Manager shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar Submittals, by the Architect's or Owner's approval thereof.

§ 3.12.9 Construction Manager shall make any corrections required to a Submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until Submittal approval. The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar Submittals, to revisions other than those requested by the Owner or Architect on previous Submittals. In the absence of such written notice, the Architect's or Owner's approval of a resubmission shall not apply to such revisions.

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

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

§ 3.13 Use of Site

§ 3.13.1 The Construction Manager shall confine operations at the Site to areas permitted by Applicable Law, easements, statutes, ordinances, codes, rules and regulations, and lawful orders of Authorities Having Jurisdiction, and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

§ 3.13.2 Only machinery, equipment and materials that are to be used directly in the Work shall be brought to and stored on the Site by the Construction Manager. The Construction Manager shall confine its operations and restrict its staging and storage of machinery, equipment, and materials to those areas within the Site or to such other areas authorized in writing by the Owner. Construction Manager shall not encumber the Site and adjacent areas with any materials or equipment and shall arrange and maintain its materials and equipment in an orderly manner so that Owner and Owner's Separate Contractors shall have reasonable access to and within the Site and any construction occurring there and in adjacent areas. After equipment is no longer required for the Work, it shall be promptly removed from the Site. Protection of the Work and of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the Construction Manager. The Construction Manager shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Construction Manager, Subcontractors, and any entity for whom the Construction Manager is responsible shall, other than as required by Applicable Law, not erect any sign on the Site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the Construction Manager shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the Site and (ii) that portion of the Work of which Owner has partial occupancy, as more specifically described in Section 9.9. The Construction Manager shall use its best efforts to not interfere with the use of and enjoyment by neighboring landowners of their property and shall keep noise and dust to the lowest levels reasonably possible to accomplish the

Work. Without prior approval of the Owner, the Construction Manager shall not permit any workers to use any existing facilities at the Site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.14 Cutting and Patching

§ 3.14.1 The Construction Manager shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Construction Manager shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Construction Manager shall not cut or otherwise alter construction by the Owner or a Separate Construction Manager except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Construction Manager shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Construction Manager shall thoroughly wash and clean all glass and mirror surfaces and leave the Work neat and ready for occupancy and use before final turnover. The Construction Manager shall use its best efforts to prevent dust. The Construction Manager shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. All waste and rubbish containers shall be covered at all times. At the end of each week, the Construction Manager shall remove waste materials, and rubbish and shall properly store the Construction Manager's tools, construction equipment, machinery and surplus materials that could cause a hazard from and about the Project. Construction Manager shall restore to satisfactory condition all new and existing walks, roads, curbs and other interior or exterior improvements that have been damaged as a result of operations under the Agreement. Upon completion of the Work, the Construction Manager shall remove any remaining waste materials, rubbish, tools, construction equipment, machinery and surplus materials and shall leave the completed Project ready for use and occupancy and with all Work in new condition and working order.

§ 3.15.2 If the Construction Manager fails to clean up as provided in the Contract Documents, the Owner may do so with its own forces or contracted services and the Owner shall be entitled to reimbursement from the Construction Manager or to deduct such costs from the Construction Manager's next Application for Payment.

§ 3.15.3 In addition to the clean-up requirements in Section 3.15.1 above, Construction Manager shall perform the following final cleaning at Substantial Completion of the Work:

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

§ 3.16 Access to Work

The Construction Manager shall provide the Owner, Project Manager, and Architect access to the Work in preparation and progress wherever located. The Construction Manager shall notify the Owner regarding Project safety criteria and programs, which the Owner, Project Manager, and Architect shall comply with while at the Site. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.17 Royalties, Patents and Copyrights

The Construction Manager shall pay all royalties and license fees. The Construction Manager shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Project Manager, and Architect harmless from loss on account thereof as set forth in Section 3.18.3 below, but shall not be responsible for such indemnity, defense or loss when a particular design, process or product of a particular manufacturer or manufacturers

is required by the Owner, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Construction Manager knows that the required design, process or product is an infringement of a copyright or a patent, the Construction Manager shall be responsible for such indemnity, defense or loss unless such information is promptly furnished to the Owner and the Architect.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS SET OUT IN §3.18.2 AND §3.18.3 BELOW, CONSTRUCTION MANAGER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER, ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (THE "INDEMNITEES" AND INDIVIDUALLY "INDEMNITEE"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE WORK, OR OTHER ACTIVITIES OF CONSTRUCTION MANAGER OR ANY SUBCONTRACTOR, INCLUDING, BUT NOT LIMITED TO (1) THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE OR OTHER APPLICABLE LAW BY CONSTRUCTION MANAGER OR ANY SUBCONTRACTOR (OR ANY OF THEIR EMPLOYEES) OF ANY TIER; (2) ANY BOND OR LIEN CLAIM ASSERTED BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER FOR WORK OR MATERIALS PROVIDED TO THE PROJECT, TO THE EXTENT PAYMENT HAS BEEN RECEIVED FROM OWNER; (3) BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER OR ANY OF THE INDEMNITEES.

§ 3.18.2 INDEMNITY – EMPLOYEE INJURY CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED IN SUBSECTIONS 3.18.1 AND 3.18.3, CONSTRUCTION MANAGER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ALL INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS), ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF CONSTRUCTION MANAGER, ANY SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONSTRUCTION MANAGER OR ANY OF ITS SUBCONTRACTORS, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF OWNER OR ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF THE OWNER AND CONSTRUCTION MANAGER THAT, IN SUCH EVENT, THE CONSTRUCTION MANAGER IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER AND INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF THE EMPLOYEE. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONSTRUCTION MANAGER UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. CONSTRUCTION MANAGER SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.

§ 3.18.3 INDEMNITY – COPYRIGHT INFRINGEMENT CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED IN SUBSECTION 3.18.1 AND 3.18.2 ABOVE, CONSTRUCTION MANAGER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ANY INDEMNITEE(S) FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR RELATING TO ANY CLAIM AGAINST OWNER OR INDEMNITEES ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH ANY INSTRUMENTS OF SERVICE FURNISHED BY OR THROUGH CONSTRUCTION MANAGER OR ITS SUBCONTRACTORS, EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF OWNER OR ANY OF THE INDEMNITEES OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.

§ 3.18.4 In claims against any person or entity indemnified under Section 3.18.1 by an employee of the Construction Manager, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations hereunder shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Construction Manager or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.5 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 3.18 or the Additional Insured requirements of this Agreement, such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision in this Agreement be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, Section and/or Agreement shall not be affected thereby and shall remain valid and fully enforceable.

§ 3.18.6 Insurance covering the indemnification obligations of Construction Manager under the foregoing paragraphs shall be provided by Construction Manager, but Construction Manager's liability to Owner as provided herein shall not be limited by the amount of the insurance coverage(s) required of and provided by Construction Manager.

§ 3.18.7 In the event that any claim, damage, demand, cost, loss, expense or injury arises or is made, asserted or threatened against Owner or any Indemnitee, Owner shall have the right to withhold from any payments due or to become due to Construction Manager an amount sufficient in its judgment to protect and indemnify the Indemnitee from any and all such claims, damages, demands, costs, losses, expenses or injuries (including, without limitation, legal fees and disbursements) except to the extent covered by insurance proceeds.

§ 3.18.8 The obligations contained in this Section 3.18 shall survive the expiration, completion, abandonment and/or termination of the Agreement and Final Completion of the Work.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the "Architect" in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall retain the Architect to provide services, duties and responsibilities as described in a separate agreement with the Architect, which shall include, if approved by Owner, any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, and Architect, with notice to the Construction Manager.

§ 4.1.3 Owner may remove the Architect at any time with or without cause. If the Owner employs a new Architect, its status under the Contract Documents shall be that of the former Architect. In the case of such termination, the Owner may itself perform some or all of the responsibilities of Architect hereunder.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents or as requested by Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 Upon the Owner's request, the Architect, and such other consultants retained by the Owner and Architect, will visit the Site at intervals appropriate to the stage of construction with the Project Manager, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work or portion thereof observed is being performed in a manner indicating that the Work

or portions observed, when fully completed, will be in accordance with the Contract Documents. However, the Owner does not currently intend for the Architect, Project Manager, or such other consultants of the Owner or Architect to make exhaustive or continuous on-Site inspections to check the quality or quantity of the Work. Neither the Architect, Project Manager, nor such other consultants of the Owner or Architect will have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Construction Manager's rights and responsibilities as indicated in this Agreement.

§ 4.2.3 On the basis of the Site visits, the Architect will keep the Owner and Project Manager reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent Project Schedule submitted by the Construction Manager, and (2) defects and deficiencies observed in the Work. Neither the Owner, Architect, nor the Project Manager will be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect, Owner, and Project Manager will not have control over or charge of and will not be responsible for acts or omissions of the Construction Manager, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration

Except as otherwise provided in the Contract Documents, the Architect, Project Manager, and such other persons designated by the Owner shall be copied on all correspondence between the Owner and Construction Manager. The Owner and Construction Manager may communicate directly with each other or indirectly through the Architect or Project Manager about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect with the Owner copied on all written communications. Unless the Owner agrees otherwise, communications between Construction Manager and Owner's Consultants shall be through Owner and/or Project Manager. Except as otherwise provided in the Contract Documents, communications by and with Subcontractors and material suppliers shall be through the Construction Manager. Communications by and with Separate Contractors shall be through the Owner, except as may be required to facilitate coordination between Construction Manager and such Separate Contractors.

§ 4.2.5 Based on the Architect's and Project Manager's evaluations of the progress and condition of the Work, the Construction Manager's Applications for Payment, and all items required to be submitted by the Construction Manager in Sections 9.3 and 9.10 herein and Section 11.1 of the Agreement, the Architect will review and, after consultation with the Project Manager, the Architect and Project Manager will certify the amounts due the Construction Manager and the Project Manager will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect, Owner, and Project Manager have authority to reject Work that does not conform to the Contract Documents. Whenever the Owner or Architect considers it necessary or advisable, the Architect and Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.1, 13.4.2 and 13.4.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect, in cooperation with the Owner and Project Manager, will review and approve, or take other appropriate action upon, the Construction Manager's Submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the Submittal Log approved by the Architect and Owner or, in the absence of an approved Submittal Log, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Construction Manager or Separate Contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or operating performance of equipment or systems, all of which remain the responsibility of the Construction Manager as required by the Contract Documents. The Architect's and Owner's review of the Construction Manager's Submittals shall not relieve the Construction Manager of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's and Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods,

techniques, sequences or procedures. The Architect's or Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Project Manager will prepare Change Orders and Owner Change Directives. The Architect and/or Project Manager will investigate and make initial determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 Promptly after the Construction Manager has submitted to the Owner, Project Manager, and Architect a punch list of incomplete items (the "Punchlist") and has informed them that, in the Construction Manager's opinion, the Work or designated portion thereof is Substantially Complete as set forth in the Contract Documents, the Architect and Project Manager shall conduct an on-Site observation with the Owner to assist the Owner in determining the date of Substantial Completion and in supplementing the Construction Manager's Punchlist of items remaining to be completed. Thereafter, the Architect, in collaboration with the Project Manager and Owner, will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and Close-Out documents required by the Contract and assembled by the Construction Manager pursuant to Section 9.10; and assist the Project Manager in issuance of a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 In addition to responding to RFIs per Section 4.2.14, the Architect will interpret and make recommendations on matters concerning performance under, and requirements of, the Contract Documents on request of the Owner.

§ 4.2.12 Interpretations and recommendations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 On matters relating to aesthetic effect, Architect will review Submittals from Construction Manager to determine if they are consistent with the intent expressed in the Contract Documents. Matters relating to aesthetic effect will be referred to Owner for written approval prior to Architect providing final decisions to Construction Manager.

§ 4.2.14 The Architect will review and respond to Requests for Information about the Contract Documents. The Construction Manager's RFIs shall be made to the Architect in writing with a copy to the Owner on an RFI form furnished by or acceptable to the Architect and Owner. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the Requests for Information. The Construction Manager shall copy and distribute the response to all persons or entities affected by response. The Architect's response to such RFIs will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.15 Subject to prior written notice and a reasonable opportunity to cure, if additional services of the Architect are required because of default or breach by the Construction Manager that causes additional services of the Architect to be necessary, the cost thereof shall be borne by the Construction Manager, and the Owner shall be entitled to reduce amounts otherwise due to the Construction Manager by the costs of such additional services and/or demand that the Construction Manager reimburse the Owner for such costs.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity defined in the Definitions section of this AIA A-201 General Conditions of the Contract, as modified for this Project.

§ 5.1.2 *[Intentionally deleted]*.

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

§ 5.2.1 Construction Manager shall publicly advertise and solicit competitive lump sum bids/proposals from Subcontractors for the performance of all major elements of the Work other than the minor Work that may be included in the Construction Manager's General Conditions Costs. Criteria for determining the bid/proposal that provides the

best value to the Owner shall be established by the Construction Manager and Owner and included in the request for bids/proposals. The Construction Manager shall notify the Owner in advance in writing of the date it will receive the bids/proposals.

§ 5.2.1.1 The Construction Manager shall schedule and conduct pre-bid conferences with interested bidders/proposers, Subcontractors, including material suppliers and equipment suppliers, and record minutes of the conferences. Construction Manager shall also respond in writing, to all parties attending, to questions raised in these conferences.

§ 5.2.1.2 All Subcontractor bids/proposals shall be opened by Construction Manager in the presence of Owner and Project Manager. The Construction Manager, Owner, and Project Manager shall review all Subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons not employed by the Owner, Construction Manager, or Project Manager during the selection process. All bids/proposals shall be publicly available after award of the contract or within **seven (7)** Days after the date of final selection, whichever is later.

§ 5.2.1.3 If Construction Manager reviews, evaluates, and recommends to Owner a bid/proposal from a Subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall compensate Construction Manager by a change in the Contract Time or Contract Sum for any additional cost and risk that Construction Manager incurs because of Owner's requirement that the other bid/proposal be accepted.

§ 5.2.1.4 Construction Manager may seek to self-perform portions of the Work identified for self-performance in the bid/proposal strategy ("Self-Performed Work"). Construction Manager must submit a bid/proposal for the Self-Performed Work in the same manner as all other Subcontractors, but must submit such bid/proposal directly to the Owner at least twenty-four (24) hours prior to receiving similar bids from other parties. After reviewing all bids, the Owner will determine whether the Construction Manager's bid/proposal provides the best value for Owner, which determination is final. If selected as the best value, the Contractor must perform the approved Self-Performed Work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Construction Manager shall account for Self-Performed Work in the same manner as it does all other Subcontractor costs. In the event an adjustment is required to the cost of any awarded Self-Performed Work, the awarded amount shall be treated as a lump sum amount and any adjustment to said amount must be approved through the Change Order process identified in Section 7.2 herein.

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

§ 5.2.3 *[Intentionally deleted.]*

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

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, in form and substance acceptable to Owner, Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by terms of the Contract Documents, and to assume all the obligations and responsibilities, required to carry out the Work in accordance with the Contract Documents, including, but not limited to, the indemnity obligations and responsibility for safety of the Work. The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Each Subcontractor will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. Construction Manager shall require all Subcontractors to (i) carry the insurance in the type and amount required by the Agreement and **Exhibit B**, (ii) indemnify the Owner to the same extent as required by the Construction Manager under the Contract Documents, and (iii) make the same warranties for the applicable portion of the Work to the Owner as required by the Construction Manager under the Contract Documents. The Construction Manager shall promptly inform the Owner in writing of any inability to comply with these requirements.

§ 5.3.2 Construction Manager shall assign to Owner, from time to time as Owner may request, all assignable guaranties, warranties, and indemnities extended by any Subcontractor, materialman, mechanic or vendor with respect to any work, materials, equipment, or services performed or furnished by the issuing party and forming a part of the

Work. Construction Manager shall use its best efforts to obtain assignable guaranties, warranties and indemnities with respect to the Work. Construction Manager shall, if requested by Owner, enforce any non-assignable guaranty, warranty or indemnity in its name but on behalf of Owner and otherwise assist Owner in realizing the full benefits thereof.

§ 5.4 Contingent Assignment of Subcontracts

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

- .1** assignment is effective only after termination of the Contract by the Owner pursuant to Sections 14.2 or 14.4, and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Construction Manager in writing; and
- .2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Construction Manager's rights and obligations under the subcontract. Owner shall only be responsible for those obligations of Construction Manager that (i) accrued prior to Owner's exercise of any rights under the conditional assignment and for which Owner has not made payment to Construction Manager and (ii) accrue subsequent to Owner's exercise of any rights under the conditional assignment. Each Subcontract shall so limit Owner's liability upon exercise of its rights under the conditional assignment. Nothing contained herein shall waive Construction Manager's obligations that arise out of Work performed under any agreement prior to Owner's acceptance of the assignment. Upon such assignment to the Owner under this Section 5.4.1, the Owner may further assign the agreement to a successor Construction Manager or other entity.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than **ninety (90)** Days, the compensation of the Subcontractor whose agreement has been accepted for assignment by the Owner, may be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 *[Intentionally deleted]*.

§ 5.4.4 Notwithstanding the foregoing, in the event of a termination for convenience under Section 14.4 below, Construction Manager's rights under each subcontract agreement with regard to the respective Subcontractor's obligation to correct defective or non-conforming Work or with regard to the respective Subcontractor's warranty obligations for portions of the Work performed by the Subcontractor are assigned by the Construction Manager to the Owner in the event of such termination on a non-exclusive basis such that Owner shall also have the right to enforce such obligations.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under conditions of the Contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such Claim as provided in Article 15.

§ 6.1.2 *[Intentionally deleted]*.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with all Separate Contractors and the Owner in reviewing their construction schedules. The Construction Manager shall make any revisions to the Project Schedule deemed necessary after a joint review and mutual agreement, and, if the result is an extension of the Contract Time, by a signed Change Order setting forth the agreed adjustment to the Contract Time. The construction schedules shall then constitute the schedules to be used by the Construction Manager, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 *[Intentionally deleted]*.

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Construction Manager's Work depends upon construction or operations by the Owner or a Separate Contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by Owner or Separate Contractor that would render it unsuitable for proper execution and results of Construction Manager's Work. Failure of the Construction Manager to report shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable. If the Construction Manager fails to make such report, the Construction Manager shall be liable for any damages, costs or liability resulting therefrom, including, without limitation, any fines, consulting fees, and costs of correction of the Work.

§ 6.2.3 The Construction Manager shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Construction Manager because of the Construction Manager's delays, improperly timed activities, defective construction, or failure to protect the Work. The Owner shall be responsible to the Construction Manager for costs the Construction Manager incurs because of a Separate Construction Manager's delays, improperly timed activities, damage to the Work, or defective construction so long as the Construction Manager complies with Section 6.2.2.

§ 6.2.4 The Construction Manager shall promptly remedy damage the Construction Manager wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5. Should the Construction Manager cause damage to the work or property of any Separate Contractor, the Construction Manager shall, upon due notice, promptly attempt to settle with such other Separate Contractor by agreement, or otherwise to resolve the dispute.

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Construction Manager, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and keeping the surrounding area free from waste materials and rubbish, the Owner may clean up and equitably allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Change Order or Owner Change Directive, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement between the Owner and Construction Manager. The Owner may issue an Owner Change Directive without agreement by the Construction Manager.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Construction Manager shall proceed promptly, unless otherwise provided in the Change Order or, Owner Change Directive. From time to time, Owner may authorize changes in the Work, issue additional instructions, require additional Work or direct the omission of Work previously ordered; provided, however, Construction Manager shall not, under any circumstances, proceed with any change without prior written authorization from Owner in accordance with this Article 7 if such change would (1) increase or decrease the Final Guaranteed Maximum Price or if prior to execution of the Final Guaranteed Maximum Price Amendment Construction Manager's compensation for Pre-Construction Phase Services; (2) extend the Contract Time; or (3) otherwise affect the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument signed by the Owner and the Construction Manager stating their agreement upon all of the following for the items covered in each Change Order as well as the cumulative effect and impact of all previous Change Order(s):

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Final Guaranteed Maximum Price, or if prior to execution of the Final Guaranteed Maximum Price Amendment, the adjustment, if any, in the Construction Manager's compensation for Pre-Construction Phase Services; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Unless otherwise provided in the Change Order, agreement on any Change Order shall constitute a final settlement of all matters in whole or in part arising from or relating to the change in the Work which is the subject of the Change Order, including but not limited to, all direct and indirect costs associated with such change and any and all adjustments to Construction Manager's compensation for Pre-Construction Phase Services, the Final Guaranteed Maximum Price, the Contract Time and the Project Schedule. In the event a Change Order increases the Final Guaranteed Maximum Price, Construction Manager shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents. Only changes in the Work through properly authorized and executed Change Orders and Owner Change Directives may be included in Construction Manager's Application for Payment.

§ 7.2.3 The Construction Manager shall not accept any request for a Change Order from any person other than the Owner and may not perform any Work asserted to constitute a change in the Work until the Owner has issued an Owner Change Directive or executed the Change Order, unless the Owner authorizes in writing that the Construction Manager to proceed with a change prior to the Owner's final execution of a Change Order.

§ 7.2.4 Change Order Requests ("CORs"). In the event (1) the Construction Manager determines it is necessary to propose a change in the Work or (2) the Owner notifies Construction Manager of a desired change in the Work, the Construction Manager shall promptly (but in no event later than **ten (10)** Days after receipt of the request) deliver to the Owner, Project Manager, and Architect three (3) completed copies of its Change Order Request ("COR") setting forth in detail, with a suitable breakdown by trades and work classifications, the Construction Manager's estimate of the changes in the Final Guaranteed Maximum Price (together with appropriate data acceptable to the Owner supporting such estimate, including but not limited to bids, cost estimates, and applicable unit prices) and any proposed adjustment to the Contract Time resulting from the change. CORs shall be in such form or forms as directed by the Owner or Project Manager and comply with the following requirements:

- .1 Each COR shall be numbered consecutively and shall include all material costs, labor costs, fees, and other reimbursable Cost of the Work, including all Subcontractors costs, and any applicable Construction Manager's Fee or profit. The COR shall specify all costs related to the proposed change in the Work, including any disruption or impact on performance.
- .2 The Subcontractor's itemized accounting shall be included with the COR.
- .3 If the COR is returned to the Construction Manager for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Construction Manager shall revise the COR accordingly and resubmit the revised COR to the Owner.
- .4 A revised COR shall bear the original COR number suffixed by the letter "R" to designate a revision in the original COR. If additional revisions to a revised COR are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix.
- .5 The Construction Manager shall request extensions of Contract Time, if any, due to changes in the Work only at the time of submitting the COR. If no time is included in the COR, it shall conclusively be presumed that the Contract Time shall not be affected by the Work which is the subject of the COR.
- .6 The Construction Manager shall maintain such Change Order log (with CORs) in such form as directed by Owner.

§ 7.2.5 Processing of CORs/Change Orders.

§ 7.2.5.1 The Owner, Project Manager, and the Architect shall review properly prepared, timely CORs submitted by the Construction Manager for changes in the Work, including adjustments to the Construction Manager's

compensation for Pre-Construction Phase Services, the Final Guaranteed Maximum Price or Contract Time. Upon written approval of a COR by the Owner, unless otherwise specified by Owner, the Construction Manager shall prepare a Change Order reflecting the agreed-upon changes as set forth in the Construction Manager's COR (or such other changes agreed upon by the Owner and the Construction Manager). The Change Order may include several approved CORs in a Change Order so long as the Construction Manager clearly identifies each approved COR by number, description and amount approved and attaches the approved COR to the Change Order.

§ 7.2.5.2 If the Construction Manager's COR is not agreed to by the Owner or if the Construction Manager fails to submit a COR to Owner within **ten (10)** Days of an Owner request for a COR, the Owner may nevertheless issue an Owner Change Directive directing the Construction Manager to perform the requested change in the Work. If so issued, the Construction Manager shall proceed with the Work authorized by same and the increase or decrease, as applicable, in the Construction Manager's compensation for Pre-Construction Phase Services or the Final Guaranteed Maximum Price as a result of such additive or deductive changes in the Work shall be calculated as set forth in Section 7.3 and the adjustment of the Contract Time shall be as proposed in the Owner Change Directive. If the Construction Manager disagrees with the adjustments stated in the Owner Change Directive, the Construction Manager may submit a Claim as set forth in Article 15.

§ 7.2.6 Except as permitted in the Agreement or herein with regard to amounts to which Owner is entitled to payment or offset arising from Construction Manager's breach or default hereunder, a change in the Construction Manager's compensation for Pre-Construction Phase Services, the Final Guaranteed Maximum Price, or the Contract Time shall be accomplished **only** by an Owner Change Directive or Change Order without prejudice, however, to Construction Manager's right to assert its entitlement to a change in the Construction Manager's compensation for Pre-Construction Phase Services, the Final Guaranteed Maximum Price, or Contract Time in accordance with Article 15. No course of conduct or dealings between the parties, nor verbal instructions, express or implied acceptance of alterations or additions to the Work, nor refinement or further detailing of Drawings and Specifications, shall be the basis of any Claim to any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents and Construction Manager hereby releases and waives all Claims for extras, changes or increases therein, unless such extras, changes and increases are specifically authorized by a written Change Order or Owner Change Directive, signed by Owner, in accordance with this Article 7.

§ 7.3 Owner Change Directives

§ 7.3.1 An Owner Change Directive is a written order signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Construction Manager's compensation for Pre-Construction Phase Services, the Final Guaranteed Maximum Price, or Contract Time, or each. The Owner may, by Owner Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, Construction Manager's compensation for Pre-Construction Phase Services, the Final the Guaranteed Maximum Price and Contract Time being adjusted accordingly. The Owner at any time may also by an Owner Change Directive, without invalidating the Contract, order the Construction Manager to perform work in the event of a dispute with the Construction Manager as to whether such work is part of the Work under the Contract Documents and the Construction Manager may submit a claim in accordance with Article 15.

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

§ 7.3.3 If the Owner Change Directive provides for an adjustment to the Construction Manager's compensation for Pre-Construction Phase Services or the Final Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Reimbursable Cost of the Work plus Construction Manager's Fee;
- .4 Actual cost of the Change in the Work to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .5 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Owner Change Directive so that application of

such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Construction Manager, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of an Owner Change Directive, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Owner, Project Manager, and Architect of the Construction Manager's agreement or disagreement with the method, if any, provided in the Owner Change Directive for determining the proposed adjustment in the Construction Manager's compensation for Pre-Construction Phase Services, the Final Guaranteed Maximum Price, or Contract Time.

§ 7.3.6 An Owner Change Directive signed by the Construction Manager indicates the Construction Manager's agreement therewith, including adjustment in Construction Manager's compensation for Pre-Construction Phase Services, the Final Guaranteed Maximum Price, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Construction Manager does not respond within **ten (10)** Days of submittal of the Owner Change Directive or indicates a disagreement with the method for adjustment in the Construction Manager's compensation for Pre-Construction Phase Services or the Final Guaranteed Maximum Price within that same **ten (10)** Day period, the Architect in collaboration with the Project Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change and including, in the case of an increase, an amount for Subcontractor overhead and profit, if any, as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Construction Manager shall keep and present, in such form as the Owner, Project Manager and/or Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, and labor burden as set forth in **Attachment 5.1** to **Exhibit A** if after execution of the Final Guaranteed Maximum Price Amendment or **Exhibit F** if prior to the execution of Final Guaranteed Maximum Price Amendment;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Construction Manager or others;
- .4 Costs of permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the Change unless otherwise included in another Cost of the Work.

The costs referred to in this Section 7.3.7 shall be reasonable costs. Construction Manager shall not be entitled to an increase of the Construction Manager's Fee or additional mark-up as a result of any Change Order, except as specifically permitted in Section 6.1.3 of the Agreement.

§ 7.3.8 Except as otherwise provided in the Agreement, the amount of credit to be allowed by the Construction Manager to the Owner for a deletion or change that results in a net decrease in the Final Guaranteed Maximum Price shall be calculated as provided in Section 6.1.3 of the Agreement. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for profit shall be figured on the basis of net increase or decrease, if any, with respect to that change, to the extent such change is authorized by the Agreement.

§ 7.3.9 Pending final determination of the total cost of an Owner Change Directive, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect, in collaboration with the Project Manager, will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Final Guaranteed Maximum Price, or if prior to the execution of the Final Guaranteed Maximum Price Amendment, the Construction Manager's compensation for Pre-construction Phase Services, on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. Further, pending final determination of any adjustment to the Contract Time, a Change Order shall be issued indicating the parties' agreement with part or all of the appropriate time adjustment, and for any portion of such time adjustment that remains in dispute, the Architect in collaboration with the

Project Manager will make an interim determination, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Construction Manager agree with a determination concerning the adjustments in the Construction Manager's compensation for Pre-Construction Phase Services, the Final Guaranteed Maximum Price, and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of an Owner Change Directive.

§ 7.4 *[Intentionally deleted.]*.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Contract Time is defined in Article 1.1.

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

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

§ 8.1.4 The term "Day" as used in the Contract Documents is defined in Article 1.1.

§ 8.2 Progress and Completion

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

§ 8.2.2 The Construction Manager shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 and **Exhibit B** to be furnished by the Construction Manager to the Owner. The Contract Time shall not be adjusted as a result of the Construction Manager's failure to obtain insurance required under this Contract.

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

§ 8.2.4 Construction Manager shall perform the Work in accordance with the Project Schedule and the Required Dates of Substantial Completion and Final Completion and all Interim Milestone Dates contained therein, which shall not exceed the time required under Sections A.2.3 and A.2.4 of **Exhibit A**. The term "Float" as used in the Contract Documents shall mean "total float" and shall mean the difference between the time available to accomplish an activity and the estimated time required and is as determined by the most recently updated Construction Schedule. All Float contained in the Construction Schedule shall be considered a Project resource available to Owner or Contractor, on an as-needed basis, to achieve Construction Schedule milestones, Interim Milestone Dates, Substantial Completion, and/or Final Completion. All Float shall be shown in the Construction Schedule. Identification of (or failure to identify) Float on the Construction Schedule shall be evaluated by the Owner and Project Manager in determining whether to approve the Construction Schedule. Once identified, Float shall be monitored, accounted for, and maintained in accordance with critical path methodology in the Construction Schedule.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 Weather Delays. If adverse weather conditions are the basis for a Claim for additional time, Construction Manager shall demonstrate the manner in which the critical path of the Project Schedule is impacted by the alleged delay due to the adverse weather conditions. In addition, each such Claim for additional time related to adverse weather conditions shall be documented by data substantiating that weather conditions had adverse effect on the critical path of the Project Schedule and that conditions experienced fall outside of the extreme ranges of weather data published by the National Oceanic and Atmospheric Administration (NOAA) for the area in which the Project is located, during the **five (5)** year climactic average immediately preceding the date of the Agreement (a "Weather Delay"), provided however, that abnormally high temperatures will not be considered a basis for a request for an

extension of the Contract Time. Regardless of actual weather conditions, any Day in which the Construction Manager is able to work sixty percent (60%) or more of its scheduled work force shall not be counted as an adverse weather condition for purposes of calculating weather related time extensions. In evaluation of the above, Saturdays will be considered as make-up days for time lost during the normal work week due to weather, and Saturdays which are considered as workable shall offset claims made by the Construction Manager for adverse weather conditions, unless Construction Manager had previously submitted a schedule to the Owner that reflected it would work on that Saturday.

§ 8.3.1.1 Adverse weather conditions or precipitation events will be recorded at the Site. They also may include subsequent muck Days, dewatering, and ice/snow removal and other related effects of the weather event. Adverse weather conditions shall not be considered a basis for an extension of Contract Time unless the number of Days of adverse weather conditions experienced during that month fall outside of the NOAA **five (5)** year average set forth in Section 8.3.1 above. All adverse weather conditions will be logged by the Construction Manager daily in the construction Daily Logs and included a weather report which will be provided monthly to the Owner.

§ 8.3.1.2. Construction Manager represents and warrants to Owner, as a material inducement to the execution of this Contract, that Construction Manager has considered all risks and occurrences that could occur with respect to the timely completion of the Work. Without limiting the foregoing, Construction Manager warrants and represents that in establishing the Project Schedule, Construction Manager has given full consideration to and takes responsibility for the effect of inclement weather and adverse weather conditions during the construction period in accordance with the 5-year climactic averages for the location of the Project as determined by National Oceanic and Atmospheric Administration (NOAA) office nearest to the Project.

§ 8.3.1.3 Extensions of time shall be the Construction Manager's **sole remedy** for Weather Delay caused by adverse weather conditions over the NOAA **five (5)**-year average discussed in Section 8.3.1, but shall only be granted if (a) Construction Manager provides notice of the adverse weather condition to Owner and Project Manager within **forty-eight (48)** hours of experiencing such adverse weather condition; (b) such delay is beyond the NOAA 5-year average for adverse weather conditions and the Saturday make-up day required by Section 8.3.1; (c) the delay is substantiated to have affected the critical path of the Project Schedule; and (d) the Owner approves the extension of Contract Time in an approved Change Order.

§ 8.3.2 Non-Weather Delay. If the critical path of the Work of the Construction Manager is delayed at any time in the commencement or progress of the Work (1) by unanticipated physical conditions at the Project other than adverse weather conditions (which shall be resolved pursuant to Section 8.3.1 above), fire, pandemics, epidemics, governmental orders or delays, unavoidable casualties, or other causes beyond the Construction Manager's control and not arising or resulting from the negligence, inattention or fault of Construction Manager or any of its Subcontractors ("Excusable Delay"); (2) by the acts or negligence of the Owner, Project Manager, or of an employee of Owner, or of a Separate Contractor employed by the Owner ("Owner-Caused Delay"); or (3) by changes ordered in the Work, and Construction Manager has provided a notice of potential delay within **forty-eight (48)** hours of Construction Manager becoming aware of such event or circumstance, the Contract Time may be extended by Change Order for such time as may be reasonably determined by the Project Manager and approved by Owner, and then only for the amount of time Construction Manager has been actually and directly delayed and only if allowed under Section 8.3.3 below. Notwithstanding the foregoing, the **Construction Manager acknowledges and agrees that neither adjustments in the Contract Time nor adjustments in the Final Guaranteed Maximum Price** will be permitted if (1) any delay is caused by the negligence or fault of the Construction Manager and/or its Subcontractors; or (2) Construction Manager failed to provide a notice of potential delay. Construction Manager acknowledges the limitations of this provision and shall cooperate with Owner to at all times minimize and mitigate the impact of any delay to completion of the Work.

§ 8.3.3 No Damage for Delay. Notwithstanding any other provision in the Contract Documents, an extension of the Contract Time shall be the **sole remedy** of Construction Manager for Excusable Delay and Weather Delay. Any delay caused by or resulting from changes ordered in the Work shall be provided in the particular Change Order and no additional Contract Time or cost will be allowed except as agreed therein. As to Owner-Caused Delay or interference, extensions of time may be provided but no compensation for delay will be allowed except as set forth in Section 8.3.3.1 below. Construction Manager shall not be entitled to any compensation or recovery of any other damages including, without limitation, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages.

§ 8.3.3.1 Owner-Caused Delay. Construction Manager shall provide notice of an Owner caused delay within **forty-eight (48)** hours of first experiencing such Owner-Caused Delay. The amount of any Claim for damages asserted by Construction Manager for an Owner-Caused Delay shall not exceed the Construction Manager's actual, direct General Conditions Costs incurred for that certain period of time of the delay. "Direct General Conditions Costs" shall mean, the allowable Costs of the Work designated as General Conditions Costs in Article 7 of the Agreement. Construction Manager shall not be entitled to (a) any indirect or consequential damages, (b) home office overhead, home office charges, or any damages based on Eichleay formula calculation; (c) recovery of any damages based on a comparison of planned expenditures to total actual expenditures, or on losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly; (d) any profits or lost profits, except as expressly recoverable as Construction Manager's Fee on the Cost of the Work as set forth in the Agreement; (e) exemplary damages, or (f) unjust enrichment damages. All recoverable costs must be shown to have been *directly caused* by an Owner-Caused Delay. Excusable Delays or delays caused by Construction Manager or its forces occurring concurrently with Owner-Caused Delay shall exempt that Day from being counted as an Owner-Caused Delay.

§ 8.3.3.2 The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as interference in the Construction Manager's performance of the Work or a wrongful act of Owner. Notwithstanding Section 8.3.3 or 8.3.3.1 above, no extension of Contract Time or any additional costs shall be granted or allowed unless the Construction Manager demonstrates that the delay in completion of the Work was caused by a delay in a portion of the Work that was on the critical path of the Project. Nothing contained herein shall prohibit recovery by Owner of liquidated damages for Construction Manager's delay pursuant to the Agreement. Construction Manager shall not be compensated nor given extensions of time for delays that are unexcused.

§ 8.3.4 Construction Manager and all Subcontractors, consultants, and suppliers will comply with all orders, regulations, or requirements issued by any Authority Having Jurisdiction that may affect commercial construction in the county where the Project is located. Construction Manager and its Subcontractors and suppliers will employ commercially reasonable efforts to mitigate any delays and/or increased costs related to price escalations in the marketplace, tariffs, or labor or materials shortages. Notwithstanding the foregoing, Owner has requested that Construction Manager prepare the Project Schedule and all bids/proposals keeping in mind reasonably foreseeable delays in deliveries, workforce inefficiencies, price escalations, price fluctuations, and potential shortages of materials. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Construction Manager or any contractors, Subcontractors, or suppliers to comply with the requirements of this Section or to include in the bids/proposals or Project Schedule sufficient time or amounts to address reasonably foreseeable delays in deliveries, workforce inefficiencies, price escalations or fluctuations, or shortages of materials.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is defined in Section 6.1.1 of the Agreement.

§ 9.2 Schedule of Values

Construction Manager shall include a Schedule of Values in the Final Guaranteed Maximum Price Amendment (**Exhibit A**) as **Attachment 1**, allocating the entire Contract Sum to the various portions of the Work, by trade, with supporting data received from Subcontractors (including Subcontractor schedules of values), and shall incorporate costs for each Subcontractor for each portion of the Work and for General Conditions Costs and the Construction Manager's Fee. The Schedule of Values shall be prepared in such a manner that each major item of Work and each contracted or subcontracted item of Work is shown as line items on AIA Document G702/703 or such other format required by Owner. The Schedule of Values shall follow the trade divisions of the Specifications so far as practicable and shall not overvalue early job activities. Except as otherwise agreed in writing by the parties, the Construction Manager's General Conditions Costs, Contingency, allowances and Construction Manager's Fee shall be included as separate line items. Any modifications or amendments to the Schedule of Values must be approved by the Owner. The Construction Manager shall provide an analysis of the Schedule of Values, showing actual performance as compared to the original projection, as part of its monthly progress report pursuant to Section 3.8.2.2.

§ 9.3 Applications for Payment

§ 9.3.1 Applications for Payment will be submitted in accordance with Article 11 of the Agreement.

§ 9.3.1.1 Construction Manager shall submit to the Owner and Project Manager an itemized Pencil Draw and Application for Payment for completed portions of the Work. The application shall be notarized and supported by data substantiating the Construction Manager's right to payment as required by this Agreement or as the Owner, Project Manager, or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The Owner shall have the right, but not the obligation, to make payments directly to Subcontractors and materialmen or to make payments jointly to Construction Manager and Subcontractor, laborer or materialman, as and when Owner deems appropriate.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Site at a location agreed upon in writing. Notwithstanding anything herein to the contrary, if it is reasonably necessary for the Construction Manager to purchase materials or equipment and store them off-Site in order to maintain the Project Schedule, Owner shall not unreasonably withhold, condition or delay its approval of payment for such items. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by the Construction Manager with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the Site, for such materials and equipment stored off the Site. Construction Manager shall also comply with the following requirements:

- .1 Materials shall be stored at a commercial warehouse meeting Owner's criteria as stated in this Section 9.3.2.
- .2 Title to such materials shall be vested in the Owner as evidenced by documentation satisfactory in form and substance to the Owner including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Construction Manager shall submit to the Owner a written list identifying each location where materials are stored off the Site and the value of materials at each location. Timestamped photos of stored materials must be provided with each Application for Payment.
- .4 The Construction Manager shall procure insurance satisfactory to the Owner for materials stored off the Site in an amount not less than the total value thereof and insurance to cover materials in transit from the off-Site storage facility to the Site. Construction Manager shall provide necessary Certificates of Insurance to demonstrate compliance with the insurance requirements.
- .5 Owner and Project Manager shall have the right to make inspections of the storage areas at any time. Warehouse records, receipts and invoices shall be available to Owner upon request to verify the quantities of materials and their disposition. Warehouse and storage facilities must be insured and bonded in such amounts as to cover stored materials.
- .6 Such materials shall be (1) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.

§ 9.3.3 The Construction Manager warrants that title, but not the risk of loss or damage, to all Work covered by an Application for Payment will pass to the Owner no later than the earlier to occur of (i) incorporation into the Work, or (ii) the time of payment. The Construction Manager further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Construction Manager's knowledge, information and belief, be free and clear of liens,

claims, security interests, or encumbrances in favor of the Construction Manager, Subcontractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 The Construction Manager shall submit with each Application for Payment such releases and waivers of liens as required by Sections 11.1.6.1.4 and 11.1.6.1.5 of the Agreement, duly executed, from itself and each Subcontractor, material supplier, or other person or entity for Work covered by the Application for Payment, and any other items, documents and information required by the Owner to evidence that the Work covered by the Application for Payment has been performed in accordance with the Contract Documents and Applicable Laws. Construction Manager shall defend, indemnify and hold harmless Owner and any related entities from any liens or bond claims filed by any Subcontractor, laborer, materialman, or supplier claiming through Construction Manager. Such indemnification may be provided through the payment bond required for the Work. If the payment bond fails to satisfy, remove or discharge any such lien or claim, upon **five (5) Days'** notice from Owner that such failure has occurred, Construction Manager will defend, indemnify and hold harmless Owner from such claim and shall be responsible for all damages, losses, payments, costs and fees, including attorney's fees, incurred by Owner as a result of such claims.

§ 9.3.5 In the event of termination for convenience or cause, or default by the Construction Manager, the items in storage upon which payment has been made, will be promptly turned over to Owner at a location designated by Owner. All surety bonds provided by Construction Manager for the Project shall cover any claim respecting materials stored off-Site.

§ 9.4 Certificates for Payment

§ 9.4.1 If the Construction Manager has complied with Section 11.1.3.1 of the Agreement as it concerns submittal of the Pencil Draw and the subsequent review and submittal of the formal Application for Payment process, Project Manager in consultation with the Architect shall, within the time periods provided in such Section, certify the Application for Payment. Upon certification Project Manager shall issue to the Owner, with a copy to the Architect and Construction Manager, a Certificate for Payment for such amounts approved, which shall be reduced by retainage, as the Project Manager determines is proper. If the Certificate for Payment cannot be issued, Project Manager shall notify the Owner and Construction Manager of its reasons for withholding certification of the Application for Payment and issuance of a Certificate for Payment. All Certificates and payments, including those pursuant to a pending Claim, shall be subject to the Owner's approval.

§ 9.4.2 The Architect and Project Manager shall, as appropriate to the type and stage of construction progress and as otherwise required by this Agreement, but not less than monthly, conduct on-Site inspections of the Work to review the progress and quality of the Work, to determine if the Work is proceeding in accordance with the Contract Documents, and to guard the Owner against defects and deficiencies in the Work. On the basis of such on-Site inspections, the Project Manager will work collaboratively with the Architect to certify and issue Certificates for Payment. After the Project Manager and Architect have performed their obligations under this Section 9.4.2, the Project Manager will issue a Certificate for Payment if it finds that all requirements have been met. The Architect's certification of an Application for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's inspections at the Site, that the Work, as inspected by Architect, has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. Project Manager's certification and issuance of a Certificate for Payment shall constitute a representation by the Project Manager, based on its observations at the Site, that the Work has progressed to the point indicated and that the payment requested reasonably corresponds to the quantity of the Work performed as observed by the Project Manager. The issuance of a Certificate for Payment by the Project Manager will not be a representation that the Project Manager has made any examination to ascertain how or for what purpose the Construction Manager has used money previously paid on account of the Final Guaranteed Maximum Price.

§ 9.4.3 The review by Architect and issuance of a Certificate for Payment by Project Manager shall constitute a recommendation to the Owner in respect to the amount to be paid. This recommendation is not binding on the Owner if, in Owner's opinion, legitimate reasons for nonpayment exist including, but not limited to the reasons set out in Section 9.5.1. If the Owner declines to make payment upon a Certificate for Payment, the Owner shall promptly notify the Construction Manager of the reasons therefor.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 A Certificate for Payment may be withheld in whole or in part, to the extent reasonably necessary to protect the Owner due to (a) the inability to certify the Application for Payment as indicated in Section 9.4.2 above; or (b) the determination that the Work has not progressed to the point indicated in the Construction Manager's Application for Payment. If the Project Manager is unable to issue a Certificate for Payment in the amount of the Application for Payment, the Project Manager will notify the Construction Manager, Architect, and Owner as provided in Section 9.4.1. If the Construction Manager, Architect, and Project Manager cannot agree on a revised amount, the Project Manager, performing its obligations under Section 9.4, will promptly issue a Certificate for Payment for the amount the Project Manager deems to be due and owing. The Owner, through Project Manager, may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent necessary to protect the Owner from loss for which the Construction Manager is responsible because of:

- .1 defective Work not remedied;
- .2 Construction Manager has been paid and labor, material or equipment claims are filed by any Subcontractor and the payment bond surety has not responded to the claim as required by the payment bond;
- .3 failure of the Construction Manager to make payments properly to Subcontractors or others for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Final Guaranteed Maximum Price;
- .5 damage to the Owner or a Separate Contractor to the extent it is either not covered by Construction Manager's insurance or Construction Manager's insurer has not confirmed the existence or amount of coverage;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover damages for the anticipated delay permitted under the Contract Documents;
- .7 failure to carry out the Work in accordance with the Contract Documents as advised by and with input from the Architect or Project Manager, as necessary to interpret or clarify the Contract Documents;
- .8 the assessment of any fines or penalties against Owner as a result of Construction Manager's failure to comply with Applicable Laws;
- .9 discovery that Work associated with a prior payment was not in fact achieved, or that Work associated with a prior payment contained defective Work;
- .10 Construction Manager owes Owner liquidated damages or other amounts under the terms of this Agreement;
- .11 failure of the Construction Manager or its Subcontractors or other personnel or entities under the control of Construction Manager to update the Project Schedule, Submittal Log, Daily Log, or to attend Project meetings as required by Owner and/or the Contract Documents;
- .12 Construction Manager has failed to provide any or keep in force or failed to cause a Subcontractor to provide or keep in force any insurance required by this Agreement; or
- .13 any material breach of the Agreement or any other reason for which Owner is entitled to withhold payment under this Agreement.

§ 9.5.2 [Intentionally deleted].

§ 9.5.3 When the reasons for withholding certification and/or payment are removed, certification and/or payment will be made for amounts previously withheld. If the Owner through Project Manager withholds certification for payment under Section 9.5.1.3, or if Project Manager or Owner otherwise becomes aware that Construction Manager is not making proper payments to Subcontractors, the Owner may, at its sole option, issue joint checks to the Construction Manager and to any Subcontractor or material or equipment suppliers to whom the Construction Manager failed to make payment for Work properly performed or material or equipment suitably delivered; *provided, however*, nothing contained herein shall obligate Owner to issue such joint checks.

§ 9.5.4 If Construction Manager disputes any determination by Architect, Project Manager, or Owner with regard to all or any part of an Application for Payment or a Certificate for Payment, Construction Manager shall nevertheless expeditiously continue to prosecute the Work but shall be entitled to make a Claim as provided in Article 15.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect and Project Manager have each certified the Application for Payment and the Project Manager has issued a Certificate for Payment, the Owner shall make payments in the manner and within the time provided in the Contract Documents. Progress payments will be made as provided in Section 11.1 of the Agreement, assuming a complete Application for Payment package is received pursuant thereto and in conformance with Article 9.3 herein. Notwithstanding the foregoing, Owner may withhold payment as provided in Sections 9.4.3 and 9.5.1 herein.

§ 9.6.2 The Construction Manager shall promptly pay each Subcontractor no later than **ten (10)** Days after receipt of payment from the Owner, out of the amount paid to the Construction Manager on account of such Subcontractor's portion of the Work, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of the Subcontractor's portion of the Work. The Construction Manager shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 Construction Manager shall use all sums advanced to it pursuant to this Agreement solely for the purpose of performance of the Work in accordance with the Contract Documents. Payments to all Subcontractors, suppliers, materialmen, and other parties furnishing labor and materials in connection with performance of the Work shall be accompanied by Conditional Waiver and Release on Progress/Final Payment documents in conformance with Texas law which shall be signed by the appropriate Subcontractor to release mechanic's and materialman's liens through the effective date of such previous Application for Payment pursuant to Section 11.1.6.1 of the Agreement. Final payment shall not be released to Construction Manager until Owner has received the information required by Section 11.2 of the Agreement. Without limiting the foregoing, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor or supplier, except as may otherwise be required by Applicable Law.

§ 9.6.5 Construction Manager payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of defective Work or Work that does not comply with the Contract Documents or industry standards.

§ 9.6.7 Payments received by the Construction Manager for Work properly performed by Subcontractors and other persons or entities providing services or work for the Construction Manager, shall be held by the Construction Manager for the Subcontractors, for which payment was made by the Owner.

§ 9.6.8 Construction Manager shall maintain a detailed and accurate accounting system that shall be necessary for the proper financial management of the Project. Construction Manager's records and receipts shall allow for ready identification of all charges included in contracts, subcontracts, purchase orders, Change Orders, invoices and Applications for Payment.

§ 9.7 Failure of Payment

§ 9.7.1 Subject to Owner's right to withhold sums from payment set forth in Section 9.4.3 and/or 9.5.1 above, if the Project Manager does not issue a Certificate for Payment, through no fault of the Construction Manager, within **ten (10)** Days after receipt of the Construction Manager's Application for Payment, or if the Owner does not pay the Construction Manager within the time required by the Contract Documents the amounts due to Construction Manager pursuant to the Contract Documents, then the Construction Manager may, upon **ten (10)** additional Days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Final Guaranteed Maximum Price shall be increased by the amount of

the Construction Manager's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Construction Manager under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Construction Manager fails to promptly make any payment due the Owner within **thirty (30)** Days of notice of the amount due, or the Owner incurs any costs and expenses to cure any default of the Construction Manager or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Construction Manager from the Owner; or (2) issue a written notice to the Construction Manager reducing the Final Guaranteed Maximum Price by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 In addition to such other requirements and conditions as set forth in the Agreement, Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and/or utilize the Work for its intended use; provided, however, as a condition precedent to Substantial Completion, in addition to such other requirements and conditions as set forth in this Agreement, the Texas Department of Health and Human Services ("TDHHS") and any other Authority Having Jurisdiction over the Project has certified that the Work is complete and can be occupied, all systems and facilities necessary for the Owner's occupancy of the premises have been installed and are in good operating order and condition, equipment has been fully tested, balanced, and commissioned, Owner's staff has been properly trained on all equipment, and Owner has received all certificates of occupancy or their equivalent (which may be temporary) and any other permits, approvals, licenses, and other documents from any Authorities Having Jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of Construction Manager, nevertheless all Construction Manager's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed); and the Construction Manager has certified that all remaining Punchlist items (as defined in Section 9.8.2) can be completed within **thirty (30)** Days. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy and utilize the Project on that date and the completion of the Work by the Construction Manager would not materially interfere or hamper the normal business operations, and any Punchlist items may be completed within the time periods as established in the Agreement for Final Completion following Substantial Completion.

§ 9.8.1.1 Construction Manager shall achieve Substantial Completion of the Work no later than the date established in Section A.2.3.1 of **Exhibit A**, the Final Guaranteed Maximum Price Amendment. Construction Manager shall achieve completion of all Punchlist items no more than **thirty (30)** Days after Construction Manager reaches Substantial Completion. Final Completion of the Work, which without limitation shall include the delivery of all Close-out Documents, the completion of requirements of Section 9.8.1 above, and Construction Manager's submission of the final accounting, shall be achieved within the time period provided in Section A.2.4 of **Exhibit A** no more than **sixty (60)** Days after achieving Substantial Completion.

§ 9.8.2 When the Construction Manager considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Owner, Architect, and Project Manager a comprehensive Punchlist of items to be completed or corrected prior to Final Payment. Failure to include an item on such Punchlist does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. The Construction Manager shall proceed promptly to complete and correct all items on the Punchlist. The Construction Manager shall not consider the Work to be substantially complete for purposes of providing a Punchlist to Owner until all Project systems included in the Work are operational as designed and scheduled, all designated or required inspections and certifications by Authorities Having Jurisdiction have been made and posted, designated instruction of the Owner and Project Manager with respect to the operation of specific systems has been completed, and all final finishes required by the Contract Documents are in place.

§ 9.8.3 Upon receipt of the Construction Manager's Punchlist, the Owner, Architect and Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Construction Manager's Punchlist, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Construction Manager shall, before issuance of the Certificate of Substantial

Completion, complete or correct such item upon notification by the Architect or Owner. In such case, the Construction Manager shall then submit a request for another inspection by the Owner, Architect, and Project Manager to determine Substantial Completion.

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted by the Construction Manager to the Owner for written acceptance of responsibilities assigned to it in the Certificate.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager, provided such occupancy or use is consented to by the insurer and authorized by Authorities Having Jurisdiction. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Construction Manager considers a portion substantially complete, the Construction Manager shall prepare and submit a Punchlist to the Owner, Architect, and Project Manager as provided under Section 9.8.2. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Construction Manager.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 At the point Construction Manager determines that all Punchlist items have been resolved, the Work has reached the stage of Final Completion, is in accordance with the Contract Documents, and that the Contract has been fully performed, Construction Manager shall notify Owner, Architect, and Project Manager. Upon Owner's receipt of (a) the Construction Manager's written notice that the requirements of this Section 9.10.1 and Section 9.10.2 have been met and the Work is ready for final inspection and acceptance, and (b) the final Application for Payment and other documentation required by the Contract Documents for Final Payment have been provided to Owner, the Owner, Architect, and Project Manager will inspect the Work for Final Payment. When the Owner, Architect, and Project Manager find the Work acceptable under the Contract Documents and the Work (including all Punchlist items, commissioning obligations, and training of Owner's staff) fully performed and all required documents delivered, the Project Manager will, subject to Section 9.10.2 and Section 11.2 of the Agreement, issue a final Certificate for Payment for acceptance by Owner.

§ 9.10.2 Neither Final Payment nor any remaining retained percentage shall become due, and the Project shall not be deemed to have reached Final Completion until the Construction Manager satisfies all of the requirements contained in Section 11.2.1 of the Agreement and elsewhere in the Contract Documents.

§ 9.10.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Construction Manager or by issuance of Change Orders affecting Final Completion, and the Architect and Project Manager so confirm, the Owner shall, upon application by the Construction Manager and certification by the Architect and Project Manager, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, and accepted. If the remaining balance for Work not fully completed or corrected

is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims. Final Payment shall not be paid prior to **thirty (30)** Days following Final Completion of the Work, satisfaction of the requirements of Sections 9.10.1 and 9.10.2, and receipt of the required documents and performance of items listed in Section 11.2.1 of the Agreement.

§ 9.10.4 No inspections of the Project conducted by Owner, Project Manager, or Architect during the course of construction, either singularly or in the aggregate, shall reduce the level or extent of Construction Manager's responsibilities arising pursuant to this Agreement. Neither the approval and/or final acceptance of the Project or any documents prepared by Construction Manager, the payment of any pay application, or the issuance of any Certificates of Final or Substantial Completion shall constitute, nor be deemed, a release of Construction Manager's obligation to perform and deliver the Work provided in the Agreement and hereunder in a manner consistent with: (i) industry standards; and (ii) as required by the Contract Documents. No approvals or acceptances by, or on behalf of, Owner shall be deemed to be a waiver of any of Owner's rights or claims or an assumption of any responsibility by Owner for any defect, error, or omission in the Work provided by Construction Manager under this Contract.

§ 9.10.5 Acceptance of Final Payment by the Construction Manager, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment or those claims that would otherwise survive completion and acceptance of the Work and Final Payment as allowed under Texas law.

§ 9.11 Record Retention

Construction Manager shall keep and maintain under generally accepted accounting principles full, true and complete lien waivers and releases, financial, and other records related to the Project for a minimum period of **five (5)** years after the date Final Completion or for such longer period as may be required by Applicable Law. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative or dispute resolution proceeding which may ensue.

§ 9.11.1 Audit Rights. Owner shall have the right, at any time and upon reasonable notice, to verify and audit the details of Construction Manager's billings, certificates, accountings, cost data, statements, and any other accounting data or data supporting Construction Manager's Applications for Payment, before or after any payment, by (1) inspecting the books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager's employees; (4) visiting the Site; and (5) any other reasonable action. Construction Manager's records shall be organized and maintained in its files by each Application for Payment period and shall be kept on the basis of generally accepted accounting principles and in conformance with the Texas State Auditor's Office requirements. Construction Manager acknowledges that Owner will audit Construction Manager at the beginning of the Project to verify General Conditions Cost information, including labor burden, and will verify records before making Final Payment under this Agreement. Additional audits may be conducted throughout the Project as reasonably required by the Owner. This provision shall survive any termination of this Agreement.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 As between the Owner and Construction Manager, the Construction Manager shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work and to prevent accidents or injury to any persons on, about or adjacent to the Site. Where consideration of labor, equipment or safety is involved, Construction Manager is solely responsible for all decisions, and Owner shall not incur any liability as a result of Construction Manager's decisions. Owner shall have the right, but not the obligation to request Construction Manager to stop Work in the event of Owner reasonably believes an unsafe condition exists. In such event, Construction Manager shall not resume Work until such unsafe condition is remedied, and shall not be entitled to any additional compensation or extension of the Contract Time resulting from such Work stoppage or unsafe condition.

§ 10.1.2. Construction Manager shall administer and manage the safety program for the Work. This will include, but not necessarily be limited to, review of the safety programs of each of Construction Manager's Subcontractors.

Construction Manager shall monitor the establishment and execution of effective safety practices applicable to all Work and the compliance with all applicable regulatory and advisory agency construction safety standards.

§ 10.1.3 Construction Manager shall, at all times, comply with Owner's Construction, Renovation, and Maintenance Activity Safety Policy (and all amendments thereto) included as a Contract Document pursuant to **Exhibit D**. Nothing contained in this Section 10.1 or elsewhere in the Contract Documents shall be construed as expanding or enlarging Owner's obligations, if any, with respect to safety issues or the Construction Manager's safety programs or protocol, it being understood that between Construction Manager and Owner, Construction Manager shall be solely responsible for proper precautions and implementation and management of safety programs on the Project.

§ 10.1.4 Construction Manager shall designate a safety manager for the Project, which person shall not be the Construction Manager's Project superintendent. Construction Manager shall notify the Owner of the name of the safety manager within **ten (10)** Days of receipt of the Notice to Proceed for Preconstruction Services. Construction Manager's safety manager shall be adequately trained and possessing experience in the role proposed on projects of similar size and scope so as to properly and responsibly carry out the duties required of the role. Construction Manager shall not change the safety manager for the Project without Owner's written consent, which consent shall not be unreasonably withheld.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Construction Manager shall be responsible for precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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

(Paragraph deleted)

§ 10.2.2 The Construction Manager shall comply with and give notices required by Applicable Laws, statutes, ordinances, codes, rules and regulations, and lawful orders of Authorities Having Jurisdiction, bearing on safety of persons or property or their protection from damage, injury or loss, with respect to the means and methods of the performance of the Work. At all times, Construction Manager shall comply with all Applicable Law concerning safety and security of the Site, existing facilities and the Work, and all persons accessing the facilities at the Site, all as more particularly described in the Agreement and the Contract Documents. Construction Manager recognizes that the Site may include a functioning hospital, medical facilities, and/or buildings with administrative functions that requires all entrants comply with and preserve maximum security and sterility requirements within all areas of the Site, whether or not under construction. Construction Manager will, at all times, implement, comply with, and continue to monitor compliance with Owner's safety, security and sterility requirements and procedures.

(Paragraphs deleted)

§ 10.2.2.1 The Construction Manager shall be responsible for any fines, penalties or charges by any regulatory body by reason of any violation of safety or health regulations by the Construction Manager or any Subcontractor or their forces. The Construction Manager shall also be responsible for reimbursement of any OSHA fines incurred by the Owner or Project Manager for Site safety conditions created or controlled by the Construction Manager that result in the Owner or Project Manager receiving a citation under the OSHA multi-employer citation provision. If the Construction Manager fails to pay or contest any such fines, penalties or charges, the Owner may, upon notice to the Construction Manager, pay them and deduct such amount from monies due or to become due to the Construction Manager.

(Paragraphs deleted)

§ 10.2.3 The Construction Manager shall implement, erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting barricades, markings danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities of dangers and hazards created by openings, stairways, falling materials, open excavations, impairments to life and fire barriers or systems, and all other hazardous conditions. The Construction Manager shall

also be responsible for all measures reasonably necessary to protect the other buildings on the premises in which the improvements are being constructed. Any damage to such property or improvements shall be promptly repaired by the Construction Manager. If Construction Manager fails to repair the damage within **three (3)** Days of notification by Owner, the Owner may, without prejudice to other remedies the Owner may have repair the damage and deduct the cost of such repair from payments then or thereafter due the Construction Manager. All barricades shall comply with the Owner's requirements and the requirements of the Contract Documents.

§ 10.2.4 When use or storage of explosives or other Hazardous Materials or equipment, or unusual methods are necessary for execution of the Work, the Construction Manager shall give the Owner reasonable advance notice thereof and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Construction Manager shall also be responsible for all measures reasonably necessary to protect the other buildings on the premises in which the improvements are being constructed. Any damage to such property or improvements shall be promptly repaired by the Construction Manager.

(Paragraphs deleted)

§ 10.2.5 The Construction Manager shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Construction Manager, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Construction Manager is responsible under Sections 10.2.1.2 and 10.2.1.3. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's obligations under Section 3.18.

§ 10.2.6 In addition to the appointment of the Construction Manager's safety manager, Construction Manager shall designate responsible representatives of its Subcontractors' staffs at the Site who all shall be responsible for the promotion of safety and prevention of accidents, and shall enforce all Applicable Laws pertaining to safety and prevention of accidents. The safety representatives shall hold meetings at least every **two (2)** weeks with representatives of the various trades employed at the Site in order to ensure that all workers understand and comply with the Applicable Laws and the Contract Documents related to safety. Construction Manager shall implement and lead a training program with all employees and Subcontractor employees that provides training on the proper conduct and safety at a hospital site. Construction Manager shall, at all times, comply with applicable construction safety program(s), insurance manuals, and any other construction safety requirements applicable to the Project.

(Paragraphs deleted)

§ 10.2.7 The Construction Manager shall not permit any part of the construction or Site to be loaded so as to cause damage or create an unsafe condition. The Construction Manager shall be responsible for all damage done by its Subcontractors' hauling of equipment and/or materials and shall correct such damage at its sole expense.

§ 10.2.8 The Work shall be scheduled and performed to provide protection and temporary facilities necessary to permit pedestrians, vehicular traffic and parking areas to maintain their normal operations during the performance of the Agreement with a minimum of interference. Construction Manager shall protect and prevent damage to all unfinished phases of the Work, including but not limited to, the protection of such Work from damage by the elements, theft or vandalism.

(Paragraphs deleted)

§ 10.2.9 Where required by Applicable Law or for the safety of the Work or of adjacent property and required by the Contract Documents or for the ongoing operations on property adjacent to the Project, the Construction Manager shall shore up, brace, underpin and protect foundations and other portions of existing structures which are in any way affected by the Work. Such costs shall be paid as a Cost of the Work with the prior written approval of Owner unless such costs are necessary due to the negligence or willful misconduct of Construction Manager or its Subcontractors. All parts of the Work shall be braced to resist wind or other loads. Construction Manager understands that some bracing and temporary items require the design of a licensed professional and Construction Manager's scope of Work hereunder includes employment of such professionals to comply with Applicable Law. Construction Manager shall perform the Work with the explicit understanding that the design of the Project is based on all parts of the Work having been completed. Temporary items such as, but not limited to, scaffolding, staging, lifting and hoisting devices, shoring, excavation, barricades, and safety and construction procedures necessary in completion of the Project shall be the sole responsibility of the Construction Manager and its Subcontractors and shall comply with all Applicable Law. It shall not be the responsibility of Owner, Project Manager, Architect or their representatives to determine if Construction Manager, Subcontractors or their representatives are in compliance with Applicable Law.

§ 10.2.10 Construction Manager shall cooperate with the owners of any public or private utility service that may be authorized by Owner to construct, reconstruct, or maintain utility services or facilities during the progress of the Work. Construction Manager shall protect existing utilities from damage and unscheduled interruption of service, and shall provide appropriate advance notices to such utility owners of Work to be conducted in the general vicinity of such services and facilities. Whenever it is necessary to connect the Work to existing facilities, Construction Manager shall not interrupt Owner's operations to make such connections. Such connections shall be done on a scheduled time basis convenient to Owner without interruptions to Owner's operations. No additional compensation for overtime Work related to such connections shall be permitted without the prior written approval of the Owner. Where Work cannot safely be performed without interruption to Owner's operation, procedures shall be established with Owner's approval that provide minimum interruption to operations including, but not limited to, the adjustment of work days, times, and hours, the provision of temporary utilities during any interrupted utility or service, and adjustments to the routing of utility or Work.

(Paragraphs deleted)

§ 10.2.11 Construction Manager shall be responsible for the structural integrity of the building during and related to its construction operations. All structural modifications and concentrated loading of materials must be reviewed and approved by Architect. Construction Manager shall also be responsible for the security of the Work, the Site and all materials stored at the Site or at any other location by Construction Manager with the consent of Owner. Construction Manager shall be solely responsible for all losses and expenses incurred by reason of failure to maintain security at the Site or at the location where Materials are stored, and such expenses incurred shall not increase the Final Guaranteed Maximum Price.

§ 10.2.12 Construction Manager acknowledges that the Work may be performed by Construction Manager on a hospital campus or other medical or administrative facilities that will be occupied and operating while the Work is in progress. Construction Manager shall conduct and schedule its operations to minimize noise and interference with such hospital operations and with Owner's employees, patients, guests, and invitees. The Work shall be scheduled and coordinated with Owner to limit disruptions to the hospital services, including, but not limited to, minimizing the vibrations associated with Construction Manager's Work and receiving Owner's written consent for all utility service disruptions at least **five (5)** Days prior to the scheduled disruption. Owner's employees, patients, guests, and invitees shall at all times have unobstructed ingress and egress to the operating hospital, medical and administrative facilities and no public parking facilities shall be blocked or hindered without Owner's prior written approval. The Work shall be scheduled and performed to provide protection and temporary facilities necessary to permit pedestrians, vehicular traffic and parking areas to maintain their normal operations during the performance of this Agreement with a minimum of interference. Construction Manager shall protect and prevent damage to all unfinished phases of the Work, including but not limited to, the protection of such Work from damage by the elements, theft or vandalism.

(Paragraphs deleted)

§ 10.2.13 Injury or Damage to Person or Property

If the Owner or Construction Manager suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding **twenty-one (21)** Days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. Construction Manager shall provide at the Site, and make available to all workers, medical supplies and equipment necessary to supply first aid service to all persons injured in connection with the Work being performed at the Site, whether by Construction Manager, a Subcontractor, a Separate Contractor, or any other person at the Site. Construction Manager shall, within **twenty-four (24)** hours after the occurrence, report in writing to Owner and Project Manager all accidents whatsoever arising out of or in connection with the performance of the Work, whether on or off the Site, which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death or serious injuries or serious property damages occur, the accident shall be reported **immediately** by telephone or messenger to Owner and Project Manager. If any claim is made by anyone against Construction Manager, any Subcontractor, or any party for whom either is responsible on account of any accident, Construction Manager shall promptly report the facts in writing to Owner and Project Manager, giving full details of the claim.

§ 10.2.14 Construction Manager shall be responsible for any of its fines, penalties or charges by any regulatory body by reason of any violation of safety or health regulations in the performance of the Work.

(Paragraphs deleted)

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

§ 10.3 Hazardous Materials and Substances

(Paragraph deleted)

§ 10.3.1 The Construction Manager is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials. If the Construction Manager encounters Hazardous Materials not addressed in the Contract Documents or not brought to the Site by the Construction Manager or its Subcontractors and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a Hazardous Material, including but not limited to asbestos, radon, or polychlorinated biphenyl (PCB), encountered on the Site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Project Manager, and Architect in writing.

(Paragraphs deleted)

§ 10.3.2 Upon receipt of the Construction Manager's written notice, the Owner shall obtain the services of a licensed laboratory or qualified environment consultant to verify the presence or absence of the Hazardous Material reported by the Construction Manager and, in the event such Hazardous Material is found to be present, to cause it to be rendered harmless. When the Hazardous Material has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Construction Manager. In the event the Work on the critical path is delayed and the other requirements for an extension of time set forth in this Agreement are satisfied, the Contract Time shall be extended appropriately via Change Order and the Final Guaranteed Maximum Price increased in the amount of the Construction Manager's reasonable additional costs of such delay, which adjustments shall be accomplished as provided in Article 7. Notwithstanding the foregoing, in those instances in which Construction Manager had notice of the presence of such materials through information reviewed by Construction Manager or in those instances where the presence of those materials is caused by Construction Manager or its agents, Construction Manager shall not be entitled to a Claim for any delays, disruption or interference it encounters.

(Paragraphs deleted)

§ 10.3.3 *[Intentionally deleted]*.

(Paragraphs deleted)

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for Hazardous Materials brought to the Site by the Construction Manager. The Construction Manager shall be responsible for materials or substances required by the Contract Documents. Construction Manager shall be responsible for identification, abatement, cleanup, control, removal, remediation and/or disposal of any Hazardous Material in or on the Site brought to the Site by the Construction Manager or any Subcontractor under this Contract. Construction Manager shall comply with all Specifications respecting, and shall obtain any and all permits necessary for, the legal and proper handling, transportation, and disposal of such Hazardous Materials.

(Paragraphs deleted)

§ 10.3.5 Construction Manager agrees that it shall not transport to, use, generate, dispose of, or install at the Site any Hazardous Materials, except in accordance with Applicable Law. Further, in performing the Work, Construction Manager shall not cause any release of Hazardous Materials into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water unless required by the Contract Documents. In the event Construction Manager engages in any of the activities prohibited in this Section 10.3 or fails to stop Work as provided in Section 10.3, to the fullest extent permitted by law, and except as provided otherwise in Section 3.18 above, Construction Manager hereby indemnifies, defends, and holds harmless the Indemnitees and their respective officers, agents, employees, and tenants from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incident to or resulting from the activities prohibited in this Section 10.3 or Construction Manager's failure to stop Work as required, except to the extent that such damage, loss or expense is due to the sole, joint, or concurrent fault or negligence of the Indemnitee seeking indemnity.

(Paragraph deleted)

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Construction Manager shall act, at the Construction Manager's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of Contract Time claimed by the Construction Manager on account of an emergency shall be determined as provided in Article 15 and Article 7, provided the Construction Manager shall not be entitled to additional compensation or an extension of Contract Time if an emergency is caused by the negligence or failure to fulfill a specific responsibility of the Construction Manager to the Owner set forth in the Contract Documents or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers. Construction Manager shall develop and maintain an Emergency Response Plan in a form acceptable to the Owner and compliant with the Contract Documents.

(Paragraph deleted)

ARTICLE 11 INSURANCE AND BONDS

(Paragraphs deleted)

§ 11.1 Construction Manager's Insurance and Bonds

(Paragraphs deleted)

§ 11.1.1 Construction Manager shall purchase and maintain insurance and provide bonds as set forth in **Exhibit B**. Construction Manager will comply, at all times, with all insurance requirements of Owner. In the event of any failure by Construction Manager to comply with the provisions of **Exhibit B**, Owner may, at its option, on notice to Construction Manager, suspend or terminate the Agreement for cause. Alternatively, Owner may purchase such insurance at Construction Manager's expense.

(Paragraph deleted)

§ 11.1.2 PERFORMANCE BOND AND PAYMENT BOND. Construction Manager will comply, at all times, with all bonding requirements of Owner and as required by Applicable Law. Payment and Performance Bond requirements are set forth in **Exhibit B**.

(Paragraphs deleted)

§ 11.1.3 [Intentionally Deleted.]

§ 11.1.4 [Intentionally Deleted.]

§ 11.2 Owner's Insurance

[Intentionally Deleted.]

§ 11.3 Waivers of Subrogation

[Intentionally Deleted.]

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

[Intentionally Deleted.]

§ 11.5 Adjustment and Settlement of Insured Loss

[Intentionally Deleted.]

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Construction Manager has covered to determine if the Work has been performed in accordance with the Contract Documents.

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

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by

the Construction Manager. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs, and the cost of correction shall be at the Construction Manager's expense unless the condition was caused by the Owner or a Separate Construction Manager in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

§ 12.2.1.1 The Construction Manager shall promptly correct Work that is incomplete, defective or rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's and Project Manager's services and expenses made necessary thereby, shall be without change in the Contract Time or Final Guaranteed Maximum Price (subject to applicable limitations in the Agreement on reimbursement for Cost of the Work) to the extent incurred prior to Final Payment and at the Construction Manager's expense (not chargeable to the Contract Sum or otherwise reimbursable from Owner) after Final Payment. If prior to the date of Substantial Completion, the Construction Manager, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Construction Manager shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.1.2 Construction Manager shall correct any defects in the Work or damage to other property caused by defects in the Work or the repairing of such defects with a minimum of inconvenience to Owner and at times least disruptive to the Owner's operations. The Construction Manager will have the right to access the Site to perform warranty Work. This right survives the completion of the Project. Any Construction Manager requests for Project access will require a minimum of **forty-eight (48)** hours' written notice to Owner for inspections, Site visits, and investigations. Work required to correct any deficiencies will be coordinated with the Owner to be performed at a time and in a manner that does not impact Owner's operations. Proper safety and infection control measures shall be obtained and adhered to during the commencement of the corrected Work.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Construction Manager's obligations under Section 3.5, if, within **two (2)** years after the date of Substantial Completion of the Work or designated portion thereof or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Construction Manager a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Construction Manager fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it and seek reimbursement from Construction Manager. Nothing herein shall be construed to negate or limit Construction Manager's obligations set forth in any Warranty or Section 3.18 above, including without limitation, Construction Manager's duties to defend and indemnify the Owner and all Indemnitees. Construction Manager acknowledges that Construction Manager's **two-(2)** year warranty/corrective period and any special warranties provided by Construction Manager are in addition to and not in lieu of any warranties, indemnities, claims, rights, actions or remedies that Owner may have in the Contract Documents, or pursuant to Applicable Law, or in equity, for defective Work or breach of the Contract Documents. Owner expressly reserves all rights and remedies available under Applicable Law for and during the full period of time allowed under any statutes of repose and statutes of limitations under Texas law. All obligations under this Section 12.2.2 shall survive acceptance of the Work under the Contract.

§ 12.2.2.2 Construction Manager shall maintain a complete and accurate schedule of the dates upon which the corrective periods or express warranties will expire. Construction Manager agrees to provide notice of the warranty expiration date to Owner and Architect at least **one (1)** month prior to the expiration of each such applicable corrective / warranty period. Prior to expiration of **one (1)** year from the date of Substantial Completion, Construction Manager shall accompany the Owner, Project Manager, and Architect (if requested by Owner) on re-inspection of the improvements or building(s) covered thereby and shall be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the respective improvements or building which are observed or reported during the re-inspection. For extended warranties expressly required by the Contract Documents (i.e.,

roofing, compressors, mechanical equipment), Owner will notify the Construction Manager of deficiencies and Construction Manager shall start remedying these defects within **five (5)** Days of initial notification from Owner. Construction Manager shall prosecute the Work without interruption until accepted by the Owner and the Architect (if retained by the Owner for such purpose), even though such prosecution should extend beyond the limit of the warranty period. The **one (1)** year reinspection by Owner, Project Manager and Construction Manager shall in no way waive or release Construction Manager from the **two (2)** year corrective/warranty period required in Section 12.2.2.1 above.

§ 12.2.2.3 The **two (2)** year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. Any corrective Work performed or to be performed under or pursuant to Section 12.2 shall be warranted to the same extent as the Work is warranted hereunder or under the applicable warranty period stated in any separate warranty.

§ 12.2.2.4 If during the **two (2)** year period for correction of the Work the Construction Manager fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 2.5. If the Construction Manager does not proceed with correction of such nonconforming Work, Owner may remove such nonconforming Work and store the salvageable materials or equipment and charge the cost thereof to the Construction Manager. If the Construction Manager does not pay costs of such removal and storage within **ten (10)** Days after written notice, Owner may upon **ten (10)** additional Days' written notice sell such materials and equipment at auction or at private sale, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Construction Manager, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Construction Manager should have borne, the Final Guaranteed Maximum Price shall be reduced by the deficiency. If payments then or thereafter due the Construction Manager are not sufficient to cover such amount, Construction Manager shall pay the difference to the Owner upon demand.

§ 12.2.3 The Construction Manager shall remove from the Site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Construction Manager nor accepted by the Owner. When the nonconforming Work is found, the entire area of Work involved shall be corrected unless the Construction Manager can completely define the limits to the Architect's and Owner's satisfaction. Additional testing, sampling or inspecting needed to define nonconforming Work and retesting corrected Work shall be at the Construction Manager's expense, including the additional cost of employment of the Owner's independent testing laboratory, if such services are required. Additional architectural or engineering service required to analyze nonconforming Work shall be paid for by the Construction Manager.

§ 12.2.4 The Construction Manager shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or Separate Contractors caused by the Construction Manager's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Construction Manager has under the Contract Documents. Establishment of the **two (2)** year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Construction Manager to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to the Construction Manager's obligations other than specifically to correct the Work. Nothing contained herein or in the Contract Documents shall waive or limit any of Owner's rights under *Tex. Civ. Prac. & Rem. Code § 16.009* or other Applicable Law. The obligations under Section 12.2 shall survive acceptance of the Work and termination of the Contract and Final Payment by the Owner.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Final Guaranteed Maximum Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 The Contract shall be governed by the law of the State of Texas without regard to its conflicts of laws principles. Venue is proper only in the district courts of Tarrant County, Texas.

§ 13.2 Successors and Assigns

The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Contract Documents. Construction Manager shall not assign the Contract without written consent of the Owner, nor shall Construction Manager assign any monies due or to become due to it hereunder without the written consent of the Owner. If Construction Manager attempts to make such an assignment without such consent, Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.3 Rights and Remedies

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

§ 13.3.2 No action or failure to act by the Owner, Architect, Project Manager, or Construction Manager shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing. No waiver of any provision of the Contract shall be of any force or effect, unless such waiver is in writing, expressly stating to be a waiver of a specified provision of the Contract and is signed by the party to be bound thereby. Either party's waiver of any breach or failure to enforce any of the provisions of the Contract at any time, shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with the Contract or any portion or provision or right under the Contract.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by Applicable Law, statutes, ordinances, codes, rules, and regulations or lawful orders of Authorities Having Jurisdiction. Unless otherwise provided, the Construction Manager shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate Authorities Having Jurisdiction, and shall bear all related costs of tests, inspections, and approvals. The Construction Manager shall give the Architect, Project Manager, and Owner timely notice of when and where tests and inspections are to be made so that the Owner and Project Manager may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or Applicable Law or regulations prohibit the Owner from delegating their cost to the Construction Manager; provided, however, that all costs and expenses incurred following a failed test, inspection, or approval (including costs of repeated testing and compensation for the services of Architect and other Owner expenses) shall be at the sole cost and expense of Construction Manager, and such costs and expenses shall not be a permitted Cost of the Work under Article 7 of the Agreement. No inspection performed or failed to be performed shall constitute a waiver of any of the Construction Manager's obligations or be construed as an approval or acceptance of any nonconforming or defective Work.

§ 13.4.2 If the Architect, Owner, or Authorities Having Jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Project Manager will, upon written authorization from the Owner, instruct the Construction Manager to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner and Project Manager, and the Construction Manager shall give timely notice to the Owner and Project Manager of when and where tests and inspections are to be made so that the Architect, Owner, and Project Manager may be present for such procedures. Construction Manager shall be responsible for the planning, scheduling, coordination, access, and performing any corrections required to bring the Work in compliance with the Contract Documents. Such costs, (including costs of repeated testing and compensation for the services of Architect and other Owner expenses) shall be at the sole cost and expense of Construction Manager, and such costs and expenses shall not be a permitted Cost of the Work under Article 7 of the Agreement.

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

be at the Construction Manager's expense, and such costs and expenses shall not be a permitted Cost of the Work under Article 7 of the Agreement.

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

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

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

§ 13.4.7 In the event Construction Manager fails or refuses to provide for testing and inspection services as required by Owner or Project Manager and it becomes necessary for Owner to provide a Separate Contractor for testing and inspection services, all costs and expenses associated with retaining the services of the Separate Contractor for testing and inspection services shall be borne by Construction Manager and Owner shall be entitled to deduct the cost of such services from such amounts as may be due Construction Manager. Owner will provide notification of such costs to Construction Manager within **ten (10)** Days of receipt of an invoice for such services.

§ 13.4.8 If the Owner requests the Construction Manager or Subcontractors to execute certificates, other than those required by Section 13.4.4, the Owner shall submit the proposed language of such certificates for review at least **fourteen (14)** Days prior to the requested dates of execution. If the Owner requests the Construction Manager or Subcontractors to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager or Subcontractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least **fourteen (14)** Days prior to execution. The Construction Manager and Subcontractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate set forth in Section 11.3 of the Agreement.

§ 13.6 Written Notice

Written notice shall be deemed to have been duly served if delivered in conformance with Section 14.4 of the Agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT FOLLOWING EXECUTION OF THE FINAL GUARANTEED MAXIMUM PRICE AMENDMENT

§ 14.1 Termination by the Construction Manager

§ 14.1.1 The Construction Manager may terminate the Contract if the Work is stopped for a period of **one hundred twenty (120)** consecutive Days in any **three hundred sixty-five (365)** Day period through no act or fault of the Construction Manager or a Subcontractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Construction Manager, for any of the following reasons:

- .1 Issuance of an order of a court or other Authorities Having Jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not certified an Application for Payment and has not notified the Construction Manager of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment as to which there is no good faith dispute within the time stated in the Contract Documents.
- .4 *[Intentionally deleted]*.

§ 14.1.2 The Construction Manager may terminate the Contract if, through no act or fault of the Construction Manager or any Subcontractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Construction Manager, repeated suspensions, delays or interruptions of the

entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than one hundred percent (100%) of the total number of Days scheduled for completion, or **one hundred twenty (120)** consecutive Days in any **three hundred sixty-five (365)** Day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Construction Manager shall provide written notice to Owner of the Construction Manager's intention to terminate, setting forth in detail the reason therefore. If the Owner fails to commence correction of any of the reasons stated in such notice within **ten (10)** Days of receipt of such notice, the Construction Manager may, upon **ten (10)** additional Days' written notice to the Owner, terminate the Contract and recover from the Owner damages incurred as a result of the termination as allowed by Applicable Law. Notwithstanding the foregoing, the Owner shall not be responsible for damages for unincurred overhead, unabsorbed home office overhead, anticipated profit on Work not performed, unjust enrichment damages, or other damages disallowed under Texas law.

§ 14.1.4 If the Work is stopped for a period of **one hundred twenty (120)** consecutive Days in any **three hundred sixty-five (365)** Day period through no act or fault of the Construction Manager or a Subcontractor or their agents or employees or any other persons performing portions of the Work under direct or indirect contract with the Construction Manager because the Owner has otherwise repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work (other than Owner's failure to make payment under Article 9 above), the Construction Manager may, upon **ten (10)** additional Days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3 to the extent allowed under *Tex. Local Gov't. Code § 271.153(b)* and only if the basis for such termination has not been removed or cured prior to the effective date of termination.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Construction Manager:

- .1 fails to submit the Final Guaranteed Maximum Price Proposal by the date required by the Agreement or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 refuses or fails to supply enough properly skilled workers or proper materials and/or equipment;
- .3 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Construction Manager and the Subcontractors;
- .4 disregards Applicable Laws;
- .5 assigns the Contract or any part thereof in violation of the Contract Documents;
- .6 sublets Work in violation of the Contract Documents;
- .7 becomes insolvent or makes a general assignment for the benefit of Construction Manager's creditors, or a trustee or receiver is appointed for Construction Manager or for any of its property;
- .8 fails to commence the Work in accordance with the provisions of this Agreement;
- .9 fails to diligently prosecute the Work to completion thereof in an efficient, timely workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents (including the Required Dates for Interim Milestones, Date of Substantial Completion, and date of Final Completion, and other dates set forth in this Agreement);
- .10 abandons any or all of the Work to be performed under the Contract; or
- .11 otherwise does not fully comply with the Contract Documents or otherwise materially breaches the Agreement.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Construction Manager and the Construction Manager's surety, if any, **ten (10)** Days' written notice, terminate employment of the Construction Manager and may, subject to any prior rights of the surety:

- .1 Exclude the Construction Manager from the Site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Construction Manager;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Construction Manager, the Owner shall furnish to the Construction Manager a detailed accounting of the costs incurred by the Owner in finishing the Work.

Notwithstanding the foregoing, if Owner reasonably determines that Construction Manager's acts or omissions pose an immediate and substantial threat or danger of injury to persons or damage to the Work or other property, Owner

may, without prejudice to any other rights or remedies granted by this Contract or by Applicable Law, immediately suspend Construction Manager's performance of the Work, take immediate possession of the Site, take such further action reasonably necessary to prevent, mitigate against, remove, or repair such threat or damage, and deduct such costs and expenses it reasonably incurs from any sums due and owing to the Construction Manager or, in the absence thereof, to recover such costs and expenses from the Construction Manager.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, Construction Manager shall not be entitled to receive any further payment until the Work is finally completed. It is expressly agreed that pursuit by Owner of any one or more of the remedies provided herein or otherwise available under Applicable Law or in equity shall not constitute an election of remedies by Owner, nor shall forbearance by Owner to enforce one or more of the remedies provided herein upon an event of default by Construction Manager be deemed or construed to constitute a waiver of such default. Upon receipt of any such written notice of termination of right to proceed, the Construction Manager shall, at its expense, for that Work affected by any such termination:

- .1 Make an inventory of all materials and equipment in storage at the Site, in route to the Site, in storage or manufacture away from the Site, and on order from suppliers;
- .2 Assign to the Owner contracts, subcontracts, supply contracts, and equipment rental agreements all as designated by the Owner; and
- .3 Remove from the Site all construction materials and equipment listed in said inventory other than such construction materials and equipment designated in writing by the Owner to be used by the Owner in completing such Work.

§ 14.2.4 Owner retains the right to pursue Construction Manager for any and all damages and/or costs incurred by Owner in completing the Contract. This right shall survive the termination of the Contract.

§ 14.2.5 If, after termination of this Contract under this Section 14.2, it is determined that the Construction Manager was not in default or that sufficient cause to terminate hereunder did not exist, the rights and obligations of the parties shall be determined as if the termination had been issued for the convenience of the Owner as provided in Section 14.4 below.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Construction Manager in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. Upon receipt of such notice, the Construction Manager shall, unless the notice required otherwise:

- .1 Immediately discontinue Work on the date and to the extent specified in the notice;
- .2 Place no further orders, contracts or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
- .3 Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the Owner of all contracts, orders, subcontracts, and rental agreements to the extent that they relate to performance of Work suspended; and
- .4 Unless otherwise specifically stated in the notice, continue to protect and maintain the Project, including those portions on which Work has been suspended.

§ 14.3.2 The Final Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption as described in Section 14.3.1 to the extent allowed under Section 8.3 (including subsections therein), or Section 15.1.5.1, but in no case in excess of any amounts allowed under Texas Law and Section 8.3.3.1. No adjustment shall be made to the extent.

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

(Paragraphs deleted)

§ 14.3.3 Adjustments made in the cost of performance shall be limited to the increase or decrease in the cost of performance directly attributable to such suspension.

§ 14.3.4 When all or a portion of the Work is suspended for any reason, as part of the scope of Work, the Construction Manager shall securely fasten down all coverings and protect the Work, as necessary. Costs for doing so shall be

compensable pursuant to Section 14.3.2 but only to the extent not otherwise provided for in the Final Guaranteed Maximum Price.

§ 14.4 Termination by the Owner for Convenience

(Paragraph deleted)

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Construction Manager shall immediately;

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary for the protection and preservation of the Work;
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice and subcontracts, supply contracts, and rental agreements owner accepts pursuant to Section 5.4 and terminate any remaining subcontracts, purchase orders and rental agreements and enter into no further Project agreements and purchase orders;
- .4 place no further contracts, orders or subcontracts for material, services, or facilities except as may be necessary or required for completion of such portion of the Work under the Agreement that is not terminated;
- .5 assist the Owner as specifically requested, in writing, in the maintenance, protection, and disposition of property acquired by the Owner under the Contract; and
- .6 transfer to the Owner title to Work completed for which payment is made to the Construction Manager.

(Paragraph deleted)

§ 14.4.3 In case of such termination for the Owner's convenience, the Construction Manager shall be entitled to receive payment for (a) Work properly executed in accordance with the Contract Documents prior to the effective date of termination, including any General Conditions Costs and Fee on Work completed, as measured by the Contract Sum allocated by the Schedule of Values, and (b) the direct, actual and unavoidable (by the exercise of reasonable care) costs incurred by Construction Manager in terminating the Work and demobilizing the Site, Construction Manager shall also be entitled to payment for materials timely fabricated off the Site and delivered and stored in accordance with the Owner's instructions. Owner shall not be liable for and Construction Manager shall not be entitled to payment for Work not performed, overhead or profit on Work not performed, or any other amount disallowed under *Tex. Local Gov't. Code § 271.153(b)*. The amounts owing by the Owner to Construction Manager pursuant to this Section shall be specified in Construction Manager's Final Application for Payment approved by Owner, which Application is subject to all requirements set forth in Article 9 and Section 11.2 of the Agreement, to the extent applicable. Construction Manager's entitlement to receive its final termination payment under this provision shall require a final lien waiver from Construction Manager and from Subcontractors whose subcontracts are not being continued by Owner, such documents to be the same form and delivered under the same conditions as required for Final Payment absent a termination under this provision. Owner shall be entitled to take possession of the Work and use copies of all files relating to performance of the Work of Construction Manager in completing the Work, except for confidential or proprietary information regarding Construction Manager.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Construction Manager shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by Applicable Law.

(Paragraphs deleted)

§ 15.1.3 Notice of Claims

Unless otherwise prescribed elsewhere in the Contract Documents, Claims by the Construction Manager must be initiated by written notice (the "Notice of Potential Claim") to Owner, with a copy sent to the Project Manager, within **twenty-one (21)** Days after occurrence of the event giving rise to such Claim or within **twenty-one (21)** Days after the Construction Manager first recognizes the condition giving rise to the Claim, whichever is later.

(Paragraph deleted)

§ 15.1.4 Continuing Contract Performance

Notwithstanding any Claim, dispute, controversy, or question that might arise in the interpretation of any provision of the Contract Documents, the performance of any Work, the delivery of any material, the payment of any monies to Construction Manager, or otherwise, Construction Manager agrees that it will not directly or indirectly stop or delay any Work or part thereof on its part required to be performed, nor will it stop or delay the delivery of any materials on its part required to be furnished for the Work, pending the determination of such Claim, dispute, or controversy so long as Owner pays Construction Manager for undisputed amounts in accordance with the Agreement.

§ 15.1.5 Claims for Additional Cost

If the Construction Manager wishes to make a Claim for an increase in the Final Guaranteed Maximum Price (and such increase is recoverable under the Contract Documents and allowed under Section 8.3. herein), written notice as provided herein shall be given to Owner and written approval by Owner through an authorized Change Order in accordance with the provisions of Section 7.2 shall be required before Construction Manager proceeds to execute the Work. Without limiting the requirements of Section 15.1.2, such notice shall include, to the extent then-known by the Construction Manager, full details and substantiating data to permit evaluation by Owner and the Architect. If further or other information subsequently becomes known to the Construction Manager, it shall be promptly furnished to the Owner, Architect, and Project Manager, in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

(Paragraph deleted)

§ 15.1.5.1 Construction Manager shall not be entitled to recover damages in excess of those allowed under the Agreement, Section 8.3.3.1 herein, or under Applicable Law.

§ 15.1.5.2 All Claim notices shall itemize the Claim and shall contain sufficient detail and supporting data to permit evaluation of the same by Owner, Architect, and Project Manager. No Claim shall be valid unless the requirements set forth in this Section 15.1.5 are followed.

(Paragraphs deleted)

§ 15.1.5.3 Any change in the Agreement resulting from such Claim shall only be valid if included as a Change Order.

(Paragraphs deleted)

§ 15.1.6 Claims for Additional Time

(Paragraphs deleted)

§ 15.1.6.1 If the Construction Manager intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Construction Manager's notice shall include the probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary; provided, however, that the Construction Manager shall provide to the Owner and Project Manager promptly upon request, additional information regarding the status of such delay. Any change in the Contract Time resulting from such Claim and approved by Owner shall be authorized by a Change Order in accordance with the provisions of Section 7.2. In any Claim by Construction Manager for any increase in the Contract Time or the Final Guaranteed Maximum Price, if permitted in the Contract Documents, Construction Manager shall demonstrate that the event giving rise to the Claim was beyond the Construction Manager's control, delayed the critical path of the Project and that Construction Manager has provided Owner with such notice as required herein. Construction Manager shall provide notice of a potential delay even if Construction Manager is uncertain the event or circumstance will actually cause a delay in performance of the Work.

(Paragraphs deleted)

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that adverse weather conditions exceeded the number of Days calculated as provided at Section

8.3.1 and had an adverse effect on the critical path of the scheduled construction. The Construction Manager shall document such Claim in writing to the Owner, Architect, and Project Manager, within the time period set forth in Section 15.1.2. Notice of a potential delay must also have been provided within **forty-eight (48)** hours of Construction Manager becoming aware of such event or circumstance.

§ 15.1.7 Claims for Consequential Damages

(Paragraphs deleted)

§ 15.1.7.1 Construction Manager waives recovery of consequential damages from Owner, including those for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, including that relating to unperformed Work. Construction Manager acknowledges and agrees that it will be bound by *Tex. Local Gov't Code* 271.153 with respect to damages recoverable from Owner.

(Paragraphs deleted)

§ 15.1.7.2 Limitation. Owner agrees to limit the consequential damages recoverable from Construction Manager, including those for rental expenses, losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons, and the like to an amount not to exceed **Seven Hundred Thousand and no/100 dollars (\$700,000.00)** (the "Consequential Damages Limitation").

Notwithstanding the foregoing, Owner and Construction Manager agree that the following liabilities, obligations and damages are specifically excluded from the Consequential Damages Limitation:

- .1 Any actual, direct or "non-consequential" damage(s) incurred by Owner for any reason, including, but not limited to any actual, direct, or "non-consequential" damage(s) incurred by Owner as a result of the termination of Construction Manager pursuant to Section 14.2 herein.
- .2 Damages covered in, arising out of, or related to the indemnification obligations provided in Section 3.18 herein.
- .3 Damages, losses, or costs incurred by Owner to the extent such loss or damage is recovered from any insurance policy purchased related to the Project.
- .4 Damages resulting from willful misconduct or intentional wrongdoing of Construction Manager or any of its employees, representatives, or Subcontractors.
- .5 Construction Manager's obligation to pay liquidated damages, as set forth in Section 6.1.6 of the Agreement. The Consequential Damages Limitation shall be inclusive of any such Liquidated Damages.

(Paragraphs deleted)

§ 15.2 Initial Decision

[Intentionally deleted].

(Paragraph deleted)

§ 15.3 Mediation

[Intentionally deleted].

(Paragraphs deleted)

§ 15.4 Arbitration

[Intentionally deleted. The Parties shall litigate all disputes].

(Paragraphs deleted)

(Paragraphs deleted)

(Paragraphs deleted)

(Paragraphs deleted)

(Paragraphs deleted)

(Paragraphs deleted)

(Paragraphs deleted)

(Paragraphs deleted)

INITIAL GUARANTEED MAXIMUM PRICE AMENDMENT

This **INITIAL GUARANTEED MAXIMUM PRICE AMENDMENT** (“Amendment”) is made as of _____, **2024** to that certain AIA A133-2019 Standard Form Agreement between Owner and Construction Manager where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price between **TARRANT COUNTY HOSPITAL DISTRICT D/B/A/ JPS HEALTH NETWORK** as “Owner” and **BATSON COOK COMPANY**, as “Construction Manager” dated _____, **2024** (the “Agreement”), as modified for the Project, whereby Construction Manager has agreed to provide Owner with certain pre-construction and construction services as described in the Agreement with respect to the JPS Pavilion OR AHU Replacement (the “Project”).

WHEREAS, the Agreement provides for an Initial Guaranteed Maximum Price (“IGMP”); and

WHEREAS, Owner and Construction Manager now desire to amend the Agreement for the purpose of incorporating the IGMP amount and setting forth certain IGMP exhibits.

NOW THEREFORE, in consideration of the covenants and conditions contained herein, and other good and valuable consideration, Owner and Construction Manager hereby agree to amend the Agreement as follows:

1. All capitalized, undefined terms shall have the meaning set forth in the Agreement. .
2. The IGMP for the Project shall be **Thirteen Million Eighty Six Thousand Three Hundred Seventy-Six and No/100 Dollars (\$13,086,376.00)**. The IGMP Breakdown is set forth in **Attachment 1** hereto.
3. The list of Accepted Alternates, if any, included in the IGMP is set forth in **Attachment 2** hereto.
4. The list of Unit Prices, if any, included in the IGMP is set forth in **Attachment 3** hereto.
5. The list of Construction Manager’s assumptions, qualifications, and assumptions for the IGMP is set forth in **Attachment 4** hereto.
6. Construction Manager’s General Conditions Costs and General Requirements Breakdown for the IGMP is set forth in **Attachment 5** hereto. Construction Manager’s labor rate schedules is set forth in Attachment 5.1 hereto.
7. Allowances included in the IGMP are set forth in **Attachment 6** hereto.

8. Construction Manager's Schedule for the Project is set forth in **Attachment 7** hereto.

9. Construction Manager's List of Key Personnel for the Project is set forth in **Attachment 8** hereto.

10. The list of Drawings on which the IGMP is based is set forth in **Attachment 9** hereto.

11. Construction Manager's Owned Equipment Rental Rates are set forth in **Attachment 10** hereto.

12. There are no approved Work Package Authorizations to include in this Amendment. Accordingly, **Attachment 11** is not used.

13. Construction Manager's Quality Control Plan for the Project is set forth in **Attachment 12** hereto.

14. Entire Amendment: This Amendment supersedes all prior negotiations, representations or agreements, either written or oral, related to the IGMP and/or determination of the IGMP value as of the date hereof between the Parties.

15. Except as specifically modified by this Amendment, all terms of the Agreement remain in full force and effect.

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

Owner:

Contractor:

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

BATSON COOK COMPANY

By: _____
Its: _____

By: _____
Its: _____

Attachment 1: Initial GMP Breakdown

EXECUTIVE SUMMARY			
JPS Pavilion OR AHU Replacement			
October 19, 2024			
		Proposal Total =	\$ 13,086,376
Project Component	Current 11/19/24 Subtotal	Building SF =	4,600
DIVISION 1 – GENERAL REQUIREMENTS		\$ / SF	% of Total
General Requirements	\$ 781,410	\$ 169.87	5.97%
DIVISION 2 – EXISTING CONDITIONS			
02a: Selective Demolition	\$ 15,000	\$ 3.26	0.11%
Division 05 -MISC METALS AND STRUCTURAL STEEL			
05a: As-Built Steel	\$ 6,800	\$ 1.48	0.05%
05b: Structural Steel	\$ 130,000	\$ 28.26	0.99%
DIVISION 7 - THERMAL AND MOISTURE PROTECTION			
07a: Waterproofing	\$ 15,000	\$ 3.26	0.11%
07b: Roofing	\$ 25,000	\$ 5.43	0.19%
DIVISION 9 - FINISHES			
09a: Drywall & ACT	\$ 15,000	\$ 3.26	0.11%
09d: Painting	\$ 30,000	\$ 6.52	0.23%
DIVISION 22 – PLUMBING			
22a: Plumbing	\$ 75,803	\$ 16.48	0.58%
DIVISION 23 – HEATING, VENTILATING, AND AIR CONDITIONING			
23a: HVAC - Allowance	\$ 7,564,327	\$ 1,644.42	57.80%
DIVISION 26 – ELECTRICAL			
26a: Electrical	\$ 750,000	\$ 163.04	5.73%
DIVISION 32 – SITE IMPROVEMENTS			
32a: Temporary Access Road	\$ 65,000	\$ 14.13	0.50%
ALLOWANCES			
Permit Allowance	\$ 2,000	\$ 0.43	0.02%
Existing Conditions Allowance	\$ 75,000	\$ 16.30	0.57%
Concrete Housekeeping Pads Allowance	\$ 25,000	\$ 5.43	0.19%
Overtime Allowance	\$ 100,000	\$ 21.74	0.76%
Owner Equipment Storage	\$ 100,000	\$ 21.74	0.76%
OR Wall Protection	\$ 295,000	\$ 64.13	2.25%
OR Flooring	\$ 300,000	\$ 65.22	2.29%
Sub-total	\$ 10,370,340	\$ 2,254.42	79.25%
General Conditions			
Preconstruction Fee	\$ 100,000	\$ 21.74	0.76%
Sub Guard 1.5%	\$ 155,555	\$ 33.82	1.19%
Safety Markup - 0.165%	\$ 21,450	\$ 4.66	0.16%
General Liability Insurance - 1.2%	\$ 156,000	\$ 33.91	1.19%
Bldr's Risk - 0.08%	\$ 10,400	\$ 2.26	0.08%
Payment & Performance Bond - 0.75%	\$ 97,500	\$ 21.20	0.75%
Fee - 3%	\$ 391,438	\$ 85.10	2.99%
SUB TOTAL	\$ 12,219,783	\$ 2,656.47	93%
Contractor Contingency 3%	\$ 366,593	\$ 79.69	3%
Owner Contingency	\$ 500,000	\$ 108.70	4%
PROJECT TOTAL	\$ 13,086,376	\$ 2,844.86	100%

August 28, 2024

JPS Pavilion OR AHU Replacement – Accepted Alternates

No Alternates have been accepted for this project.



August 28, 2024

JPS Pavilion OR AHU Replacement – Unit Prices

No Unit prices have been determined for this project.



Attachment 4: Assumptions/Clarifications/Qualifications

BASIS OF ESTIMATE

November 19, 2024

JPS Pavilion OR AHU Replacement

The Basis of Estimate is a written explanation of assumptions, clarifications, and exclusions used in the preparation of the executive summary / overall proposal.

CONSTRUCTION DOCUMENTS USED TO PREPARE:

- 11-12-24 JPS Pavillion OR AHU Reset Narrative – Structural
- 11-13-24 JPS Pavillion OR Replacement Project – MEP Revised Narrative
- JPS OR Wall Protection Review Set
- Hoeffler Welker email iGMP Flooring dated 11-19-24

Division 01 – General

Includes:

1. General Requirements and General Conditions necessary for oversight and completion of project
2. General Liability Insurance is included
3. Subcontractor Default Insurance is included
4. Final Cleaning
5. Dumpsters and dumpster pull
6. Building permit allowance
7. Field verification of existing conditions and dimensions
8. Scanning of existing concrete reinforcement
9. Overall project schedule dated November 1, 2024
10. Temporary roof protection as necessary to protect existing roof during phased construction
11. Larger crane to erect steel and install mechanical equipment to avoid blocking (4) ambulance bays.
12. Initial and Revised Preconstruction costs are included

Excludes:

1. Any temporary AHU or OT work options per Batson Cook 9/6 email are not included in base bid
2. Third Party/ inspection service costs
3. Taxes
4. Terminal cleaning (by JPS)
5. Relocation of owner's existing equipment; such as hospital equipment, surgical equipment, furniture, artwork, etc

DIVISION 02 – Demolition

02a. Selective Demo

Includes:

1. Removal and disposal of existing mechanical equipment as shown

2. Modification and patch/repair of existing roof for new mechanical equipment as shown

Excludes:

1. Abatement testing, survey, or monitoring
 2. Handling or disposal of any controlled or hazardous materials
-

DIVISION 03 – Concrete

Includes:

1. Allowance for concrete housekeeping pads (chilled water and condensing pumps in the basement)
2. Allowance for concrete fill at new steel columns and openings on roof in existing concrete

Excludes:

1. Repair, replacement, and infill of concrete not identified in plans provided
-

DIVISION 05 – Metals

05a. Metals

Includes:

1. Provide As-Built existing Chiller Platform Steel in CAD Format for Design team review
2. Fabricate and install structural steel for GCH 1 and 2 platforms – to be galvanized
3. Delegated design per 'Part VIII – Submittals' on page S-002

Excludes:

1. Repair and reinforcement of existing structure not identified
-

DIVISION 07 – Roofing

07a. Roofing

Includes:

1. Patch and repair of existing roof related to new construction
2. Temporary roof protection during construction
3. New Roof walkway protection where required

Excludes:

1. Patching or repair of existing roof not affected by our work
 2. Spray on fireproofing except where altered or disturbed by contractor's work
 3. Demolition of existing roof
 4. R-25 insulation
 5. Roof access hatch or ladders
-

DIVISION 09 – Finishes

09a. Drywall and ACT

Includes:

1. Demo, patch, and repair of level 2 gyp ceiling as required for Chiller installation

Excludes:

1. Framing or drywall not shown
2. Repair of existing ceilings and corridor outside of the identified scope of work unless required for contractor MEP installation

09b. Flooring

Includes:

1. Allowance of \$36/sf for Nora modular tile welded with integral base for OR1-14 including floor preparation per Hoeffler Welker 11-19 email.

Excludes:

1. Patch, repair, and painting of existing areas outside of scope of work
2. Painting of any galvanized metal / structural steel

09d. Painting

Includes:

1. Priming of steel per specification section 05 12 00
2. Patch and repair level 2 gyp ceiling as required for Chiller installation

Excludes:

1. Patch, repair, and painting of existing areas outside of scope of work
2. Painting of any galvanized metal / structural steel

10b. Wall Protection

Includes:

1. Provide and install wall protection where shown (7,500 SF); above existing wall protection to nearest ceiling or bulkhead
2. Provide and install (15) corner guards where shown

Excludes:

1. Repair or replacement of existing wall protection

DIVISION 23 – HEATING, VENTILATING, AND AIR CONDITIONING

23. HVAC

Includes:

1. Demo of mechanical systems, new mechanical piping, furnish and install (5) new AHUs and (2) Owner supplied Glycol chillers and associated pumps per MEP narrative
2. Controls by JCI

Excludes:

1. Pre-TAB
2. Final test and balance
3. Testing, repair, or inspection of existing mechanical equipment to remain

DIVISION 26 – ELECTRICAL

26a. Electrical

Includes:

1. De-energize existing AHU's and all equipment depicted on MEP narrative.
2. Demo all feeders and branch power not needed back to source
3. Swap breakers in existing MSSB
4. Disconnect power from existing AHU and reconnect power to new AHU.
5. Conduit and wiring to GCH 1 and GCH 2 and make final electrical connections
6. 1200amp distribution board HEQDP3
7. Provide lightning protection per drawing and spec pages
8. Provide temporary power and temporary lighting as needed.
9. Remove and replace cover plates where needed for install of new wall protection

Excludes:

1. Testing, repair, or inspection of existing electrical systems and light fixtures not indicated
-

DIVISION 32 – SITE IMPROVEMENTS

32a. Temporary Road

Includes:

1. 5'x10' road plates (2)
2. DOT 247 Flex base with filter fabric over existing grade and compaction
3. Removal and re-sod upon completion

Excludes:

1. Irrigation modification or repair
 2. Temporary irrigation
 3. Utility modifications
 4. Erosion control / SWPPP
-

- End of Basis of Proposal -

JPS - Pavilion AHU Replacement				Date: 11/19/2024
				BY: JP
				Pavilion AHU Replace
Item/Personnel:	# of weeks/month	Unit Cost	Total Cost	Notes:
GC Salary:				
PM 1 (Jonathan P)	14	\$ 11,348	\$ 158,872	3 days/week
APM (Joanna A)	14	\$ 9,727	\$ 136,178	3 days/week
Superintendent 1 (Matthew H)	14	\$ 18,913	\$ 264,782	Full Time
Superintendent 2	3	\$ 18,913	\$ 56,739	OR Flooring Supervision (Additional)
Project Accountant (Jamie C)	14	\$ 5,404	\$ 75,656	2 day/week
Corporate Scheduler (Pedro V)	14	\$ 1,576	\$ 22,064	1 day/month
			\$714,291	
Additional GC Cost:				
Job Trailer				
Rent	14	\$ 2,200	\$ 30,800	10'x50' w/ Toilet & Service
Temp Power	14	\$ 250	\$ 3,500	
Temp Water	14	\$ 60	\$ 840	
Office Setup(Trailer + Furniture)	1	\$ 10,000	\$ 10,000	
Internet	14	\$ 200	\$ 2,800	
Phone	14	\$ 500	\$ 7,000	
Copier/Printers	14	\$ 475	\$ 6,650	
Office Supplies	14	\$ 350	\$ 4,900	
Water/Hydration Service	14	\$ 350	\$ 4,900	
Postage/Shipping	14	\$ 350	\$ 4,900	
AED Device	1	\$ 2,600	\$ 2,600	
First Aid Supplies	14	\$ 450	\$ 6,300	
Job Site				
Job Signage	1	\$ 12,000	\$ 12,000	BC Signage Package
Portable Restrooms/Handsinks	14	\$ 600	\$ 8,400	Toilets w/ Sinks included
Parking	14	\$ 350	\$ 4,900	
Job Boxes	14	\$ 550	\$ 7,700	
Site Fire Protection	1	\$ 3,500	\$ 3,500	
Century Building				
Truck Rental	14	\$ 1,120	\$ 15,680	1 Truck
Truck Maintenance	14	\$ 400	\$ 5,600	
Gas Card	14	\$ 800	\$ 11,200	
Technology				
Autodesk/BIM360	1	\$ 10,649	\$ 10,649	
Touchplan	1	\$ 12,000	\$ 12,000	1 years/Annual Renewal
BIM Coordination	1	\$ 5,000	\$ 5,000	
GC Pay	14	\$ 185	\$ 2,590	
Miscellaneous		\$ -	\$ -	
Mileage (PM, PE, FE, Office)	14	\$ 750	\$ 10,500	
Printing Service (Drawings and Prints)	14	\$ 350	\$ 4,900	
Badging	20	\$ 150	\$ 3,000	
Total Additional GC Cost			\$ 202,809	
Total GC Cost:			\$ 917,100.00	7.05% of Contract
General Requirements				
Salary				
Field Engineer (Cory N)	14	\$ 14,410	\$ 201,740	Full Time
Intern (Derrick L)	14	\$ 4,323	\$ 60,522	3 days/week
Century Building				
NAM	14	\$ 600	\$ 8,400	
Safety /PPE				
Safety Incentive	14	\$ 100	\$ 1,400	
Safety Allocation	1	\$ 21,169		Contract x .165%
Safety Equipment/OSHA	1	\$ 7,500	\$ 7,500	
Roof Protection Maintenance	1	\$ 50,000	\$ 50,000	
Hard Hats/Safety Vest	14	\$ 600	\$ 8,400	
Site				
Erosion Control	1	\$ 3,000	\$ 3,000	
Small Tools	14	\$ 2,000	\$ 28,000	
Sticky Boxes	14	\$ 700	\$ 9,800	
Floor Protection	20000	\$ 2	\$ 40,000	25%*SF
Dumpsters	60	\$ 850	\$ 50,660	
Site Cleanup	14	\$ 2,500	\$ 35,000	
Construction/Touchup Clean	14	\$ 10,392	\$ 145,488	1 laborer
Final Clean	1	\$ 35,000	\$ 35,000	
Miscellaneous				
Floor Scanning	1	\$ 10,000	\$ 10,000	
Misc. Material	1	\$ 3,000	\$ 3,000	
Opening Protection	1	\$ 10,000	\$ 10,000	
Elevator Protection	1	\$ 10,000	\$ 10,000	
Temporary Measures	1	\$ 50,000	\$ 50,000	
Traffic Control	1	\$ 3,500	\$ 3,500	
Third Party Equipment	1	\$ 10,000	\$ 10,000	
Total GR Cost			\$781,410	6.01% of Contract amount

Attachment 5.1: Batson-Cook Labor Rate Schedule

BATSON-COOK

CONSTRUCTION

Fixed Labor Rates - 2024			
Position	Unit Cost/hr	Position	Unit Cost/hr
Asst. Field Engineer	\$65	Laborer	\$40
Asst. Precon Manager	\$90	MEP Coordinator	\$75
Asst. Project Manager	\$90	MEP Director	\$195
Asst. Superintendent	\$90	Office Engineer	\$75
Asst. VDC Manager	\$90	Precon Engineer	\$75
Carpenter	\$52	Precon Executive	\$175
Carpenter Foreman	\$65	Precon Manager 1	\$105
Carpenter Helper	\$45	Precon Manager 2	\$130
Chief Field Engineer	\$135	Project Accountant	\$75
Concrete Finisher	\$50	Project Executive	\$175
Construction Coordinator	\$50	Project Manager 1	\$105
Corporate Scheduler	\$175	Project Manager 2	\$130
Crane Operator	\$90	Senior MEP Coordinator	\$135
Drywall Mech. Helper	\$47	Senior PM	\$145
Drywall Mechanic	\$54	Senior Precon Manager	\$145
Field Engineer	\$75	Senior Project Accountant	\$80
Foreman	\$65	Senior Superintendent	\$145
General Superintendent	\$175	Senior VDC Manager	\$145
HSE - Coordinator	\$64	Superintendent 1	\$105
HSE - Director	\$150	Superintendent 2	\$130
HSE - Manager	\$105	VDC Director	\$175
HSE - Senior Manager	\$135	VDC Engineer	\$75
HSE - Specialist	\$83	VDC Manager	\$130
Intern	\$40	VP of Precon	\$195

November 19, 2024

JPS Pavilion OR AHU Replacement – Allowances

The following allowances are included in the project GMP:

- 1. Permit Allowance - \$2,000
- 2. Existing Conditions Allowance - \$75,000
- 3. Concrete Housekeeping Pads Allowance - \$25,000
- 4. Overtime Allowance - \$100,000
- 5. Owner Equipment Storage Allowance - \$100,000
- 6. OR Wall Protection Allowance - \$295,000
- 7. OR Flooring Allowance \$300,000



Data Date: 01-Nov-24						Batson-Cook																												19-Nov-24 15:31			
Activity ID	Activity Name	Orig Dur	Rem Dur	Start	Finish			2025														2026															
						N	D	J	F	March	April	May	June	July	A	S	O	N	D	J	F	March	April														
						2	2	0	1	1	2	0	0	1	2	3	0	1	2	2	0	1	1	2	3	0	1	2	2	0	1	1	2	0	0	1	2
GMP-1050	HW - Review Existing Steel As-Built	5	5	06-Dec-24	12-Dec-24																																
GMP-1060	HW - Provide updated Steel Sketches	5	5	13-Dec-24	19-Dec-24																																
GMP-1070	BCC - Update Pricing per HW Sketches	5	5	20-Dec-24	30-Dec-24																																
GMP-1080	JPS - Approve steel Sketch Pricing	5	5	31-Dec-24	07-Jan-25																																
Pre-Construction		369	170	06-Mar-24 A	21-Aug-25																																
Procurement		369	170	06-Mar-24 A	21-Aug-25																																
Subcontractor's Buyout		30	30	18-Dec-24	03-Feb-25																																
SBU-1010	BCC - Buyout Subcontractors - Early Procurement	30	30	18-Dec-24	03-Feb-25																																
Submittals		47	47	27-Dec-24	05-Mar-25																																
Division 05 - Metals		40	40	08-Jan-25	05-Mar-25																																
SD05-1040	BCC - Review and Submit - Structural Steel Shop Drawings	25	25	08-Jan-25	12-Feb-25																																
SD05-1010	A/E - Review and Approve - Structural Steel Shop Drawings	15	15	13-Feb-25	05-Mar-25																																
Division 09 - Finishes		10	10	06-Jan-25	17-Jan-25																																
A1070	BCC - Review & Submit - Wall Protection	5	5	06-Jan-25	10-Jan-25																																
A1080	A/E/O - Review & Approve - Wall Protection	5	5	13-Jan-25	17-Jan-25																																
Division 23 - Heating, Ventilation and Air Conditioning (HVAC)		30	30	06-Jan-25	17-Feb-25																																
SD23-1000	BCC - Review and Submit - Mechanical Equipment	15	15	06-Jan-25	27-Jan-25																																
SD23-1010	A/E - Review and Approve - Mechanical Equipment	15	15	28-Jan-25	17-Feb-25																																
Division 26 - Electrical		30	30	27-Dec-24	10-Feb-25																																
SD26-1000	BCC - Review and Submit - Electrical Fixtures and Equipment	15	15	27-Dec-24	17-Jan-25																																
SD26-1010	A/E - Review and Approve - Electrical Fixtures and Equipment	15	15	21-Jan-25	10-Feb-25																																
Fabrication and Deliver		369	150	06-Mar-24 A	21-Aug-25																																
Division 05 - Metals		25	25	06-Mar-25	09-Apr-25																																
FDD05-1000	Lead Time - Structural Steel	25	25	06-Mar-25	09-Apr-25																																
Division 09 - Finishes		5	5	21-Jan-25	27-Jan-25																																
A1060	Lead Time - Wall Protection	5	5	21-Jan-25	27-Jan-25																																
Division 23 - Heating, Ventilation and Air Conditioning (HVAC)		369	130	06-Mar-24 A	21-Aug-25																																
FDD23-1000	Lead Time - Glycol Chillers (Owner Furnished)	160	0	06-Mar-24 A	01-Nov-24 A																																
FDD23-1010	Lead Time - Air Handling Units	130	130	18-Feb-25	21-Aug-25																																
FDD23-1020	Lead Time - Mechanical Equipment Pumps	60	60	18-Feb-25	12-May-25																																
FDD23-1030	Lead Time - Buffer Tank	60	60	18-Feb-25	12-May-25																																
FDD23-1040	Lead Time - Air Separator	90	90	18-Feb-25	24-Jun-25																																
FDD23-1050	Lead Time - Expansion Tank	60	60	18-Feb-25	12-May-25																																
Division 26 - Electrical		60	60	11-Feb-25	05-May-25																																
																																</					

3

STAFFING PLAN

a. Provide an organizational chart illustrating the key Project personnel for both onsite and offsite operations of Respondent. List the key Project personnel's names and their individual roles and responsibilities. Also list key positions to be provided where specific personnel are unknown at the time of submission (i.e., Assistant Superintendent, MEP Superintendent, etc.)

b. Submit current resumes of the proposed Project team, including similar project experience and qualifications.



BATSON-COOK CONSTRUCTION

Neha Dugal
Sr. Vice President
& General Manager

Simon Massey
Project Executive

PRECON. 10%
CONST. 10%

Justin Miller
Senior Superintendent

PRECON. 10%
CONST. 10%

Preconstruction Team

Construction Team

Brian Cook
Preconstruction Manager

PRECON. 100%
CONST. 20%

Robert Litaker
Preconstruction Asst. Manager

PRECON. 100%
CONST. 20%

Clayton Guillory
Assistant VDC Manager

PRECON. 100%
CONST. 20%

Jonathan Polk
Project Manager

PRECON. 100%
CONST. 60%

Jose Suaste
Project Engineer

PRECON. 0%
CONST. 60%

Daniele Stroud
Project Accountant/ Diversity
Coordinator

PRECON. 0%
CONST. 40%

Matthew Hes
Lead Superintendent

PRECON. 100%
CONST. 100%

William Gonzales
Night Superintendent

PRECON. 0%
CONST. 100%

Cory Nickodam
Alternate Night Superintendent

PRECON. 0%
CONST. 100%

James Filyaw
Safety Manager

PRECON. 20%
CONST. 20%



Neha Dugal, LEED AP, ASHE CHC

SR. VICE PRESIDENT & GENERAL MANAGER

Education

M.S., Civil Engineering Construction
Stanford University, Stanford, California
B.E., Civil Engineering
Maharashtra Institute of Technology
Pune, India

Certifications/Training

LEED Accredited Professional
ASHE - Healthcare Construction Certification
OSHA 30-hour

Years of Experience: 19

Location: Dallas, TX

Neha will lead the project team and have overall responsibility for the successful execution of all phases of the project, cost control, value engineering, subcontractor selection, contract negotiation, scheduling and project delivery. She will work closely with both the preconstruction and construction teams to ensure the project’s successful completion.

RELEVANT EXPERIENCE



JPS Hospital Building Program

Fort Worth, Texas

\$1.7 million

Program projects include: JPS Hospital Phased OR Renovation, JPS Hospital 20 Phased OR renovations for OBOR & Endo rooms. Interior finish renovations at Outpatient Clinic 2 (OPC 2), Outpatient Clinic 1 (OPC 1), Viola Pitts 1st Floor, NE Medical Home and Diamond Hill East, JPS Hospital Oncology and Infusion, JPS Hospital Center Arlington Building, JPS Hospital Main Campus and Additional Outpatient Care, JPS Hospital Ceiling Tile Replacement in Patient Care Pavilion.



Hammes Partners - HCA Alliance Surgery Center, Tenant Buildout, & Medical City Fort Worth Pharmacy Renovation

Fort Worth, Texas

\$13 million

19,726-square-foot ambulatory surgery center. The facility provides surgical services in specialties including: Orthopedics, Bariatrics, Gynecology, ENT, and General surgery. Other features include: four (4) leading-edge operating rooms featuring the latest in patient safety technology, two (2) private recovery rooms, separate pediatric recovery area, spacious waiting area, prefabricated head walls at OR, procedure & treatment rooms. The Fort Worth Pharmacy Renovation’s primary purpose of this project is to expand the existing asphalt parking lot to accommodate 113 additional parking spaces and additional lighting.



UTSW Building Program

Dallas, Texas

\$124 million combined

- | | | |
|---|--|---|
| <ul style="list-style-type: none">• UTSW Paul M. Bass Administrative & Clinical Center Demolition• UTSW CUH Visitor Canopy• UTSW J5.136 Phase 2• UTSW 1.447 X-Ray Room• UTSW Internal Medicine• UTSW K4.500 Pediatric Suite• UTSW Bass to NB Fiber Optic Cabling• UTSW CUH to Bass Tower | <ul style="list-style-type: none">• Fiber Optic Cabling• UTSW Y3.234 Tissue Culture Lab• UTSW Parking LOT 17• UTSW CUH 1.475 Multipurpose Room Build• UTSW CUH 1.474 R&F Equipment Room• UTSW NB9.1.112 Cold Room• UTSW Zale Hospital Pharmacy• UTSW WO# 576021 | <ul style="list-style-type: none">• UTSW CUH West Entry Canopy• O'Donnell School of Health• UTSW Aston 5th Floor Renovations• UTSW EC1 Cafe• UTSW Cafeteria Equipment Room• UTSW Gamma Knife• Peter O'Donnell Biomed Buildout |
|---|--|---|



Jonathan Polk, ASHE HCC
PROJECT MANAGER

Education

B.S., Building Science
Auburn University

Certifications/Training

OSHA 30-hour

First Aid CPR

ASHE Healthcare Construction Certificate

Years of Experience Construction: 8

Location: Dallas, TX

Jonathan will manage the day-to-day operations of the project from its inception through occupancy and closeout. His responsibilities will include cost and quality control, subcontract negotiations, change order management and establishing and maintaining the project schedule.

RELEVANT EXPERIENCE



Hammes Partners - HCA Alliance Surgery Center

Fort Worth, Texas

\$13 million

19,726-square-foot ambulatory surgery center. The facility provides surgical services in specialties including: Orthopedics, Bariatrics, Gynecology, ENT, and General surgery. Other features include: four (4) leading-edge operating rooms featuring the latest in patient safety technology, two (2) private recovery rooms, separate pediatric recovery area, spacious waiting area, prefabricated head walls at OR, procedure & treatment rooms.



UTSW Building Program

Dallas, Texas

\$124 million combined

- | | | |
|---|--|---|
| <ul style="list-style-type: none">• UTSW Paul M. Bass Administrative & Clinical Center Demolition• UTSW CUH Visitor Canopy• UTSW J5.136 Phase 2• UTSW 1.447 X-Ray Room• UTSW Internal Medicine• UTSW K4.500 Pediatric Suite• UTSW Bass to NB Fiber Optic Cabling• UTSW CUH to Bass Tower | <ul style="list-style-type: none">• Fiber Optic Cabling• UTSW Y3.234 Tissue Culture Lab• UTSW Parking LOT 17• UTSW CUH 1.475 Multipurpose Room Build• UTSW CUH 1.474 R&F Equipment Room• UTSW NB9.1.112 Cold Room• UTSW Zale Hospital Pharmacy• UTSW WO# 576021 | <ul style="list-style-type: none">• UTSW CUH West Entry Canopy• O'Donnell School of Health• UTSW Aston 5th Floor Renovations• UTSW EC1 Cafe• UTSW Cafeteria Equipment Room• UTSW Gamma Knife• Peter O'Donnell Biomed Buildout |
|---|--|---|



Cancer Treatment Center of America

Newnan, Georgia

\$67 million

A 225,000-square-foot, state-of-the-art cancer treatment hospital, which included a wing of guest accommodations for the convenience of patients and their family. Rooms included were: CT, CT sim, PET CT, spec CT, MRI, diagnostic (x-ray), angio (interventional radiology), mammo, two operating rooms – lead lined to allow for IORT, PACU, endo, bronc, linear accelerator vault – TrueBeam, TomoTherapy vault, high dose rate (HDR) brachytherapy, laboratory, chemo infusion bays, pharmacy – retail and chemo, as well as 25 critical care capable patient rooms.



Matthew Hes, ASHE HCC
LEAD SUPERINTENDENT

Years of Experience Construction: 10

Location: Dallas, TX

Certifications/Training:

ASHE - Healthcare Construction Certification;
OSHA 30

Matthew will manage and direct all on-site field construction activities including job site safety, planning, scheduling and coordinating subcontractors’ work. He will also contribute in preconstruction strategy sessions and provide direction on means and methods of construction industry best practices, while ensuring a quality and timely completion of the project.

RELEVANT EXPERIENCE



UTSW Building Program

Dallas, Texas

\$58.6 million combined

- UTSW CUH CT 1.425 CT2 Scan Replacement Room
- UTSW EF2 PET CT Buildout
- UTSW NC2 Office Renovation
- UTSW Paul M. Bass Administrative & Clinical Center Demolition

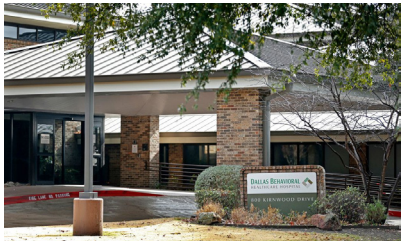


Georgetown Behavioral Health Institute

Georgetown, Texas

\$15 million

76,000 SF behavioral health center with 58 patient rooms, 116 beds, full restaurant quality kitchen and office spaces.



Behavioral HealthCare Hospital Program

Dallas & Houston, Texas

\$15 million

Dallas - 8,432 SF interior remodel to update patient rooms, bathrooms, new flooring and exterior building improvements.

Houston - 20,000 SF kitchen and dining hall gut remodel. To include black mold abatement in the kitchen, structural improvements, and upgrade of interior finishes.



Brian Cook
PRECONSTRUCTION MANAGER

Education

University of Wisconsin - Stout, Menomonie, WI Bachelor of Science Degree in Industrial Technology	Western Wisconsin Technical College, La Crosse, WI Autocad and its Applications for Windows	University of Wisconsin - La Crosse, La Crosse, WI Basic Studies Years of Experience: 29 Location: Dallas, TX
---	--	---

Brian will advise the preconstruction team during the entire preconstruction phase activity. At the time of transfer from preconstruction to construction, he will maintain involvement with the team to ensure continuity in the project.

RELEVANT EXPERIENCE



JPS Hospital Building Program
Fort Worth, Texas \$1.7 million
Program projects include: JPS Hospital Phased OR Renovation, JPS Hospital 20 Phased OR renovations for OBOR & Endo rooms. Interior finish renovations at Outpatient Clinic 2 (OPC 2), Outpatient Clinic 1 (OPC 1), Viola Pitts 1st Floor, NE Medical Home and Diamond Hill East, JPS Hospital Oncology and Infusion, JPS Hospital Center Arlington Building, JPS Hospital Main Campus and Additional Outpatient Care, JPS Hospital Ceiling Tile Replacement in Patient Care Pavilion.



Hammes Partners - HCA Alliance Surgery Center
Fort Worth, Texas \$13 million
19,726-square-foot ambulatory surgery center. The facility provides surgical services in specialties including: Orthopedics, Bariatrics, Gynecology, ENT, and General surgery. Other features include: four (4) leading-edge operating rooms featuring the latest in patient safety technology, two (2) private recovery rooms, separate pediatric recovery area, spacious waiting area, prefabricated head walls at OR, procedure & treatment rooms.



UTSW Building Program
Dallas, Texas \$124 million combined

• UTSW Paul M. Bass Administrative & Clinical Center Demolition • UTSW CUH Visitor Canopy • UTSW J5.136 Phase 2 • UTSW 1.447 X-Ray Room • UTSW Internal Medicine • UTSW K4.500 Pediatric Suite • UTSW Bass to NB Fiber Optic Cabling • UTSW CUH to Bass Tower	• Fiber Optic Cabling • UTSW Y3.234 Tissue Culture Lab • UTSW Parking LOT 17 • UTSW CUH 1.475 Multipurpose Room Build • UTSW CUH 1.474 R&F Equipment Room • UTSW NB9.1.112 Cold Room • UTSW Zale Hospital Pharmacy • UTSW WO# 576021	• UTSW CUH West Entry Canopy • O'Donnell School of Health • UTSW Aston 5th Floor Renovations • UTSW EC1 Cafe • UTSW Cafeteria Equipment Room • UTSW Gamma Knife • Peter O'Donnell Biomed Buildout
---	--	---

Attachment 9: Contract Drawing Log

Drawing Log				
Project Number	Name	Date		Version
62365	JPS Pavilion OR AHU Replacement (Issue For Construction)	24-May-24		1
Number	Title	Set Name	Version	Issuance Date
AS-101	ARCHITECTURAL SITE PLAN	ASI 01	1	23-Jul-24
A-103	PENTHOUSE FLOOR AND ROOF PLAN	ASI 01	2	23-Jul-24
A-104	LEVEL 02 - 0R RCP	IFC Drawings	1	24-May-24
A-201	EXTERIOR ELEVATIONS	IFC Drawings	1	24-May-24
A-202	SECTION DETAILS	IFC Drawings	1	24-May-24
AD103	DEMOLITION ROOF PLAN	IFC Drawings	1	24-May-24
E-001	ELECTRICAL LEGENDS, INDEX, & NOTES	IFC Drawings	1	24-May-24
E-002	ELECTRICAL SCHEDULES	IFC Drawings	1	24-May-24
E-501	ELECTRICAL DETAILS	IFC Drawings	1	24-May-24
E-601	PARTIAL ELECTRICAL ONE LINE DIAGRAM	IFC Drawings	1	24-May-24
E-602	PARTIAL ELECTRICAL ONE LINE DIAGRAM	IFC Drawings	1	24-May-24
E-801	ELECTRICAL PANEL SCHEDULES	IFC Drawings	1	24-May-24
ED-103	ELECTRICAL ROOF - PLAN DEMOLITION	IFC Drawings	1	24-May-24
EP-100	BASEMENT FLOOR - ELECTRICALPOWER FLOOR PLAN	IFC Drawings	1	24-May-24
EP-103A	PENTHOUSE FLOOR - ELECTRICAL POWER FLOOR PLAN - AREA A	IFC Drawings	1	24-May-24
EP-103B	PENTHOUSE FLOOR - ELECTRICAL POWER FLOOR PLAN - AREA B	IFC Drawings	1	24-May-24
EP-401	ENLARGED EXISTING ELECTRICAL ROOMS	IFC Drawings	1	24-May-24
FP-102A	LEVEL 02 - FIRE PROTECTION FLOOR PLAN - PARTA	IFC Drawings	1	24-May-24
FP-103	LOW ROOF LEVEL - FIRE PROTECTION PLAN - OVERALL	IFC Drawings	1	24-May-24
G-000	COVER PAGE	IFC Drawings	1	29-Jan-24
G-011	GENERAL INFORMATION	IFC Drawings	1	24-May-24
G-012	CODE AND LIFE SAFETY	IFC Drawings	1	24-May-24
M-001	MECHANICAL COVER	IFC Drawings	1	24-May-24
M-102A	SECOND FLOOR - HVAC PLAN - PART A	IFC Drawings	1	24-May-24
M-102B	SECOND FLOOR - HVAC PLAN - PART B	IFC Drawings	1	24-May-24
M-103A	LOW ROOF LEVEL - HVAC PLAN A	IFC Drawings	1	24-May-24
M-103B	LOW ROOF LEVEL - HVAC PLAN B	IFC Drawings	1	24-May-24
M-103D	THIRD FLOOR - HVAC PLAN - PART D	IFC Drawings	1	24-May-24
M110B	BASEMENT - MECHANICAL PIPING PLAN - PART B	IFC Drawings	1	24-May-24
M-103D	THIRD FLOOR - HVAC PLAN - PART D	IFC Drawings	1	24-May-24
M-110B	BASEMENT - MECHANICAL PIPING PLAN - PART B	IFC Drawings	1	24-May-24
M-112B	SECOND FLOOR - MECHANICAL PIPING PLAN - PART B	IFC Drawings	1	24-May-24
M-113A	LOW ROOF LEVEL - MECHANICAL PIPING PLAN - PART A	IFC Drawings	1	24-May-24
M-113B	LOW ROOF LEVEL - MECHANICAL PIPING PLAN - PART B	IFC Drawings	1	24-May-24
M-113D	THIRD FLOOR - MECHANICAL PIPING PLAN - PART D	IFC Drawings	1	24-May-24
M-301	MECHANICAL DETAILS	IFC Drawings	1	24-May-24
M-302	MECHANICAL DETAILS	IFC Drawings	1	24-May-24
M-303	MECHANICAL DETAILS	IFC Drawings	1	24-May-24
M-304	MECHANICAL DETAILS	IFC Drawings	1	24-May-24
M-401	ENLARGED MECHANICAL PLANS	IFC Drawings	1	24-May-24
M-402	ENLARGED MECHANICAL PLANS	IFC Drawings	1	24-May-24
M-411	MECHANICAL SECTIONS	IFC Drawings	1	24-May-24
M-412	MECHANICAL SECTIONS	IFC Drawings	1	24-May-24

M-502	GLYCOL FLOW DIAGRAM	IFC Drawings	1	24-May-24
M-601	MECHANICAL SCHEDULES	IFC Drawings	1	24-May-24
M-602	MECHANICAL SCHEDULES	IFC Drawings	1	24-May-24
M-621	MECHANICAL CONTROLS	IFC Drawings	1	24-May-24
M-622	MECHANICAL CONTROLS	IFC Drawings	1	24-May-24
M-623	MECHANICAL CONTROLS	IFC Drawings	1	24-May-24
M-801	PHASING - LEVEL 02 DEMO	IFC Drawings	1	24-May-24
M-802	PHASING - LOW ROOF LEVEL DEMO	IFC Drawings	1	24-May-24
M-803	PHASING - LEVEL 02 NEW WORK	IFC Drawings	1	24-May-24
M-804	PHASING - LEVEL ROOF LEVEL NEW WORK	IFC Drawings	1	24-May-24
MD102A	SECOND FLOOR - MECHANICAL DEMO PLAN - PART A	IFC Drawings	1	24-May-24
MD102B	SECOND FLOOR - MECHANICAL DEMO PLAN - PART B	IFC Drawings	1	24-May-24
MD103A	LOW ROOF LEVEL - MECHANICAL DEMO PLAN - PART A	IFC Drawings	1	24-May-24
MD103B	LOW ROOF LEVEL - MECHANICAL DEMO PLAN - PART B	IFC Drawings	1	24-May-24
MD112A	SEOND FLOOR - MECHANICAL PIPING DEMO PLAN - PART A	IFC Drawings	1	24-May-24
MD112B	SECOND FLOOR - MECHANICAL PIPING DEMO PLAN - PART B	IFC Drawings	1	24-May-24
MD113A	LOW ROOF LEVEL - MECHANICAL PIPING DEMO PLAN - PART A	IFC Drawings	1	24-May-24
MD113B	LOW ROOF LEVEL - MECHANICAL PIPING DEMO PLAN - PART B	IFC Drawings	1	24-May-24
P-001	PLUMBING COVER	IFC Drawings	1	24-May-24
P-102A	SECOND FLOOR - PLUMBING PLAN - PART A	IFC Drawings	1	24-May-24
P-102B	SECOND FLOOR - PLUMBING PLAN - PART B	IFC Drawings	1	24-May-24
P-103A	LOW ROOF LEVEL - PLUMBING PLAN - PART A	IFC Drawings	1	24-May-24
P-103B	LOW ROOF LEVEL - PLUMBING PLAN - PART B	IFC Drawings	1	24-May-24
P-301	PLUMBING DETAILS	IFC Drawings	1	24-May-24
P-601	PLUMBING EQUIPMENT SCHEDULES	IFC Drawings	1	24-May-24
S-001	STRUCTUAL GENERAL NOTES	IFC Drawings	1	24-May-24
S-002	STRUCTURAL GENERAL NOTES	IFC Drawings	1	24-May-24
S-003	SPECIAL INSPECTIONS	IFC Drawings	1	24-May-24
S-004	STRUCTURAL SYMBOLS & NOTATIONS	IFC Drawings	1	24-May-24
S-005	STRUCTURAL SYMBOLS & NOTATIONS	IFC Drawings	1	24-May-24
S-010	CLASSES OF CONCRETE MATRIX	IFC Drawings	1	24-May-24
S-012	LOAD KEY PLAN	IFC Drawings	1	24-May-24
S-103	EXISITNG LOW ROOF FRAMING PLAN	IFC Drawings	1	24-May-24
S-104	PENTHOUSE ROOF FRAMING PLAN	IFC Drawings	1	24-May-24
S-110	PENTHOUSE FRAMING PLANS - PHASE 1 & 2	IFC Drawings	1	24-May-24
S-111	PENTHOUSE FRAMING PLANS - PHASE 3 & 4	IFC Drawings	1	24-May-24
S-201	PARTIAL FRAMING PLANS	IFC Drawings	1	24-May-24
S-301	TYPICAL CONCRETE DETAILS	IFC Drawings	1	24-May-24
S-401	TYPICAL STEEL FRAMING DETAILS	IFC Drawings	1	24-May-24
S-402	TYPICAL STEEL FRAMING DETAILS	IFC Drawings	1	24-May-24
S-410	STEEL FRAMING DETAILS	IFC Drawings	1	24-May-24
S-411	STEEL FRAMING DETAILS	IFC Drawings	1	24-May-24
S-415	FRAMING ELEVATIONS	IFC Drawings	1	24-May-24

Attachment 9: Contract Specification Log

Spec Log				
Project Number	Name	Date		Version
62365	Project Manual: JPS Pavilion OR AHU Replacement (Issued For Construction)	24-May-24		1
Division	Specification	Set Name	Version	Issuance Date
DIV 02	02 41 19 - Selective Demolition	IFC Project Manual	1	24-May-24
DIV 03	03 10 00 - Concrete Forming and Accessories 033000 Cast in Place Concrete	IFC Project Manual	1	24-May-24
	03 20 00 - Concrete Reinforcing	IFC Project Manual	1	24-May-24
	03 30 00 - Cast in Place Concrete	IFC Project Manual	1	24-May-24
DIV 05	05 12 00 - Structural Steel Framing	IFC Project Manual	1	24-May-24
	05 31 00 - Steel Decking	IFC Project Manual	1	24-May-24
	05 50 00 - Metal Fabrications	IFC Project Manual	1	24-May-24
DIV 06	06 10 00 - Rough Carpentry	IFC Project Manual	1	24-May-24
DIV 07	07 42 13 - Insulated Roof Panels	IFC Project Manual	1	24-May-24
	07 42 13 - Insulated Roof Panels	IFC Project Manual	1	24-May-24
	07 92 00 - Joint Sealants	IFC Project Manual	1	24-May-24
DIV 08	08 11 13 - Hollow Metal Doors and Frames	IFC Project Manual	1	24-May-24
DIV 09	09 91 00 - Painting	IFC Project Manual	1	24-May-24
DIV 10	10 44 00 - Fire Protection Specialities	IFC Project Manual	1	24-May-24
DIV 21	21 05 00 - Common Work Results for Fire Suppression	IFC Project Manual	1	24-May-24
	21 05 53 - Identification for Fire Suppression Piping and Equipment	IFC Project Manual	1	24-May-24
	21 13 00 - Fire Suppression Sprinkler Systems	IFC Project Manual	1	24-May-24
DIV 22	22 05 00 - Common Work Results for Plumbing	IFC Project Manual	1	24-May-24
	22 05 17 - Sleeves and seals for Plumbing Piping	IFC Project Manual	1	24-May-24
	22 05 23 - General Duty valves for Plumbing Piping	IFC Project Manual	1	24-May-24
	22 05 29 - Hangers and Supports for Plumbing Piping and Equipment	IFC Project Manual	1	24-May-24
	22 05 53 - Identification for Plumbing and Equipment	IFC Project Manual	1	24-May-24
	22 07 19 - Plumbing Piping Insulation	IFC Project Manual	1	24-May-24
	22 08 00 - Commissioning of Plumbing Systems	IFC Project Manual	1	24-May-24
	22 11 16 - Domestic Water Piping	IFC Project Manual	1	24-May-24
	22 13 16 - Sanitary Waste and Vent Piping	IFC Project Manual	1	24-May-24
	22 13 19 - Sanitary Waste Piping Specialties	IFC Project Manual	1	24-May-24
	22 40 00 - Plumbing Fixtures	IFC Project Manual	1	24-May-24
	22 40 19 - Plumbing Specialties	IFC Project Manual	1	24-May-24
DIV 23	23 05 10 - Basic Mechanical Requirements	IFC Project Manual	1	24-May-24
	23 05 13 - Common Motor Requirements for HVAC Equipment	IFC Project Manual	1	24-May-24

	23 05 17 - Sleeves and Sleeve Seals for HVAC Piping	IFC Project Manual	1	24-May-24
	23 05 19 - Meters and Gauges for HVAC Piping	IFC Project Manual	1	24-May-24
	23 05 23 - General Duty Valves for HVAC Piping	IFC Project Manual	1	24-May-24
	23 05 29 - Hangers and Supports for HVAC Piping and Equipment	IFC Project Manual	1	24-May-24
	23 05 48 - Vibration and Seismic Controls for HVAC	IFC Project Manual	1	24-May-24
	23 05 53 - Identification for HVAC Piping and Equipment	IFC Project Manual	1	24-May-24
	230593 - Testing, Adjusting and Balancing for HVAC	IFC Project Manual	1	24-May-24
	230713 - Duct Insulation	IFC Project Manual	1	24-May-24
	230719 - HVAC Piping Insulation	IFC Project Manual	1	24-May-24
	230800 - Commissioning of HVAC Systems	IFC Project Manual	1	24-May-24
	230925 - Variable Frequency Drives	IFC Project Manual	1	24-May-24
	232113 - Hydronic Piping	IFC Project Manual	1	24-May-24
	232116 - Hydronic Piping Specialties	IFC Project Manual	1	24-May-24
	232123 - Hydronic Pumps	IFC Project Manual	1	24-May-24
	232513 - Water Treatment for Closed Loop Hydronic Systems	IFC Project Manual	1	24-May-24
	233113 - Metal Ducts	IFC Project Manual	1	24-May-24
	233119.13 - Shop Fabricated HVAC Casings	IFC Project Manual	1	24-May-24
	233300 - Air Duct Accessories	IFC Project Manual	1	24-May-24
	233713 - Diffusers, Registers and Grills	IFC Project Manual	1	24-May-24
	233723 - HVAC Gravity Ventilators	IFC Project Manual	1	24-May-24
	236426.13 - Air Cooled, Screw Water Glycol Chillers	IFC Project Manual	1	24-May-24
	237314 - Indoor Modular Central Station Air Handling Units	IFC Project Manual	1	24-May-24
	239000 - HVAC Louvers	IFC Project Manual	1	24-May-24
DIV 26	26 05 00 - Common Work Results for Electrical	IFC Project Manual	1	24-May-24
	26 05 05 - Selective Demolition for Electrical	IFC Project Manual	1	24-May-24
	26 05 19 - Low-Voltage Electrical Power Conductors and Cables	IFC Project Manual	1	24-May-24
	26 05 26 - Grounding and Bonding for Electrical Systems	IFC Project Manual	1	24-May-24
	26 05 29 - Hangers and Supports for Electrical Systems	IFC Project Manual	1	24-May-24
	26 05 33.13 - Conduit for Electrical Systems	IFC Project Manual	1	24-May-24
	26 05 33.16 - Boxes for Electrical Systems	IFC Project Manual	1	24-May-24
	26 05 53 - Identification for Electrical Systems	IFC Project Manual	1	24-May-24

	26 05 73 - Power System Analysis	IFC Project Manual	1	24-May-24
	26 05 83 - Wiring Connections	IFC Project Manual	1	24-May-24
	26 22 00 - Low Voltage Transformers	IFC Project Manual	1	24-May-24
	26 24 16 - Panelboards	IFC Project Manual	1	24-May-24
	26 27 26 - Wiring Devices	IFC Project Manual	1	24-May-24
	26 29 13 - Enclosed Controllers	IFC Project Manual	1	24-May-24
	26 41 13 - Lightning Protection for Structures	IFC Project Manual	1	24-May-24
	26 43 00 - Surge Protection Devices	IFC Project Manual	1	24-May-24
	26 51 00 - Interior Lighting	IFC Project Manual	1	24-May-24
DIV 28	28 31 11 - Digital, Addressable Fire Alarm System and Voice Evacuation	IFC Project Manual	1	24-May-24
	28 46 00 - Fire Detection and Alarm System	IFC Project Manual	1	24-May-24

August 28, 2024

JPS Pavilion OR AHU Replacement – Construction Manager Owned Equipment

Please see the following page for rental rates of equipment to be used on this project:





706-643-2113
815 Fifth Avenue
West Point, GA 31833

Rental Agent:	QUOTE DATES:	STATUS:
Michael Smith		

Quoted	Rate	Qty	Total
4000 48" Panel	\$ 85.00	1	\$ 85.00
4001 36" Panel	\$ 85.00	1	\$ 85.00
4002 24" Panel	\$ 60.00	1	\$ 60.00
4005 6" Panel	\$ 40.00	1	\$ 40.00
4006 12" Panel	\$ 45.00	1	\$ 45.00
AGSHIELD Corner	\$ 30.00	1	\$ 30.00
D144WK Door	\$ 150.00	1	\$ 150.00
Negative Air Machine	\$ 300.00	1	\$ 300.00
Port Pressure Monitor	\$ 300.00	1	\$ 300.00

COMPANY HOURS
Monday - Friday : 8:00 AM - 5:00 PM
Saturday - Sunday : Closed

Project Quality Control Plan

JPS Hospital Pavilion OR AHU Replacement Project

09/02/2024

Table of Contents

#	Description	Page #
I	Introduction	2
	Purpose	2
	Objectives	2
	Project Description	2
	Roles and Responsibilities	2
II	Preconstruction	3
	Document existing conditions	3
	Utility Locating Plan	3
	Laser Scanning and BIM Coordination	3
	Incorporating QA/QC activities in Schedule	3
	Constructability Review	4
III	Submittals, Material Coordination and Pre-Installation	5
	Submittal Review and approval	5
	Subcontractor Kickoff/Pre-installation Meetings	6
	1 st Delivery Inspection	6
	Mockups	10
	Project Execution Plan	10
IV	Testing and Inspections	11
	100 Day to CO Log	11
	Structionsite Photo Documentation	11
	Above Ceiling and In-wall Inspection Check List	12
	Non-Conformance Management	13
	Pre-punch/Final Inspections	13
V	Turnover & Closeout	14
	Electronic Closeout	14
	Owner Training	14
	11-month warranty walkthrough	14

I. Introduction

Purpose

This Quality Control Plan (QCP) has been developed to ensure that all aspects of the DFW Airport Skylink MSF & 8 Column Fence Replacement Project meet or exceed the established quality standards and specifications. Quality control is a fundamental component of our commitment to delivering a successful project that is safe, efficient, and compliant with all regulatory requirements.

Objectives

- To prevent construction defects from occurring
- To ensure work conforms to the contract documents and functional performance requirements
- To select qualified, quality-oriented trade partners
- To perform timely inspections and tests by Batson Cook Construction and trade partners
- To minimize rework during construction
- To achieve a zero punch list at substantial completion

Project Description

The JPS Hospital OR AHU Replacement Project is located in Fort Worth and encompasses phased Chiller and AHU replacement at the North Pavilion roof.

Roles and Responsibilities

The following are the role assignments for the project, followed by a brief summary of their quality control responsibilities.

Project Superintendent

Name: Matthew Hes

Cell #: 469-774-0080

Email: mhes@batson-cook.com

Project Superintendent will be the day-to-day contact for Batson Cook Construction.

Project Manager

Name: Jonathan Polk

Cell #: 214-427-7972

Email: jpolk@batson-cook.com

Assistant Project Manager

Name: Joanna Ayala

Cell #: 817-690-1347

Email: jayala@batson-cook.com

Project Manager (s) oversee the quality control program and documentation between subcontractors work and JPS Hospital.

Night Superintendent

Name: William Gonzales/Cory Nickodam

Cell #: 214-407-3310/817-713-9195

Email: wgonzales@batson-cook.com
[/cnickodam@batson-cook.com](mailto:cnickodam@batson-cook.com)

Our Project Team is responsible for quality control inspections and documentation on the project for Batson Cook and Trade Partners. This includes monthly QA/QC meetings, preparatory meetings, submittal review, in-place inspections, corrective action and stop work.

II. Preconstruction

Document Existing Conditions

At the onset of every project, Batson Cook project management team will inspect and create a photographic and/or video record via Structionsite platform to document existing conditions. This will be submitted as “Preconstruction Existing Conditions Survey” prior to starting Construction.

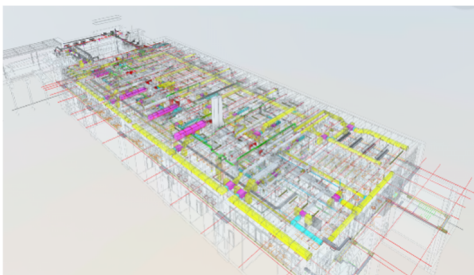
Utility Locating Plan

All Batson Cook Projects shall have a Utility Locating Plan in place before any work starts on a new project. Key elements include:



- Use or need of GPR/ Underground Mapping to identify and verify utilities.
- Including all High-risk areas (gas, power, and water mains) are to be located by hydrovac on all projects.
- Use Batson Cook engineer or 3rd Party to create composite Utility Locating Plan uploaded to CAD.
- Possible use of Hololens (Mixed Reality Headset) to overlay CAD drawings with existing conditions.

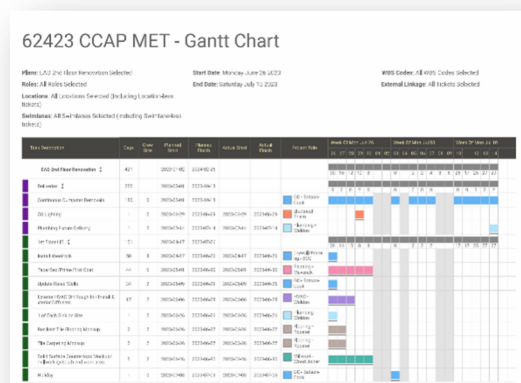
Laser Scanning & BIM Coordination



Batson Cook will perform a laser scan of the existing conditions on the 2nd Floor corridors and Roof to account for accurate existing conditions. These will be added to the BIM Model to allow for accurate overhead BIM Coordination. Clash detection will be performed to identify and resolve potential conflicts prior to shop drawing submission and approval.

Incorporate QA/QC Activities in Project Schedule

Update the Project Schedule to incorporate QA/QC activities into the 4-week look ahead schedule. See sample below for example.



Constructability Review:

Update the Constructability Review by thorough review of design documents, construction means and methods and site-specific conditions. See sample below for example.

Constructability Review

Client: JPS Health Systems

Project: Pavilion OR-AHU Replacement

Contractor: Batson-Cook Construction

TYPE/CURRENT STATUS CODES	
AR	Action Required
CA	Constructability/Correction
NC	Needs Clarification
G	General
C	Complete

RESPONSIBLE PARTY CODES	
JPS	Owner: JPS Health Systems
HW	Project Architect: Hoeffler Welker
HW	Design Architect: Hoeffler Welker
MME	Structural Engineer: Martinez Moore Engineers
BHE	MP: B&H Engineers
SSR	Elec. Engineer: Smith Seckman Reid

Phase: IFC

Document Date: 05.24.24

Item No.	Type	Location/ Discipline	Item Description	Date Initiated	Current Status	Date Required	Date Completed	Responsible Party	Comments/Benefits/Action Required
1	G	Owner	What are the Shutdown and Inspection procedures for the facility?	08/15/24	G			JPS	
2	CA	Architectural Mechanical	BT-01 is shown at different column lines. S103 & A103 match; M103B is different. Please confirm correct plan to follow.	08/15/24	CA			HW/BHE	
3	G	Owner	Who is the current warranty holder of the roof and the existing roof contractor?	08/15/24	G			JPS	
4	CA	Architectural	Please provide roof and wall framing details for the versapanel at the new penthouse.	08/15/24	CA			HW	
5	NC	Structural	When installing the penthouse structural steel, we plan to utilize baker scaffold and stage material on the roof area above the ORs, equating to above 10,000 lbs at any given time. What is the allowable load of the roof above the ORs?	08/15/24	NC			HW/MME	
6	NC		Per our pre-bid meetings we have combined phases 2 & 3. Please confirm this is acceptable.	08/15/24	NC			HW	
7	NC	Architectural	A-103 shows the door finish and frame finish color to be TBD. Please confirm finish color.	08/15/24	NC			HW	
8	NC	Architectural	G012 - Life Safety Plan shows 2 fire extinguishers, one at each door. This is not represented on A103.	08/15/24	NC			HW	
9	CA	Architectural	Please provide basis of design for prefabricated canopy/specifications.	08/15/24	CA			HW	
10	NC	Architectural	Please confirm that penthouse steel is not painted.	08/15/24	NC			HW	
11	NC	Plumbing	Please confirm that 1 1/4" gas line needs to be painted yellow.	08/15/24	NC			HW/BHE	

1 of 1

III. Submittals, Material Coordination and Pre-Installation

Submittal Review and Approval

As early as practical, but prior to the first work-in-place, Batson Cook will develop a comprehensive procurement log. See sample below. This log will identify all items requiring submittal by Batson Cook, its trade partners and suppliers. The submittal register identifies the "due date" considering the submittal review and approval process including possible revisions and re-submittals plus the time for fabrication, transportation and delivery to the jobsite.

Submittal samples shall demonstrate the level of quality that is acceptable to the owner and the responsible design professional. Batson Cook shall strictly comply with contract submittal requirements. We will not procure materials, equipment or supplies requiring submittal review, until architect and/or design consultants have approved submittals. Copies of approved submittals including manufacturer's installation instructions shall be maintained electronically. Batson Cook's project management team shall be responsible for managing the submittal process and coordinating procurement activities. Written documentation via a Substitution Request Form found in Division 01 Specification from Batson Cook to the Owner of proposed change for any Owner Specified Items is required for all variations or substitutions. The owner shall approve all variations or substitutions in accordance with contract requirements.

The Project Management team will ensure that all purchased building materials, equipment, and supplies conform to project requirements. The ability to provide items specified on time and packaged to ensure protection during loading, unloading and storage at the jobsite are key factors in vendor selection.

62270 - Biomed Shell Build Out - Material Procurement Log							Report Date: 9/3/2024	
Equipment/Material	Trade Partner	Autodesk Submittal #	Submittal Status	Released?	Required Release Date	Lead Time (weeks)	Delivery Date / Ship Date	Scheduled Install Date
Vacuum Pumps	Kilgore/Plumbing	657	Approved	yes	12/01/23	20		04/19/24
Chiller (CUP)	Texas Air Systems	4	Approved	yes	12/08/23	52	10/31/24	12/06/24
VFDs (Chiller)	Texas Air Systems	5	Approved	yes	12/11/23	52	07/15/24	12/09/24
Automatic Transfer Switch	FSG	527	Approved as noted	yes	03/15/24	30	01/02/25	10/11/24
Medium Voltage Transformer Maddox	FSG	505	Approved as noted	yes	04/03/24	40	02/28/25	01/08/25
CO2 Gas Manifolds	Kilgore/Plumbing	634	Approved as noted	yes	04/22/24	12		07/15/24
Ceiling Tile (Level 3)	Batson-Cook	509	Approved as noted	yes	05/06/24	8		06/29/24
Ceiling Tile (Level 6)	Batson-Cook	509	Approved as noted	yes	05/20/24	8		07/15/24
Recirculation Pumps	Kilgore/Plumbing	536	Approved	yes	05/20/24	8		07/15/24
Fire Alarm System	FSG	779	Approved	yes	06/18/24	8	04/01/24	08/13/24
Water Heating Equipment	Kilgore/Plumbing	669	Approved as noted	yes	06/19/24	7		08/07/24
Ceiling Tile (Level 8)	Batson-Cook	509	Approved as noted	yes	06/20/24	8		08/15/24
Wood Doors	The Door Company	542	Approved as noted	yes	06/24/24	12	09/02/24	09/16/24
Plumbing Fixtures	Kilgore/Plumbing	533	Approved	yes	06/26/24	6		08/07/24
Stainless Steel Partitions	Archer Specialties	816	Approved as noted	yes	07/01/24	5		08/05/24
Ceiling Tile (Level 4)	Batson-Cook	509	Approved as noted	yes	07/01/24	8		08/24/24
Chiller Pumps (CUP)	Texas Air Systems	6	Approved	yes	07/02/24	24	07/15/24	12/17/24
Wall Protection	Archer Specialties	633	Approved as noted	yes	07/08/24	5		08/12/24
VFDs (exhaust fans)	Kilgore/Mechanical	646	Approved as noted (A/E); UTSW Review	yes	07/08/24	6		08/19/24
Public Elev. Lobby Glass Panels	DGB Glass	668	Approved as noted	yes	07/09/24	10		09/17/24
Carpet (C1 & C2)	Fabulous Floors	569	Approved	yes	07/10/24	6	04/29/24	08/21/24
Ceiling Tile (Level 5)	Batson-Cook	509	Approved as noted	yes	07/24/24	8		09/18/24
VFDs (AHU)	Texas Air Systems	529	Approved	yes	07/26/24		07/15/24	07/26/24
Terrazzo Flooring	American Terrazzo	535	Approved	yes	07/29/24	4		08/26/24
Markerboards	Archer Specialties	629	Approved as noted	yes	08/26/24	5		09/30/24
HM Doors	The Door Company	541	Approved as noted	yes	09/03/24	12	08/29/24	11/26/24
Signage	ASI Signage	817	Required	no	09/04/24	8		10/30/24
Access Control System	FSG	644	Approved as noted	yes	09/09/24			09/09/24
Fire Rated Glass	DGB Glass	618	Approved as noted	no	09/16/24	5		10/21/24
Door Hardware	The Door Company	541	Approved as noted	yes	10/01/24	8		11/26/24
Electric Humidifiers (CPR-016)	Kilgore/Mechanical	528	Approved as noted	yes				
Bubble Damper	Kilgore/Mechanical	678	Approved as noted	yes		11		

Subcontractor Kickoff /Pre-Installation Meetings

Batson Cook project management team will schedule subcontractor kickoff / pre-installation meetings with key trade partners prior to start of work. Agenda includes mobilization date, staging, QA/QC inspections and any other items required for trades scope of work

**Precast Erection Coordination -
Tower & Parking Deck**

Project: MidtownMOB

Date: June 5th @ 11am



General Notes	Resp.	Due
1 Introductions		
2 Roles and Responsibilities		
3 Columbia Precast		
4 Precision		
5 Metromont		
6 Batson-Cook		
7 Job site contact info: Jeremiah Perkins (770)733-5694		
8 Site Specific Safety Plan & Submit Crane Lift Plan		
Parking Deck	Resp.	Due
9 Mobilization Date: 07/24/17		
10 Production Status		
11 Review Schedule		
12 Crane Info - Slopes/Crane Mats		
13 Staging of trucks		
14 Any lane closures?		
15 Plant Visit date		
Tower	Resp.	Due
16 Mobilization Date: 09/28/17		
17 Production Status		
18 Review Schedule & where 2 crews work		
19 Staging of trucks		
20 Any lane closures?		
21 Plant Visit Date		
Action Items	Resp.	Due
22		

1st Delivery Inspection

1st delivery inspection occurs for the first batch of materials delivered and installed. This inspection is conducted to ensure that the delivered items meet the contract documents and approved submittals. See below for 1st delivery inspection and field quality control items for this project.

Specification	Field Quality Control
03 10 00 Concrete Forming and Accessories	A. Field Inspection: Refer to Specification 014529 "Structural Testing and Inspections" for inspection requirements associated with forming and accessories.
03 20 00 Concrete Reinforcing	A. Field Testing and Inspection: Refer to Specification 01 45 29 "Structural Testing and Inspections" for testing and inspection requirements associated with concrete reinforcing.
03 30 00 Cast-In-Place Concrete	1. Surveys: Submit report certifying that all anchor rods and reinforcing dowels into columns above are in their proper location prior to placing of concrete. A. Field Testing and Inspection: Refer to Specification 014529 "Structural Testing and Inspections" for testing and inspection requirements associated with cast-in-place concrete.
05 12 00 Structural Steel Framing	A. Field Testing and Inspection: Refer to Specification 014529 "Structural Testing and Inspections" for testing and inspection requirements associated with structural steel.
05 31 00 Steel Decking	A. Field Testing and Inspection: Refer to Specification 01 45 29 "Structural Testing and Inspections" for testing and inspection requirements associated with steel decking. 1. Check steel deck as received in the field for possible shipping damage, workmanship, and identification marking to conform to specified ASTM standards for steel deck. 2. Periodically monitor the method of attaching the steel floor and roof decking to the structural frame. 3. Visually inspect 100% of the welding or other attachment method of steel deck to the structure and at sidelaps. 4. Visual inspect 100% of the Powder-Actuated or Compressed-Air fasteners using an inspection gauge supplied by the manufacturer to verify that the stand-off distance from the top of the deck is in accordance with the manufacturer's requirements.
07 41 16 Insulated Metal Roof Panels	A. Manufacturer's Field Service: Engage a factory-authorized service representative to test and inspect completed metal panel installation, including accessories. Report results in writing. B. Remove and replace applications where tests and inspections indicate that they do not comply with specified requirements. C. Additional tests and inspections, at Contractor's expense, are performed to determine compliance of replaced or additional work with specified requirements. D. Prepare test and inspection reports.

Specification	Field Quality Control
07 42 13.19 Insulated Metal Wall Panels	A. Testing Agency: Owner will engage a qualified testing agency to perform tests and inspections. B. Water-Spray Test: After installation, test area of assembly shown on Drawings as directed by Architect for water penetration according to AAMA 501.2. C. Manufacturer's Field Service: Engage a factory-authorized service representative to test and inspect completed metal wall panel installation, including accessories. D. Metal wall panels will be considered defective if they do not pass test and inspections. E. Additional tests and inspections, at Contractor's expense, are performed to determine compliance of replaced or additional work with specified requirements. F. Prepare test and inspection reports.
07 54 23 Thermoplastic-Polyolefin (TPO) Roofing	A. Testing Agency: Owner will engage a qualified testing agency to perform tests and to inspect substrate conditions, surface preparation, roof membrane application, sheet flashings, protection, and drainage components, and to furnish reports to Architect. 1. Flood Testing: Flood test each roof area for leaks, according to recommendations in ASTM D5957, after completing roofing and flashing but before overlying construction is placed. Install temporary containment assemblies, plug or dam drains, and flood with potable water. 2. Infrared Thermography: Testing agency surveys entire roof area using infrared color thermography according to ASTM C1153. 3. Electrical Capacitance/Impedance Testing: Testing agency surveys entire roof area for entrapped water within roof assembly according to ASTM D7954/D7954M. 4. Nuclear Hydrogen Detection Testing: Testing agency surveys entire roof area for entrapped water within roof assembly according to ANSI/SPRI/RCI NT-1. 5. Low-Voltage ELD Testing: Testing agency surveys entire roof area and flashings to locate discontinuities in the roof membrane using low-voltage horizontal membrane scanning platform in accordance with ASTM D8231. 6. High-Voltage Membrane Testing: Testing agency surveys entire roof area, flashings, and parapet walls to locate discontinuity in the roof membrane using an electrically charged metal "broom head." C. Final Roof Inspection: Arrange for roofing system manufacturer's technical personnel to inspect roofing installation on completion, in presence of Architect, and to prepare inspection report. D. Repair or remove and replace components of roofing system where inspections indicate that they do not comply with specified requirements. E. Additional testing and inspecting, at Contractor's expense, will be performed to determine if replaced or additional work complies with specified requirements.

Specification	Field Quality Control
07 92 00 <i>Joint Sealants</i>	A. Testing Agency: Owner will engage a qualified testing agency to perform tests and inspections. 1. Field-Adhesion Testing: Field test joint-sealant adhesion to joint substrates as follows: a. Extent of Testing: Test completed and cured sealant joints as follows: 1) Perform 10 tests for the first 1000 ft. (300 m) of joint length for each kind of sealant and joint substrate. 2) Perform one test for each 1000 ft. (300 m) of joint length thereafter or one test per each floor per elev. b. Test Method: Test joint sealants in accordance with Method A, Tail Procedure, in ASTM C1521. 1) For joints with dissimilar substrates, verify adhesion to each substrate separately; extend cut along one side, verifying adhesion to opposite side. Repeat procedure for opposite side.
08 11 13 <i>Hollow Metal Doors and Frames</i>	A. Inspection Agency: Owner will engage a qualified inspector to perform inspections and to furnish reports to Architect. 1. Fire-Rated Door Inspections: Inspect each fire-rated door in accordance with NFPA 80, Section 5.2. 2. Egress Door Inspections: Inspect each door equipped with panic hardware, each door equipped with fire exit hardware, each door located in an exit enclosure, each electrically controlled egress door, and each door equipped with special locking arrangements in accordance with NFPA 101, Section 7.2.1.15. C. Repair or remove and replace installations where inspections indicate that they do not comply with specified requirements. D. Reinspect repaired or replaced installations to determine if replaced or repaired door assembly installations comply with specified requirements. E. Prepare and submit separate inspection report for each fire-rated door assembly indicating compliance with each item listed in NFPA 80.
22 07 19 <i>Plumbing Piping Insulation</i>	A. Testing Agency: Engage a qualified testing agency to perform tests and inspections. 1. Inspect pipe, fittings, strainers, and valves, randomly selected by Architect, by removing field-applied jacket and insulation in layers in reverse order of their installation. Extent of inspection shall be limited to three locations of straight pipe, three locations of threaded fittings, three locations of welded fittings, two locations of threaded strainers, two locations of welded strainers, three locations of threaded valves, and three locations of flanged valves for each pipe service defined in the "Piping Insulation Schedule, General" Article.

Specification	Field Quality Control
23 21 13 <i>Hydronic Piping</i>	A. Prepare hydronic piping according to ASME B31.9 and as follows: 1. Leave joints, including welds, uninsulated and exposed for examination during test. 2. Provide temporary restraints for expansion joints that cannot sustain reactions due to test pressure. If temporary restraints are impractical, isolate expansion joints from testing. 3. Flush hydronic piping systems with clean water; then remove and clean or replace strainer screens. 4. Isolate equipment from piping. If a valve is used to isolate equipment, its closure shall be capable of sealing against test pressure without damage to valve. Install blinds in flanged joints to isolate equipment. 5. Install safety valve, set at a pressure no more than one-third higher than test pressure, to protect against damage by expanding liquid or other source of overpressure during test. 6. Flush hydronic piping systems per JPS standards. Flushing to be done per the requirements of Nalco an Ecolab Company, M: 817.228.9886. B. Perform the following tests on hydronic piping: 1. Use ambient temperature water as a testing medium unless there is risk of damage due to freezing. Another liquid that is safe for workers and compatible with piping may be used. 2. While filling system, use vents installed at high points of system to release air. Use drains installed at low points for complete draining of test liquid. 3. Isolate expansion tanks and determine that hydronic system is full of water. 4. Subject piping system to hydrostatic test pressure that is not less than 1.5 times the system's working pressure. Test pressure shall not exceed maximum pressure for any vessel, pump, valve, or other component in system under test. Verify that stress due to pressure at bottom of vertical runs does not exceed 90 percent of specified minimum yield strength or 1.7 times the "SE" value in Appendix A in ASME B31.9, "Building Services Piping." 5. After hydrostatic test pressure has been applied for at least 10 minutes, examine piping, joints, and connections for leakage. Eliminate leaks by tightening, repairing, or replacing components, and repeat hydrostatic test until there are no leaks. 6. Subject piping to hydrostatic test pressure that is not less than 1.5 times the design pressure for 24 hours without pressure loss. 7. Prepare written report of testing. C. Perform the following before operating the system: 1. Open manual valves fully. 2. Inspect pumps for proper rotation. 3. Set makeup pressure-reducing valves for required system pressure. 4. Inspect air vents at high points of system and determine if all are installed and operating freely (automatic type), or bleed air completely (manual type). 5. Set temperature controls so all coils are calling for full flow. 6. Inspect and set operating temperatures of hydronic equipment, such as boilers, chillers, cooling towers, to specified values. 7. Verify lubrication of motors and bearings.

Specification	Field Quality Control
23 31 13 Metal Ducts	B. Leakage Tests: 1. Comply with SMACNA's "HVAC Air Duct Leakage Test Manual." Submit a test report for each test. 2. Test the following systems: a. Supply Ducts (Medium Pressure): Test 100% of the medium pressure supply ductwork. b. Supply, Return, & Exhaust Ducts: Test one long section of a low pressure supply, return, and exhaust duct. If leakage test passes, remaining low pressure duct will be inspected only. 3. Disassemble, reassemble, and seal segments of systems to accommodate leakage testing and for compliance with test requirements. 4. Test for leaks before applying external insulation. 5. Conduct tests at static pressures equal to maximum design pressure of system or section being tested. If static-pressure classes are not indicated, test system at maximum system design pressure. Do not pressurize systems above maximum design operating pressure. 6. Give seven days' advance notice for testing. C. Duct System Cleanliness Tests: 1. Visually inspect duct system to ensure that no visible contaminants are present. 2. Test sections of metal duct system, chosen randomly by Owner, for cleanliness according to "Vacuum Test" in NADCA ACR, "Assessment, Cleaning and Restoration of HVAC Systems." a. Acceptable Cleanliness Level: Net weight of debris collected on the filter media shall not exceed 0.75 mg/100 sq. cm.
23 33 00 Air Duct Accessories	1. Operate dampers to verify full range of movement. 2. Inspect locations of access doors and verify that purpose of access door can be performed. 3. Operate fire, smoke, and combination fire and smoke dampers to verify full range of movement and verify that proper heat-response device is installed. 4. Inspect turning vanes for proper and secure installation. 5. Operate remote damper operators to verify full range of movement of operator and damper.
26 05 33.13 Conduit for Electrical Systems	A. Repair cuts and abrasions in galvanized finishes using zinc-rich paint recommended by manufacturer. Replace components that exhibit signs of corrosion. B. Where coating of PVC-coated galvanized steel rigid metal conduit (RMC) contains cuts or abrasions, repair in accordance with manufacturer's instructions. C. Correct deficiencies and replace damaged or defective conduits.
26 05 53 Identification for Electrical Systems	A. See Section 01 40 00 - Quality Requirements, for additional requirements. B. Replace self-adhesive labels and markers that exhibit bubbles, wrinkles, curling or other signs of improper adhesion.

Specification	Field Quality Control
26 22 00 Low Voltage Transformers	A. Inspect and test in accordance with NETA ATS, except Section 4. B. Perform inspections and tests listed in NETA ATS Sections 7.2.1.1 and 7.2.1.2. Tests and inspections listed as optional are not required. 1. 167 KVA single phase, 500 KVA three phase and smaller: a. Perform turns ratio tests at all tap positions. 2. Larger than 167 KVA single phase and 500 KVA three phase: a. Verify that control and alarm settings on temperature indicators are as specified. b. Perform excitation-current tests on each phase. c. Measure the resistance of each winding at each tap connection. d. Perform an applied voltage test on all high- and low-voltage windings-to-ground.
26 24 16 Panelboards	A. Inspect and test in accordance with NETA ATS, except Section 4. B. Molded Case Circuit Breakers: Perform inspections and tests listed in NETA ATS, Section 7.6.1.1 for all main circuit breakers and any circuit breakers larger than 225 amperes. Tests listed as optional are not required, except for the following: 1. Perform insulation-resistance tests on all control wiring with respect to ground. 2. Test functions of the trip unit by means of secondary injection. C. Ground Fault Protection Systems: Test in accordance with manufacturer's instructions as required by NFPA 70. 1. Perform inspections and tests listed in NETA ATS, Section 7.14. The insulation-resistance test on control wiring listed as optional is required. D. Test GFCI circuit breakers to verify proper operation. E. Test AFCI circuit breakers to verify proper operation. F. Test shunt trips to verify proper operation. G. Procure services of a qualified manufacturer's representative to observe installation and assist in inspection, testing, and adjusting. Include manufacturer's reports with field quality control submittals. H. Correct deficiencies and replace damaged or defective panelboards or associated components.
26 27 26 Wiring Devices	A. See Section 01 40 00 - Quality Requirements, for additional requirements. B. Inspect each wiring device for damage and defects. C. Operate each wall switch, wall dimmer, and fan speed controller with circuit energized to verify proper operation. D. Test each receptacle to verify operation and proper polarity. E. Test each GFCI receptacle for proper tripping operation according to manufacturer's instructions. F. Inspect each surge protection receptacle to verify surge protection is active. G. Correct wiring deficiencies and replace damaged or defective wiring devices.
26 51 00 Interior Lighting	A. Inspect each product for damage and defects. B. Operate each luminaire after installation and connection to verify proper operation. C. Test self-powered exit signs and emergency lighting units to verify proper operation upon loss of normal power supply. D. Correct wiring deficiencies and repair or replace damaged or defective products. Repair or replace excessively noisy ballasts as determined by Architect.

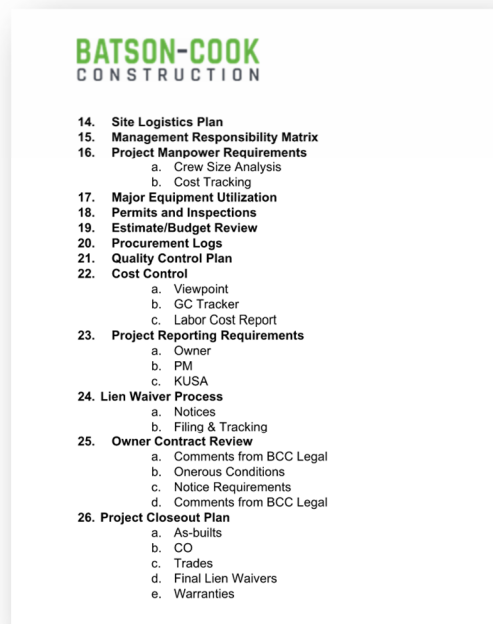
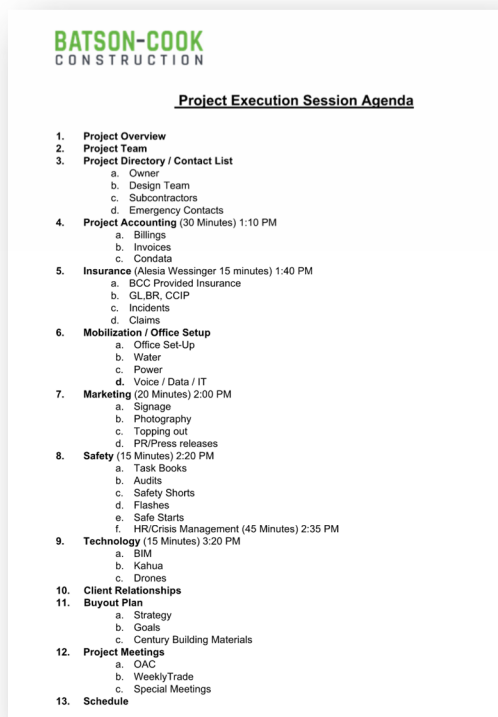
Mock-ups

The following indicates in-place mock-ups to be completed for the JPS OR AHU Project:

- 01 43 39 MOCK UP REQUIREMENTS [which includes EXTERIOR STRUCTURAL MOCK-UPS]
- 01 45 29 STRUCTURAL TESTING AND INSPECTIONS
- 03 30 00 CAST-IN-PLACE CONCRETE
- 07 41 16 INSULATED METAL ROOF PANELS
- 07 42 13 INSULATED METAL WALL PANELS
- 09 91 13 EXTERIOR PAINTING
- 26 51 00 INTERIOR LIGHTING

Project Execution Plan

Prior to beginning construction, the Project management team shall prepare a Project Execution Plan. The entire team should be included in the preparation of the plan. See below sample agenda



IV: Testing and Inspections

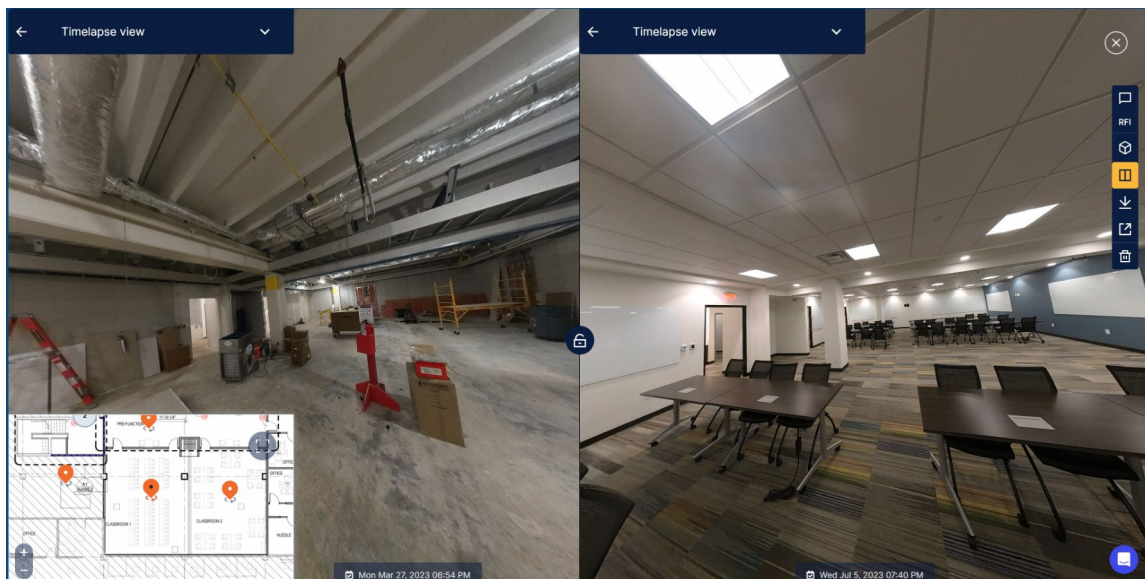
100 Day to CO Log

A 100 day to Certificate of Occupancy (CO) Log is a process to track progress of the project – especially life safety systems and inspections in the lead-up to obtaining a Certificate of Occupancy. This log helps ensure that all necessary tasks and inspections are completed within a specific timeframe (Often 100 days) and can be customized to suit the project needs/phased completion. See sample below.

Item #	Description of Work Activity	Level	Activity Owned By	Required Completion Date	Calendar Days Until Completion	Done	Open	Comments
FIRE ALARM SYSTEM								
1-1	FA panel installed and connected		EM	1/19/2023	(41)	X		
1-2	Build out fire command center complete with permanent desk and locking hardware		BDC	12/29/2022	(51)	X		Waiting on door and hardware to be installed 11.8 - waiting 11.8 door install
1-3	Fire alarm / sprinkler monitoring agreement in place		Chetler	12/29/2022	(52)	X		11.8 - need test for control panel need to finalize protocol quantities 11.8 - FA to review with JAB
1-4	Install required telephone lines from MDF to FACP (POT), including shelf time		OT	12/29/2022	(53)	X		
1-5	Mount / label FA devices	05	EC	1/11/2023	(10)	X		Does not include dampers
1-6	Mount / label FA devices	0L	EC	1/11/2023	(10)	X		Does not include dampers 11.8 - only missing wood ceilings
1-7	Mount / label FA devices	2	EC	1/11/2023	(10)	X		Does not include dampers 11.8 - only missing wood ceilings
1-8	Mount / label FA devices	3	EC	1/11/2023	(10)	X		Does not include dampers 11.8 - only missing wood ceilings
1-9	Mount / label FA devices	6	EC	1/11/2023	(10)	X		Does not include dampers
1-10	Mount / label FA devices	8	EC	1/11/2023	(10)	X		Does not include dampers
1-11	Mount / label FA devices	7	EC	1/11/2023	(10)	X		Does not include dampers
1-12	Mount / label FA devices	9	EC	1/11/2023	(10)	X		Does not include dampers
1-13	Mount / label FA devices	9	EC	1/11/2023	(10)	X		Does not include dampers

Structionsite Photo Documentation

Batson Cook utilizes Structionsite photo documentation platform to capture, organize and share photos/video's for our projects. These are shared in our OAC meetings and link is also provided in closeout documentation.



Above Ceiling and In-wall inspection Check Lists

See snip below for Above Ceiling and In-wall Inspection Checklist on all Batson Cook projects. These sheets can be customized to the needs of this project.

Above Ceiling Inspection Sheet				
BATSON-COOK CONSTRUCTION				
Project Name:				
Project Number:				
Date:				
Contact:				
Document Description				
Description/Scope	Yes	No	N/A	Comments
MECHANICAL				
1. Verify HVAC is installed per plans and specs	☐			
2. Verify mechanical equipment connections are complete				
3. Verify mechanical equipment, duct supports & hangers are per specs				
4. Verify duct insulated is installed per specs, including sealed & pressure tested				
5. Verify all VAVs have clear access for service and are properly labeled				
6. Verify ducts are labeled per specs				
7. Verify all ductwork is free from dust and debris				
8. Verify dead end ducts are capped off				
9. Verify dampers are installed based on life safety drawings				
10. Verify all flex ducts are connected to diffusers and grilles				
11. Verify equipment access doors are installed per plans and specs				
12. Verify seismic bracing is installed per shop drawings and specs				
13. Verify mechanical equipment, piping, duct supports & hangers are installed per specs				
14. Verify piping is insulated & labeled per specs				
15. Verify valve tags are installed				
16. Verify piping hangers & saddles are installed per specs				
17. Verify all equipment above ceiling is connected, labeled, and closed up per specs				
18. Verify condensate drains are connected per specs				
19. Verify ducts are sealed, insulated and pressure tested per specs				
20. Verify above ceiling drain bodies are grouted & sealed per specs				
21. Verify ducts are labeled per specs				
22. Verify hood grease duct clean outs are installed & accessible				
23. Verify all duct dampers are installed and working properly				
24. Verify water testing is completed per specifications				
25. Verify all unused hangers are removed from above ceiling				
26. Verify all unused existing equipment and ductwork are removed per specs				
FIRESTOP				
1. Verify fire rated wall penetrations are sealed with approved firestop				
2. Verify fire rated wall penetrations are labeled				
3. Verify there are no damages, cracks, holes, or openings to penetration seal				
4. Verify fireproofing patched at all columns and beams				
FIRE SPRINKLER				
1. Verify all penetrations are caulked and sealed				
2. Verify all sprinklers heads installed per shop drawings				
3. Verify sprinklers line hangers/supports are per specs				
4. Verify all dead end piping is capped before charging system				

In Wall CheckList				
BATSON-COOK CONSTRUCTION				
Project Name:				
Project Number:				
Date:				
Contact:				
Document Description				
Description/Scope	Yes	No	N/A	Comments
FRAMING				
1. Verify wall type and construction is per plans and specifications	☐			
2. Verify framing is installed correctly - Does wall size match the architectural plans?				
3. Verify all shaft walls are framed correctly				
4. Verify wall type is properly detailed (this may be completed as part of above ceiling inspection)				
5. Verify fire-rated corners are built properly				
6. Verify soffits/above ceiling hard hats are built properly				
7. Verify all above wall duct penetrations have frames for pass through				
8. Verify doors are located in the correct locations and rough opening size is correct				
9. Verify steel supports for lead lined door and window frames are installed, welds inspected and spray fire proofing painted				
10. Verify lead lined doors are in the correct openings				
11. Verify lead shielding is complete with all penetrations properly wrapped				
12. Verify AIA measurements to ensure the restrooms will meet AIA Standards since drywall is hung				
13. Verify blocking is complete for wall bumps, mill work, TV brackets, bath accessories, hand rail, crash rail, bumper rail				
14. Verify if the specs require control joints in drywall (typically done in long stretches of wall like a corridor)				
15. Verify framing trade partner has marked area as complete				
INSULATION				
1. Verify insulation is installed correctly (confirm specs for insulation type and rating)				
2. Verify that insulation is dry				
3. Verify there are no voids in installation (check corners and at top and bottom of track)				
FIRESTOP				
1. Verify fire rated wall penetrations are sealed with approved firestop (this may be completed as part of above ceiling inspection)				
2. Verify fire rated wall penetrations are labeled (this may be completed as part of above ceiling inspection)				
3. Verify there are no damages, cracks, holes, or openings to penetration seal				
4. Verify all Party Walls are installed as required				
5. Verify slab penetrations in walls are sealed properly				
6. Verify fireproofing patched at all columns and beams				
FIRE SPRINKLER				
1. Verify fire sprinkler lines are run through priority and rated walls				
PLUMBING				
1. Verify plumbing is installed per plans and specs				

Non-Conformance Tracking Procedure

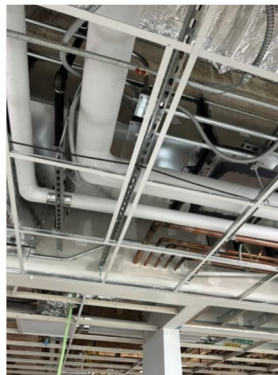
Whenever a member of Batson Cook's team, owner, architect or consultant notes non-conformance with installation of work, the item in question will not continue until the corrected non-conforming work conforms to the requirements of the contract documents.

See sample example below:

62270 - UTSW SOPH Biomedical Research Building Shell Space Buildout
Issue detail
#323: Quality Control

BATSON-COOK
CONSTRUCTION

Standard fields	
Status	Open
Type	Observation > Quality Control
Description	Hydronic needs support within 12 inches of every direction change
Assigned to	Phillip Casey (Kilgore/Mech)
Created by	Ryan Valle
Created on	Aug 29, 2024
Location	---
Location details	Lvl 6 North Corridor



Batson Cook's non-conformance procedure is as follows:

- Non-conforming work items are recorded in Autodesk Construction Cloud (ACC).
- Non-conformance Reports (NCR's) will be issued by Batson Cook's project management team performed to the trade partner's craft foreman for their work.
- Batson Cook's project management team will update Autodesk Construction Cloud indicating the status of NCR's in process and maintain a file of "open" reports
- After the corrective action(s) are complete, the work will be verified and documented by Batson Cook's project management team, the owner, architect or consulting engineer, as applicable
- In some cases, the disposition may be "accept as is" with no rework or corrective action(s) required, as approved by owner, architect, consultant or building official, as applicable.

Pre-Punchlist / Final Inspection

Near the completion of all work areas or any increment thereof, the project superintendent will conduct an inspection of the work and develop a Batson Cook pre-punch list of items which do not conform to the contract documents. The punch list will include the estimated correction date to correct deficiencies. The project superintendent will make follow-up inspections to validate correction of all punch list items.

The following is a typical sequence of Pre-punch list / final inspection activities:

- Pre-punch by Batson Cook and trade partners
- Deficiency correction and verification – pre-final inspection
- Final inspection to include the owner's punch list
- Deficiency correction and verification sign-off by the owner or the owner's representative
- Delivery of as-built and warranties
- Instruction and training procedures

IV. Turnover and Closeout

Electronic Closeout

Batson Cook will submit a comprehensive electronic closeout package that includes:

- Project Directory & Contact List
- As-Builts (hyperlinked with all RFI's)
- O&M Manuals
- Manufacturer/Trade Partner Warranties
- Attic Stock
- Structionsite Photo Documentation Link
- Owner Training Documentation

Hard copies are available per request

Owner Training

Batson Cook will document all Owner Training. This includes sign in sheets and videos of training in closeout documentation (as noted above).

11-month warranty walkthrough

All Batson Cook projects conduct an 11-month walkthrough, typically conducted prior to the expiration of the one-year warranty walkthrough. This walkthrough allows Owner to identify any issues that need to be addressed by Batson Cook before the warranty expires.

Lessons Learned Meeting

For all Batson Cook projects, a lessons learned meeting is scheduled at the end of the project, aimed at identifying what went well, what didn't and what could be improved in future projects. These meetings are held with the entire project team and are vital for continuous improvement and knowledge sharing within the team and larger Batson Cook organization as well.

November 19, 2024

JPS Pavilion OR AHU Replacement – Allowances

The following allowances are included in the project GMP:

- 1. Permit Allowance - \$2,000
- 2. Existing Conditions Allowance - \$75,000
- 3. Concrete Housekeeping Pads Allowance - \$25,000
- 4. Overtime Allowance - \$100,000
- 5. Owner Equipment Storage Allowance - \$100,000
- 6. OR Wall Protection Allowance - \$295,000
- 7. OR Flooring Allowance \$300,000



Attachment 9: Contract Specification Log

Spec Log				
Project Number	Name	Date		Version
62365	Project Manual: JPS Pavilion OR AHU Replacement (Issued For Construction)	24-May-24		1
Division	Specification	Set Name	Version	Issuance Date
DIV 02	02 41 19 - Selective Demolition	IFC Project Manual	1	24-May-24
DIV 03	03 10 00 - Concrete Forming and Accessories 033000 Cast in Place Concrete	IFC Project Manual	1	24-May-24
	03 20 00 - Concrete Reinforcing	IFC Project Manual	1	24-May-24
	03 30 00 - Cast in Place Concrete	IFC Project Manual	1	24-May-24
DIV 05	05 12 00 - Structural Steel Framing	IFC Project Manual	1	24-May-24
	05 31 00 - Steel Decking	IFC Project Manual	1	24-May-24
	05 50 00 - Metal Fabrications	IFC Project Manual	1	24-May-24
DIV 06	06 10 00 - Rough Carpentry	IFC Project Manual	1	24-May-24
DIV 07	07 42 13 - Insulated Roof Panels	IFC Project Manual	1	24-May-24
	07 42 13 - Insulated Roof Panels	IFC Project Manual	1	24-May-24
	07 92 00 - Joint Sealants	IFC Project Manual	1	24-May-24
DIV 08	08 11 13 - Hollow Metal Doors and Frames	IFC Project Manual	1	24-May-24
DIV 09	09 91 00 - Painting	IFC Project Manual	1	24-May-24
DIV 10	10 44 00 - Fire Protection Specialities	IFC Project Manual	1	24-May-24
DIV 21	21 05 00 - Common Work Results for Fire Suppression	IFC Project Manual	1	24-May-24
	21 05 53 - Identification for Fire Suppression Piping and Equipment	IFC Project Manual	1	24-May-24
	21 13 00 - Fire Suppression Sprinkler Systems	IFC Project Manual	1	24-May-24
DIV 22	22 05 00 - Common Work Results for Plumbing	IFC Project Manual	1	24-May-24
	22 05 17 - Sleeves and seals for Plumbing Piping	IFC Project Manual	1	24-May-24
	22 05 23 - General Duty valves for Plumbing Piping	IFC Project Manual	1	24-May-24
	22 05 29 - Hangers and Supports for Plumbing Piping and Equipment	IFC Project Manual	1	24-May-24
	22 05 53 - Identification for Plumbing and Equipment	IFC Project Manual	1	24-May-24
	22 07 19 - Plumbing Piping Insulation	IFC Project Manual	1	24-May-24
	22 08 00 - Commissioning of Plumbing Systems	IFC Project Manual	1	24-May-24
	22 11 16 - Domestic Water Piping	IFC Project Manual	1	24-May-24
	22 13 16 - Sanitary Waste and Vent Piping	IFC Project Manual	1	24-May-24
	22 13 19 - Sanitary Waste Piping Specialties	IFC Project Manual	1	24-May-24
	22 40 00 - Plumbing Fixtures	IFC Project Manual	1	24-May-24
	22 40 19 - Plumbing Specialties	IFC Project Manual	1	24-May-24
DIV 23	23 05 10 - Basic Mechanical Requirements	IFC Project Manual	1	24-May-24
	23 05 13 - Common Motor Requirements for HVAC Equipment	IFC Project Manual	1	24-May-24

	23 05 17 - Sleeves and Sleeve Seals for HVAC Piping	IFC Project Manual	1	24-May-24
	23 05 19 - Meters and Gauges for HVAC Piping	IFC Project Manual	1	24-May-24
	23 05 23 - General Duty Valves for HVAC Piping	IFC Project Manual	1	24-May-24
	23 05 29 - Hangers and Supports for HVAC Piping and Equipment	IFC Project Manual	1	24-May-24
	23 05 48 - Vibration and Seismic Controls for HVAC	IFC Project Manual	1	24-May-24
	23 05 53 - Identification for HVAC Piping and Equipment	IFC Project Manual	1	24-May-24
	230593 - Testing, Adjusting and Balancing for HVAC	IFC Project Manual	1	24-May-24
	230713 - Duct Insulation	IFC Project Manual	1	24-May-24
	230719 - HVAC Piping Insulation	IFC Project Manual	1	24-May-24
	230800 - Commissioning of HVAC Systems	IFC Project Manual	1	24-May-24
	230925 - Variable Frequency Drives	IFC Project Manual	1	24-May-24
	232113 - Hydronic Piping	IFC Project Manual	1	24-May-24
	232116 - Hydronic Piping Specialties	IFC Project Manual	1	24-May-24
	232123 - Hydronic Pumps	IFC Project Manual	1	24-May-24
	232513 - Water Treatment for Closed Loop Hydronic Systems	IFC Project Manual	1	24-May-24
	233113 - Metal Ducts	IFC Project Manual	1	24-May-24
	233119.13 - Shop Fabricated HVAC Casings	IFC Project Manual	1	24-May-24
	233300 - Air Duct Accessories	IFC Project Manual	1	24-May-24
	233713 - Diffusers, Registers and Grills	IFC Project Manual	1	24-May-24
	233723 - HVAC Gravity Ventilators	IFC Project Manual	1	24-May-24
	236426.13 - Air Cooled, Screw Water Glycol Chillers	IFC Project Manual	1	24-May-24
	237314 - Indoor Modular Central Station Air Handling Units	IFC Project Manual	1	24-May-24
	239000 - HVAC Louvers	IFC Project Manual	1	24-May-24
DIV 26	26 05 00 - Common Work Results for Electrical	IFC Project Manual	1	24-May-24
	26 05 05 - Selective Demolition for Electrical	IFC Project Manual	1	24-May-24
	26 05 19 - Low-Voltage Electrical Power Conductors and Cables	IFC Project Manual	1	24-May-24
	26 05 26 - Grounding and Bonding for Electrical Systems	IFC Project Manual	1	24-May-24
	26 05 29 - Hangers and Supports for Electrical Systems	IFC Project Manual	1	24-May-24
	26 05 33.13 - Conduit for Electrical Systems	IFC Project Manual	1	24-May-24
	26 05 33.16 - Boxes for Electrical Systems	IFC Project Manual	1	24-May-24
	26 05 53 - Identification for Electrical Systems	IFC Project Manual	1	24-May-24

	26 05 73 - Power System Analysis	IFC Project Manual	1	24-May-24
	26 05 83 - Wiring Connections	IFC Project Manual	1	24-May-24
	26 22 00 - Low Voltage Transformers	IFC Project Manual	1	24-May-24
	26 24 16 - Panelboards	IFC Project Manual	1	24-May-24
	26 27 26 - Wiring Devices	IFC Project Manual	1	24-May-24
	26 29 13 - Enclosed Controllers	IFC Project Manual	1	24-May-24
	26 41 13 - Lightning Protection for Structures	IFC Project Manual	1	24-May-24
	26 43 00 - Surge Protection Devices	IFC Project Manual	1	24-May-24
	26 51 00 - Interior Lighting	IFC Project Manual	1	24-May-24
DIV 28	28 31 11 - Digital, Addressable Fire Alarm System and Voice Evacuation	IFC Project Manual	1	24-May-24
	28 46 00 - Fire Detection and Alarm System	IFC Project Manual	1	24-May-24

August 28, 2024

JPS Pavilion OR AHU Replacement – Construction Manager Owned Equipment

Please see the following page for rental rates of equipment to be used on this project:





706-643-2113
815 Fifth Avenue
West Point, GA 31833

Rental Agent:	QUOTE DATES:	STATUS:
Michael Smith		

Quoted	Rate	Qty	Total
4000 48" Panel	\$ 85.00	1	\$ 85.00
4001 36" Panel	\$ 85.00	1	\$ 85.00
4002 24" Panel	\$ 60.00	1	\$ 60.00
4005 6" Panel	\$ 40.00	1	\$ 40.00
4006 12" Panel	\$ 45.00	1	\$ 45.00
AGSHIELD Corner	\$ 30.00	1	\$ 30.00
D144WK Door	\$ 150.00	1	\$ 150.00
Negative Air Machine	\$ 300.00	1	\$ 300.00
Port Pressure Monitor	\$ 300.00	1	\$ 300.00

COMPANY HOURS
Monday - Friday : 8:00 AM - 5:00 PM
Saturday - Sunday : Closed

Project Quality Control Plan

JPS Hospital Pavilion OR AHU Replacement Project

09/02/2024

Table of Contents

#	Description	Page #
I	Introduction	2
	Purpose	2
	Objectives	2
	Project Description	2
	Roles and Responsibilities	2
II	Preconstruction	3
	Document existing conditions	3
	Utility Locating Plan	3
	Laser Scanning and BIM Coordination	3
	Incorporating QA/QC activities in Schedule	3
	Constructability Review	4
III	Submittals, Material Coordination and Pre-Installation	5
	Submittal Review and approval	5
	Subcontractor Kickoff/Pre-installation Meetings	6
	1 st Delivery Inspection	6
	Mockups	10
	Project Execution Plan	10
IV	Testing and Inspections	11
	100 Day to CO Log	11
	Structionsite Photo Documentation	11
	Above Ceiling and In-wall Inspection Check List	12
	Non-Conformance Management	13
	Pre-punch/Final Inspections	13
V	Turnover & Closeout	14
	Electronic Closeout	14
	Owner Training	14
	11-month warranty walkthrough	14

I. Introduction

Purpose

This Quality Control Plan (QCP) has been developed to ensure that all aspects of the DFW Airport Skylink MSF & 8 Column Fence Replacement Project meet or exceed the established quality standards and specifications. Quality control is a fundamental component of our commitment to delivering a successful project that is safe, efficient, and compliant with all regulatory requirements.

Objectives

- To prevent construction defects from occurring
- To ensure work conforms to the contract documents and functional performance requirements
- To select qualified, quality-oriented trade partners
- To perform timely inspections and tests by Batson Cook Construction and trade partners
- To minimize rework during construction
- To achieve a zero punch list at substantial completion

Project Description

The JPS Hospital OR AHU Replacement Project is located in Fort Worth and encompasses phased Chiller and AHU replacement at the North Pavilion roof.

Roles and Responsibilities

The following are the role assignments for the project, followed by a brief summary of their quality control responsibilities.

Project Superintendent

Name: Matthew Hes

Cell #: 469-774-0080

Email: mhes@batson-cook.com

Project Superintendent will be the day-to-day contact for Batson Cook Construction.

Project Manager

Name: Jonathan Polk

Cell #: 214-427-7972

Email: jpolk@batson-cook.com

Assistant Project Manager

Name: Joanna Ayala

Cell #: 817-690-1347

Email: jayala@batson-cook.com

Project Manager (s) oversee the quality control program and documentation between subcontractors work and JPS Hospital.

Night Superintendent

Name: William Gonzales/Cory Nickodam

Cell #: 214-407-3310/817-713-9195

Email: wgonzales@batson-cook.com
[/cnickodam@batson-cook.com](mailto:cnickodam@batson-cook.com)

Our Project Team is responsible for quality control inspections and documentation on the project for Batson Cook and Trade Partners. This includes monthly QA/QC meetings, preparatory meetings, submittal review, in-place inspections, corrective action and stop work.

II. Preconstruction

Document Existing Conditions

At the onset of every project, Batson Cook project management team will inspect and create a photographic and/or video record via Structionsite platform to document existing conditions. This will be submitted as “Preconstruction Existing Conditions Survey” prior to starting Construction.

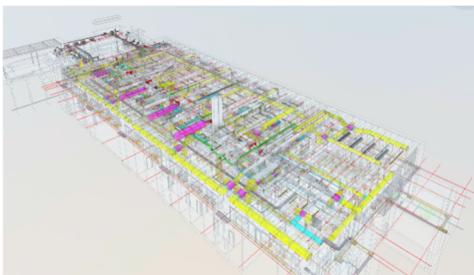
Utility Locating Plan

All Batson Cook Projects shall have a Utility Locating Plan in place before any work starts on a new project. Key elements include:



- Use or need of GPR/ Underground Mapping to identify and verify utilities.
- Including all High-risk areas (gas, power, and water mains) are to be located by hydrovac on all projects.
- Use Batson Cook engineer or 3rd Party to create composite Utility Locating Plan uploaded to CAD.
- Possible use of Hololens (Mixed Reality Headset) to overlay CAD drawings with existing conditions.

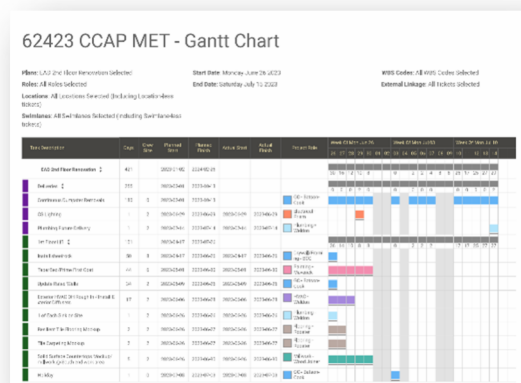
Laser Scanning & BIM Coordination



Batson Cook will perform a laser scan of the existing conditions on the 2nd Floor corridors and Roof to account for accurate existing conditions. These will be added to the BIM Model to allow for accurate overhead BIM Coordination. Clash detection will be performed to identify and resolve potential conflicts prior to shop drawing submission and approval.

Incorporate QA/QC Activities in Project Schedule

Update the Project Schedule to incorporate QA/QC activities into the 4-week look ahead schedule. See sample below for example.



Constructability Review:

Update the Constructability Review by thorough review of design documents, construction means and methods and site-specific conditions. See sample below for example.

Constructability Review

Client: JPS Health Systems

Project: Pavilion OR-AHU Replacement

Contractor: Batson-Cook Construction

TYPE/CURRENT STATUS CODES	
AR	Action Required
CA	Constructability/Correction
NC	Needs Clarification
G	General
C	Complete

RESPONSIBLE PARTY CODES	
JPS	Owner: JPS Health Systems
HW	Project Architect: Hoeffler Welker
HW	Design Architect: Hoeffler Welker
MME	Structural Engineer: Martinez Moore Engineers
BHE	MP: B&H Engineers
SSR	Elec. Engineer: Smith Seckman Reid

Phase: IFC

Document Date: 05.24.24

Item No.	Type	Location/ Discipline	Item Description	Date Initiated	Current Status	Date Required	Date Completed	Responsible Party	Comments/Benefits/Action Required
1	G	Owner	What are the Shutdown and Inspection procedures for the facility?	08/15/24	G			JPS	
2	CA	Architectural Mechanical	BT-01 is shown at different column lines. S103 & A103 match; M103B is different. Please confirm correct plan to follow.	08/15/24	CA			HW/BHE	
3	G	Owner	Who is the current warranty holder of the roof and the existing roof contractor?	08/15/24	G			JPS	
4	CA	Architectural	Please provide roof and wall framing details for the versapanel at the new penthouse.	08/15/24	CA			HW	
5	NC	Structural	When installing the penthouse structural steel, we plan to utilize baker scaffold and stage material on the roof area above the ORs, equating to above 10,000 lbs at any given time. What is the allowable load of the roof above the ORs?	08/15/24	NC			HW/MME	
6	NC		Per our pre-bid meetings we have combined phases 2 & 3. Please confirm this is acceptable.	08/15/24	NC			HW	
7	NC	Architectural	A-103 shows the door finish and frame finish color to be TBD. Please confirm finish color.	08/15/24	NC			HW	
8	NC	Architectural	G012 - Life Safety Plan shows 2 fire extinguishers, one at each door. This is not represented on A103.	08/15/24	NC			HW	
9	CA	Architectural	Please provide basis of design for prefabricated canopy/specifications.	08/15/24	CA			HW	
10	NC	Architectural	Please confirm that penthouse steel is not painted.	08/15/24	NC			HW	
11	NC	Plumbing	Please confirm that 1 1/4" gas line needs to be painted yellow.	08/15/24	NC			HW/BHE	

1 of 1

III. Submittals, Material Coordination and Pre-Installation

Submittal Review and Approval

As early as practical, but prior to the first work-in-place, Batson Cook will develop a comprehensive procurement log. See sample below. This log will identify all items requiring submittal by Batson Cook, its trade partners and suppliers. The submittal register identifies the "due date" considering the submittal review and approval process including possible revisions and re-submittals plus the time for fabrication, transportation and delivery to the jobsite.

Submittal samples shall demonstrate the level of quality that is acceptable to the owner and the responsible design professional. Batson Cook shall strictly comply with contract submittal requirements. We will not procure materials, equipment or supplies requiring submittal review, until architect and/or design consultants have approved submittals. Copies of approved submittals including manufacturer's installation instructions shall be maintained electronically. Batson Cook's project management team shall be responsible for managing the submittal process and coordinating procurement activities. Written documentation via a Substitution Request Form found in Division 01 Specification from Batson Cook to the Owner of proposed change for any Owner Specified Items is required for all variations or substitutions. The owner shall approve all variations or substitutions in accordance with contract requirements.

The Project Management team will ensure that all purchased building materials, equipment, and supplies conform to project requirements. The ability to provide items specified on time and packaged to ensure protection during loading, unloading and storage at the jobsite are key factors in vendor selection.

62270 - Biomed Shell Build Out - Material Procurement Log							Report Date: 9/3/2024	
Equipment/Material	Trade Partner	Autodesk Submittal #	Submittal Status	Released?	Required Release Date	Lead Time (weeks)	Delivery Date / Ship Date	Scheduled Install Date
Vacuum Pumps	Kilgore/Plumbing	657	Approved	yes	12/01/23	20		04/19/24
Chiller (CUP)	Texas Air Systems	4	Approved	yes	12/08/23	52	10/31/24	12/06/24
VFDs (Chiller)	Texas Air Systems	5	Approved	yes	12/11/23	52	07/15/24	12/09/24
Automatic Transfer Switch	FSG	527	Approved as noted	yes	03/15/24	30	01/02/25	10/11/24
Medium Voltage Transformer Maddox	FSG	505	Approved as noted	yes	04/03/24	40	02/28/25	01/08/25
CO2 Gas Manifolds	Kilgore/Plumbing	634	Approved as noted	yes	04/22/24	12		07/15/24
Ceiling Tile (Level 3)	Batson-Cook	509	Approved as noted	yes	05/06/24	8		06/29/24
Ceiling Tile (Level 6)	Batson-Cook	509	Approved as noted	yes	05/20/24	8		07/15/24
Recirculation Pumps	Kilgore/Plumbing	536	Approved	yes	05/20/24	8		07/15/24
Fire Alarm System	FSG	779	Approved	yes	06/18/24	8	04/01/24	08/13/24
Water Heating Equipment	Kilgore/Plumbing	669	Approved as noted	yes	06/19/24	7		08/07/24
Ceiling Tile (Level 8)	Batson-Cook	509	Approved as noted	yes	06/20/24	8		08/15/24
Wood Doors	The Door Company	542	Approved as noted	yes	06/24/24	12	09/02/24	09/16/24
Plumbing Fixtures	Kilgore/Plumbing	533	Approved	yes	06/26/24	6		08/07/24
Stainless Steel Partitions	Archer Specialties	816	Approved as noted	yes	07/01/24	5		08/05/24
Ceiling Tile (Level 4)	Batson-Cook	509	Approved as noted	yes	07/01/24	8		08/24/24
Chiller Pumps (CUP)	Texas Air Systems	6	Approved	yes	07/02/24	24	07/15/24	12/17/24
Wall Protection	Archer Specialties	633	Approved as noted	yes	07/08/24	5		08/12/24
VFDs (exhaust fans)	Kilgore/Mechanical	646	Approved as noted (A/E); UTSW Review	yes	07/08/24	6		08/19/24
Public Elev. Lobby Glass Panels	DGB Glass	668	Approved as noted	yes	07/09/24	10		09/17/24
Carpet (C1 & C2)	Fabulous Floors	569	Approved	yes	07/10/24	6	04/29/24	08/21/24
Ceiling Tile (Level 5)	Batson-Cook	509	Approved as noted	yes	07/24/24	8		09/18/24
VFDs (AHU)	Texas Air Systems	529	Approved	yes	07/26/24		07/15/24	07/26/24
Terrazzo Flooring	American Terrazzo	535	Approved	yes	07/29/24	4		08/26/24
Markerboards	Archer Specialties	629	Approved as noted	yes	08/26/24	5		09/30/24
HM Doors	The Door Company	541	Approved as noted	yes	09/03/24	12	08/29/24	11/26/24
Signage	ASI Signage	817	Required	no	09/04/24	8		10/30/24
Access Control System	FSG	644	Approved as noted	yes	09/09/24			09/09/24
Fire Rated Glass	DGB Glass	618	Approved as noted	no	09/16/24	5		10/21/24
Door Hardware	The Door Company	541	Approved as noted	yes	10/01/24	8		11/26/24
Electric Humidifiers (CPR-016)	Kilgore/Mechanical	528	Approved as noted	yes				
Bubble Damper	Kilgore/Mechanical	678	Approved as noted	yes		11		

Subcontractor Kickoff /Pre-Installation Meetings

Batson Cook project management team will schedule subcontractor kickoff / pre-installation meetings with key trade partners prior to start of work. Agenda includes mobilization date, staging, QA/QC inspections and any other items required for trades scope of work

**Precast Erection Coordination -
Tower & Parking Deck**

Project: MidtownMOB

Date: June 5th @ 11am



General Notes	Resp.	Due
1 Introductions		
2 Roles and Responsibilities		
3 Columbia Precast		
4 Precision		
5 Metromont		
6 Batson-Cook		
7 Job site contact info: Jeremiah Perkins (770)733-5694		
8 Site Specific Safety Plan & Submit Crane Lift Plan		
Parking Deck	Resp.	Due
9 Mobilization Date: 07/24/17		
10 Production Status		
11 Review Schedule		
12 Crane Info - Slopes/Crane Mats		
13 Staging of trucks		
14 Any lane closures?		
15 Plant Visit date		
Tower	Resp.	Due
16 Mobilization Date: 09/28/17		
17 Production Status		
18 Review Schedule & where 2 crews work		
19 Staging of trucks		
20 Any lane closures?		
21 Plant Visit Date		
Action Items	Resp.	Due
22		

1st Delivery Inspection

1st delivery inspection occurs for the first batch of materials delivered and installed. This inspection is conducted to ensure that the delivered items meet the contract documents and approved submittals. See below for 1st delivery inspection and field quality control items for this project.

Specification	Field Quality Control
03 10 00 Concrete Forming and Accessories	A. Field Inspection: Refer to Specification 014529 "Structural Testing and Inspections" for inspection requirements associated with forming and accessories.
03 20 00 Concrete Reinforcing	A. Field Testing and Inspection: Refer to Specification 01 45 29 "Structural Testing and Inspections" for testing and inspection requirements associated with concrete reinforcing.
03 30 00 Cast-In-Place Concrete	1. Surveys: Submit report certifying that all anchor rods and reinforcing dowels into columns above are in their proper location prior to placing of concrete. A. Field Testing and Inspection: Refer to Specification 014529 "Structural Testing and Inspections" for testing and inspection requirements associated with cast-in-place concrete.
05 12 00 Structural Steel Framing	A. Field Testing and Inspection: Refer to Specification 014529 "Structural Testing and Inspections" for testing and inspection requirements associated with structural steel.
05 31 00 Steel Decking	A. Field Testing and Inspection: Refer to Specification 01 45 29 "Structural Testing and Inspections" for testing and inspection requirements associated with steel decking. 1. Check steel deck as received in the field for possible shipping damage, workmanship, and identification marking to conform to specified ASTM standards for steel deck. 2. Periodically monitor the method of attaching the steel floor and roof decking to the structural frame. 3. Visually inspect 100% of the welding or other attachment method of steel deck to the structure and at sidelaps. 4. Visual inspect 100% of the Powder-Actuated or Compressed-Air fasteners using an inspection gauge supplied by the manufacturer to verify that the stand-off distance from the top of the deck is in accordance with the manufacturer's requirements.
07 41 16 Insulated Metal Roof Panels	A. Manufacturer's Field Service: Engage a factory-authorized service representative to test and inspect completed metal panel installation, including accessories. Report results in writing. B. Remove and replace applications where tests and inspections indicate that they do not comply with specified requirements. C. Additional tests and inspections, at Contractor's expense, are performed to determine compliance of replaced or additional work with specified requirements. D. Prepare test and inspection reports.

Specification	Field Quality Control
07 42 13.19 Insulated Metal Wall Panels	A. Testing Agency: Owner will engage a qualified testing agency to perform tests and inspections. B. Water-Spray Test: After installation, test area of assembly shown on Drawings as directed by Architect for water penetration according to AAMA 501.2. C. Manufacturer's Field Service: Engage a factory-authorized service representative to test and inspect completed metal wall panel installation, including accessories. D. Metal wall panels will be considered defective if they do not pass test and inspections. E. Additional tests and inspections, at Contractor's expense, are performed to determine compliance of replaced or additional work with specified requirements. F. Prepare test and inspection reports.
07 54 23 Thermoplastic-Polyolefin (TPO) Roofing	A. Testing Agency: Owner will engage a qualified testing agency to perform tests and to inspect substrate conditions, surface preparation, roof membrane application, sheet flashings, protection, and drainage components, and to furnish reports to Architect. 1. Flood Testing: Flood test each roof area for leaks, according to recommendations in ASTM D5957, after completing roofing and flashing but before overlying construction is placed. Install temporary containment assemblies, plug or dam drains, and flood with potable water. 2. Infrared Thermography: Testing agency surveys entire roof area using infrared color thermography according to ASTM C1153. 3. Electrical Capacitance/Impedance Testing: Testing agency surveys entire roof area for entrapped water within roof assembly according to ASTM D7954/D7954M. 4. Nuclear Hydrogen Detection Testing: Testing agency surveys entire roof area for entrapped water within roof assembly according to ANSI/SPRI/RCI NT-1. 5. Low-Voltage ELD Testing: Testing agency surveys entire roof area and flashings to locate discontinuities in the roof membrane using low-voltage horizontal membrane scanning platform in accordance with ASTM D8231. 6. High-Voltage Membrane Testing: Testing agency surveys entire roof area, flashings, and parapet walls to locate discontinuity in the roof membrane using an electrically charged metal "broom head." C. Final Roof Inspection: Arrange for roofing system manufacturer's technical personnel to inspect roofing installation on completion, in presence of Architect, and to prepare inspection report. D. Repair or remove and replace components of roofing system where inspections indicate that they do not comply with specified requirements. E. Additional testing and inspecting, at Contractor's expense, will be performed to determine if replaced or additional work complies with specified requirements.

Specification	Field Quality Control
07 92 00 Joint Sealants	A. Testing Agency: Owner will engage a qualified testing agency to perform tests and inspections. 1. Field-Adhesion Testing: Field test joint-sealant adhesion to joint substrates as follows: a. Extent of Testing: Test completed and cured sealant joints as follows: 1) Perform 10 tests for the first 1000 ft. (300 m) of joint length for each kind of sealant and joint substrate. 2) Perform one test for each 1000 ft. (300 m) of joint length thereafter or one test per each floor per elev. b. Test Method: Test joint sealants in accordance with Method A, Tail Procedure, in ASTM C1521. 1) For joints with dissimilar substrates, verify adhesion to each substrate separately; extend cut along one side, verifying adhesion to opposite side. Repeat procedure for opposite side.
08 11 13 Hollow Metal Doors and Frames	A. Inspection Agency: Owner will engage a qualified inspector to perform inspections and to furnish reports to Architect. 1. Fire-Rated Door Inspections: Inspect each fire-rated door in accordance with NFPA 80, Section 5.2. 2. Egress Door Inspections: Inspect each door equipped with panic hardware, each door equipped with fire exit hardware, each door located in an exit enclosure, each electrically controlled egress door, and each door equipped with special locking arrangements in accordance with NFPA 101, Section 7.2.1.15. C. Repair or remove and replace installations where inspections indicate that they do not comply with specified requirements. D. Reinspect repaired or replaced installations to determine if replaced or repaired door assembly installations comply with specified requirements. E. Prepare and submit separate inspection report for each fire-rated door assembly indicating compliance with each item listed in NFPA 80.
22 07 19 Plumbing Piping Insulation	A. Testing Agency: Engage a qualified testing agency to perform tests and inspections. 1. Inspect pipe, fittings, strainers, and valves, randomly selected by Architect, by removing field-applied jacket and insulation in layers in reverse order of their installation. Extent of inspection shall be limited to three locations of straight pipe, three locations of threaded fittings, three locations of welded fittings, two locations of threaded strainers, two locations of welded strainers, three locations of threaded valves, and three locations of flanged valves for each pipe service defined in the "Piping Insulation Schedule, General" Article.

Specification	Field Quality Control
23 21 13 Hydronic Piping	A. Prepare hydronic piping according to ASME B31.9 and as follows: 1. Leave joints, including welds, uninsulated and exposed for examination during test. 2. Provide temporary restraints for expansion joints that cannot sustain reactions due to test pressure. If temporary restraints are impractical, isolate expansion joints from testing. 3. Flush hydronic piping systems with clean water; then remove and clean or replace strainer screens. 4. Isolate equipment from piping. If a valve is used to isolate equipment, its closure shall be capable of sealing against test pressure without damage to valve. Install blinds in flanged joints to isolate equipment. 5. Install safety valve, set at a pressure no more than one-third higher than test pressure, to protect against damage by expanding liquid or other source of overpressure during test. 6. Flush hydronic piping systems per JPS standards. Flushing to be done per the requirements of Nalco an Ecolab Company, M: 817.228.9886. B. Perform the following tests on hydronic piping: 1. Use ambient temperature water as a testing medium unless there is risk of damage due to freezing. Another liquid that is safe for workers and compatible with piping may be used. 2. While filling system, use vents installed at high points of system to release air. Use drains installed at low points for complete draining of test liquid. 3. Isolate expansion tanks and determine that hydronic system is full of water. 4. Subject piping system to hydrostatic test pressure that is not less than 1.5 times the system's working pressure. Test pressure shall not exceed maximum pressure for any vessel, pump, valve, or other component in system under test. Verify that stress due to pressure at bottom of vertical runs does not exceed 90 percent of specified minimum yield strength or 1.7 times the "SE" value in Appendix A in ASME B31.9, "Building Services Piping." 5. After hydrostatic test pressure has been applied for at least 10 minutes, examine piping, joints, and connections for leakage. Eliminate leaks by tightening, repairing, or replacing components, and repeat hydrostatic test until there are no leaks. 6. Subject piping to hydrostatic test pressure that is not less than 1.5 times the design pressure for 24 hours without pressure loss. 7. Prepare written report of testing. C. Perform the following before operating the system: 1. Open manual valves fully. 2. Inspect pumps for proper rotation. 3. Set makeup pressure-reducing valves for required system pressure. 4. Inspect air vents at high points of system and determine if all are installed and operating freely (automatic type), or bleed air completely (manual type). 5. Set temperature controls so all coils are calling for full flow. 6. Inspect and set operating temperatures of hydronic equipment, such as boilers, chillers, cooling towers, to specified values. 7. Verify lubrication of motors and bearings.

Specification	Field Quality Control
23 31 13 Metal Ducts	B. Leakage Tests: 1. Comply with SMACNA's "HVAC Air Duct Leakage Test Manual." Submit a test report for each test. 2. Test the following systems: a. Supply Ducts (Medium Pressure): Test 100% of the medium pressure supply ductwork. b. Supply, Return, & Exhaust Ducts: Test one long section of a low pressure supply, return, and exhaust duct. If leakage test passes, remaining low pressure duct will be inspected only. 3. Disassemble, reassemble, and seal segments of systems to accommodate leakage testing and for compliance with test requirements. 4. Test for leaks before applying external insulation. 5. Conduct tests at static pressures equal to maximum design pressure of system or section being tested. If static-pressure classes are not indicated, test system at maximum system design pressure. Do not pressurize systems above maximum design operating pressure. 6. Give seven days' advance notice for testing. C. Duct System Cleanliness Tests: 1. Visually inspect duct system to ensure that no visible contaminants are present. 2. Test sections of metal duct system, chosen randomly by Owner, for cleanliness according to "Vacuum Test" in NADCA ACR, "Assessment, Cleaning and Restoration of HVAC Systems." a. Acceptable Cleanliness Level: Net weight of debris collected on the filter media shall not exceed 0.75 mg/100 sq. cm.
23 33 00 Air Duct Accessories	1. Operate dampers to verify full range of movement. 2. Inspect locations of access doors and verify that purpose of access door can be performed. 3. Operate fire, smoke, and combination fire and smoke dampers to verify full range of movement and verify that proper heat-response device is installed. 4. Inspect turning vanes for proper and secure installation. 5. Operate remote damper operators to verify full range of movement of operator and damper.
26 05 33.13 Conduit for Electrical Systems	A. Repair cuts and abrasions in galvanized finishes using zinc-rich paint recommended by manufacturer. Replace components that exhibit signs of corrosion. B. Where coating of PVC-coated galvanized steel rigid metal conduit (RMC) contains cuts or abrasions, repair in accordance with manufacturer's instructions. C. Correct deficiencies and replace damaged or defective conduits.
26 05 53 Identification for Electrical Systems	A. See Section 01 40 00 - Quality Requirements, for additional requirements. B. Replace self-adhesive labels and markers that exhibit bubbles, wrinkles, curling or other signs of improper adhesion.

Specification	Field Quality Control
26 22 00 Low Voltage Transformers	A. Inspect and test in accordance with NETA ATS, except Section 4. B. Perform inspections and tests listed in NETA ATS Sections 7.2.1.1 and 7.2.1.2. Tests and inspections listed as optional are not required. 1. 167 KVA single phase, 500 KVA three phase and smaller: a. Perform turns ratio tests at all tap positions. 2. Larger than 167 KVA single phase and 500 KVA three phase: a. Verify that control and alarm settings on temperature indicators are as specified. b. Perform excitation-current tests on each phase. c. Measure the resistance of each winding at each tap connection. d. Perform an applied voltage test on all high- and low-voltage windings-to-ground.
26 24 16 Panelboards	A. Inspect and test in accordance with NETA ATS, except Section 4. B. Molded Case Circuit Breakers: Perform inspections and tests listed in NETA ATS, Section 7.6.1.1 for all main circuit breakers and any circuit breakers larger than 225 amperes. Tests listed as optional are not required, except for the following: 1. Perform insulation-resistance tests on all control wiring with respect to ground. 2. Test functions of the trip unit by means of secondary injection. C. Ground Fault Protection Systems: Test in accordance with manufacturer's instructions as required by NFPA 70. 1. Perform inspections and tests listed in NETA ATS, Section 7.14. The insulation-resistance test on control wiring listed as optional is required. D. Test GFCI circuit breakers to verify proper operation. E. Test AFCI circuit breakers to verify proper operation. F. Test shunt trips to verify proper operation. G. Procure services of a qualified manufacturer's representative to observe installation and assist in inspection, testing, and adjusting. Include manufacturer's reports with field quality control submittals. H. Correct deficiencies and replace damaged or defective panelboards or associated components.
26 27 26 Wiring Devices	A. See Section 01 40 00 - Quality Requirements, for additional requirements. B. Inspect each wiring device for damage and defects. C. Operate each wall switch, wall dimmer, and fan speed controller with circuit energized to verify proper operation. D. Test each receptacle to verify operation and proper polarity. E. Test each GFCI receptacle for proper tripping operation according to manufacturer's instructions. F. Inspect each surge protection receptacle to verify surge protection is active. G. Correct wiring deficiencies and replace damaged or defective wiring devices.
26 51 00 Interior Lighting	A. Inspect each product for damage and defects. B. Operate each luminaire after installation and connection to verify proper operation. C. Test self-powered exit signs and emergency lighting units to verify proper operation upon loss of normal power supply. D. Correct wiring deficiencies and repair or replace damaged or defective products. Repair or replace excessively noisy ballasts as determined by Architect.

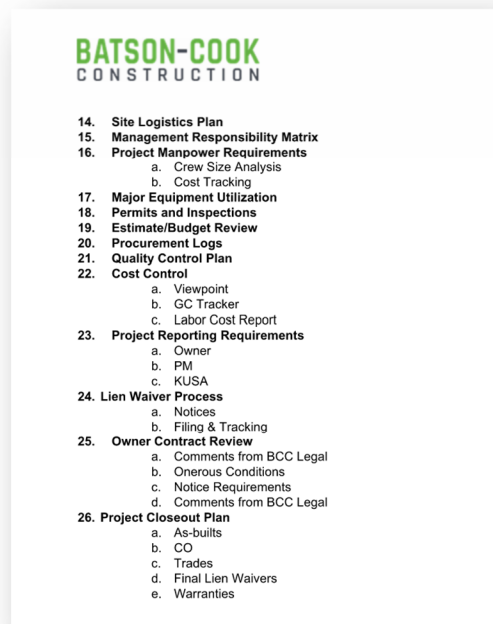
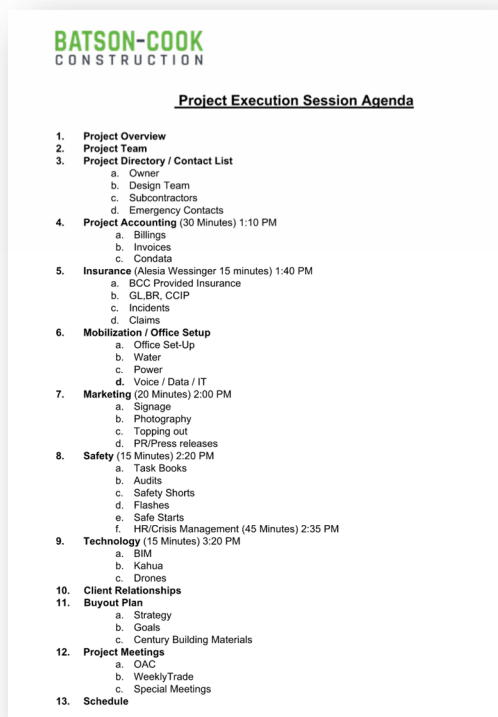
Mock-ups

The following indicates in-place mock-ups to be completed for the JPS OR AHU Project:

- 01 43 39 MOCK UP REQUIREMENTS [which includes EXTERIOR STRUCTURAL MOCK-UPS]
- 01 45 29 STRUCTURAL TESTING AND INSPECTIONS
- 03 30 00 CAST-IN-PLACE CONCRETE
- 07 41 16 INSULATED METAL ROOF PANELS
- 07 42 13 INSULATED METAL WALL PANELS
- 09 91 13 EXTERIOR PAINTING
- 26 51 00 INTERIOR LIGHTING

Project Execution Plan

Prior to beginning construction, the Project management team shall prepare a Project Execution Plan. The entire team should be included in the preparation of the plan. See below sample agenda



IV: Testing and Inspections

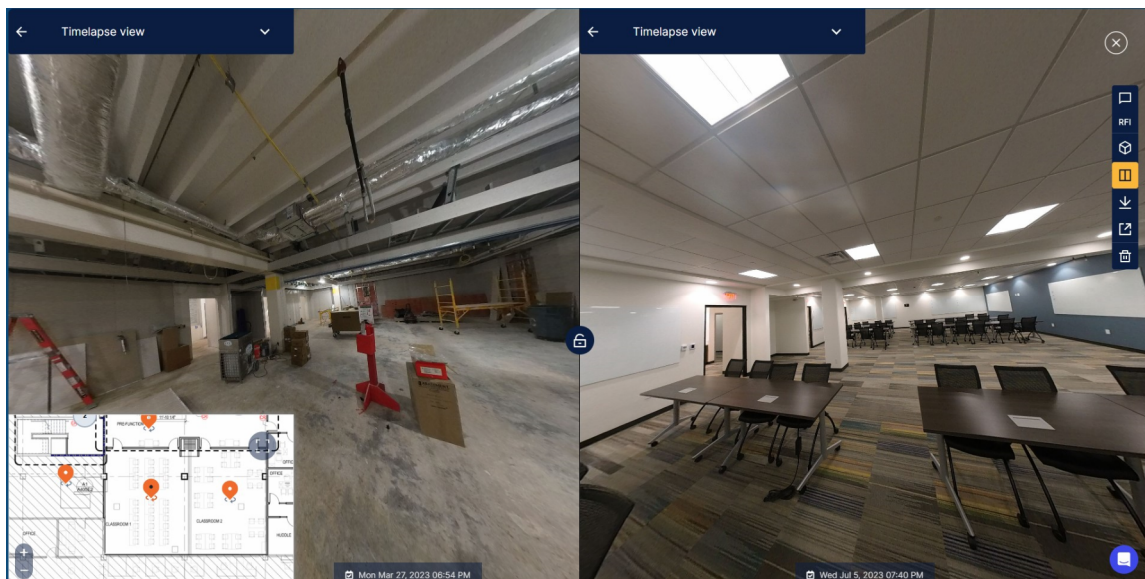
100 Day to CO Log

A 100 day to Certificate of Occupancy (CO) Log is a process to track progress of the project – especially life safety systems and inspections in the lead-up to obtaining a Certificate of Occupancy. This log helps ensure that all necessary tasks and inspections are completed within a specific timeframe (Often 100 days) and can be customized to suit the project needs/phased completion. See sample below.

Item #	Description of Work Activity	Level	Activity Owned By	Required Completion Date	Calendar Days Until Completion	Done	On Track	Delayed	Comments
FIRE ALARM SYSTEM									
1-1	FA panel installed and connected		EM	1/19/2023	(41)	X			
1-2	Build out fire command center complete with permanent desk and locking hardware		BDC	12/29/2022	(51)	X			Waiting on door and hardware to be installed 6-27 - waiting 100% door install 11-8 - temp door set in place
1-3	Fire alarm / sprinkler monitoring agreement in place		Chetler	12/29/2022	(52)	X			RFI to include with CMR 10-11 - Service agreement for monitoring 11-8 - no update from CMR 11-15 - Sprinkler responses to house - need number for call center (security office)
1-4	Install required telephone lines from MDF to FACP (POT), including shelf time		OT	12/29/2022	(53)	X			11-8 - need test for control panel need to fix tone in/out quantities 11-15 - RFI to review with J&B
1-5	Mount / label FA devices	05	EC	1/11/2023	(43)	X			Does not include dampers
1-6	Mount / label FA devices	0L	EC	1/11/2023	(115)	X			Does not include dampers 11-8 - only missing wood ceilings
1-7	Mount / label FA devices	2	EC	1/11/2023	(115)	X			Does not include dampers 11-8 - only missing wood ceilings
1-8	Mount / label FA devices	3	EC	1/11/2023	(115)	X			Does not include dampers 11-8 - only missing wood ceilings
1-9	Mount / label FA devices	6	EC	1/11/2023	(85)	X			Does not include dampers
1-10	Mount / label FA devices	6	EC	1/11/2023	(85)	X			Does not include dampers
1-11	Mount / label FA devices	7	EC	1/11/2023	(85)	X			Does not include dampers
1-12	Mount / label FA devices	8	EC	1/11/2023	(85)	X			Does not include dampers
1-13	Mount / label FA devices	9	EC	1/11/2023	(85)	X			Does not include dampers

Structionsite Photo Documentation

Batson Cook utilizes Structionsite photo documentation platform to capture, organize and share photos/video's for our projects. These are shared in our OAC meetings and link is also provided in closeout documentation.



Above Ceiling and In-wall inspection Check Lists

See snip below for Above Ceiling and In-wall Inspection Checklist on all Batson Cook projects. These sheets can be customized to the needs of this project.

Above Ceiling Inspection Sheet				
BATSON-COOK CONSTRUCTION Project Name: Project Number: Date: Contact:				
Document Description				
Description/Scope	Yes	No	N/A	Comments
MECHANICAL				
1. Verify HVAC is installed per plans and specs	☒			
2. Verify mechanical equipment connections are complete				
3. Verify mechanical equipment, duct supports & hangers are per specs				
4. Verify duct insulated is installed per specs, including sealed & pressure tested				
5. Verify all VAVs have clear access for service and are properly labeled				
6. Verify ducts are labeled per specs				
7. Verify all ductwork is free from dust and debris				
8. Verify dead end ducts are capped off				
9. Verify dampers are installed based on life safety drawings				
10. Verify all flex ducts are connected to diffusers and grilles				
11. Verify equipment access doors are installed per plans and specs				
12. Verify seismic bracing is installed per shop drawings and specs				
13. Verify mechanical equipment, piping, duct supports & hangers are installed per specs				
14. Verify piping is insulated & labeled per specs				
15. Verify valve tags are installed				
16. Verify piping hangers & saddles are installed per specs				
17. Verify all equipment above ceiling is connected, labeled, and closed up per specs				
18. Verify condensate drains are connected per specs				
19. Verify ducts are sealed, insulated and pressure tested per specs				
20. Verify above ceiling drain bodies are grouted & sealed per specs				
21. Verify ducts are labeled per specs				
22. Verify hood grease duct clean outs are installed & accessible				
23. Verify all duct dampers are installed and working properly				
24. Verify water testing is completed per specifications				
25. Verify all unused hangers are removed from above ceiling				
26. Verify all unused existing equipment and ductwork are removed per specs				
FIRESTOP				
1. Verify fire rated wall penetrations are sealed with approved firestop				
2. Verify fire rated wall penetrations are labeled				
3. Verify there are no damages, cracks, holes, or openings to penetration seal				
4. Verify fireproofing patched at all columns and beams				
FIRE SPRINKLER				
1. Verify all penetrations are caulked and sealed				
2. Verify all sprinklers heads installed per shop drawings				
3. Verify sprinklers line hangers/supports are per specs				
4. Verify all dead end piping is capped before charging system				

In Wall CheckList				
BATSON-COOK CONSTRUCTION Project Name: Project Number: Date: Contact:				
Document Description				
Description/Scope	Yes	No	N/A	Comments
FRAMING				
1. Verify wall type and construction is per plans and specifications	☒			
2. Verify framing is installed correctly - Does wall size match the architectural plans?				
3. Verify all shaft walls are framed correctly				
4. Verify wall type is properly detailed (this may be completed as part of above ceiling inspection)				
5. Verify fire-rated corners are built properly				
6. Verify soffits/above ceiling hard hats are built properly				
7. Verify all above wall duct penetrations have frames for pass through				
8. Verify doors are located in the correct locations and rough opening size is correct				
9. Verify steel supports for lead lined door and window frames are installed, welds inspected and spray fire proofing painted				
10. Verify lead lined doors are in the correct openings				
11. Verify lead shielding is complete with all penetrations properly wrapped				
12. Verify AIA measurements to ensure the restrooms will meet AIA Standards since drywall is hung				
13. Verify blocking is complete for wall bumps, mill work, TV brackets, bath accessories, hand rail, crash rail, bumper rail				
14. Verify if the specs require control joints in drywall (typically done in long stretches of wall like a corridor)				
15. Verify framing trade partner has marked area as complete				
INSULATION				
1. Verify insulation is installed correctly (confirm specs for insulation type and rating)				
2. Verify that insulation is dry				
3. Verify there are no voids in installation (check corners and at top and bottom of track)				
FIRESTOP				
1. Verify fire rated wall penetrations are sealed with approved firestop (this may be completed as part of above ceiling inspection)				
2. Verify fire rated wall penetrations are labeled (this may be completed as part of above ceiling inspection)				
3. Verify there are no damages, cracks, holes, or openings to penetration seal				
4. Verify all Party Walls are installed as required				
5. Verify slab penetrations in walls are sealed properly				
6. Verify fireproofing patched at all columns and beams				
FIRE SPRINKLER				
1. Verify fire sprinkler lines are run through priority and rated walls				
PLUMBING				
1. Verify plumbing is installed per plans and specs				

Non-Conformance Tracking Procedure

Whenever a member of Batson Cook's team, owner, architect or consultant notes non-conformance with installation of work, the item in question will not continue until the corrected non-conforming work conforms to the requirements of the contract documents.

See sample example below:

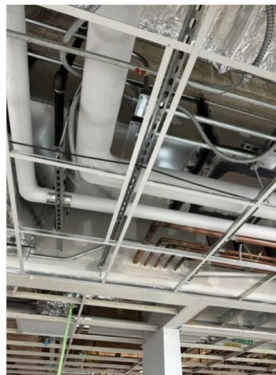
62270 - UTSW SOPH Biomedical Research Building Shell Space Buildout Issue Detail - Quality Control

Issue detail

#323: Quality Control

BATSON-COOK
CONSTRUCTION

Standard fields	
Status	Open
Type	Observation > Quality Control
Description	Hydronic needs support within 12 inches of every direction change
Assigned to	Phillip Casey (Kilgore/Mech)
Created by	Ryan Valle
Created on	Aug 29, 2024
Location	---
Location details	Lvl 6 North Corridor



Batson Cook's non-conformance procedure is as follows:

- Non-conforming work items are recorded in Autodesk Construction Cloud (ACC).
- Non-conformance Reports (NCR's) will be issued by Batson Cook's project management team performed to the trade partner's craft foreman for their work.
- Batson Cook's project management team will update Autodesk Construction Cloud indicating the status of NCR's in process and maintain a file of "open" reports
- After the corrective action(s) are complete, the work will be verified and documented by Batson Cook's project management team, the owner, architect or consulting engineer, as applicable
- In some cases, the disposition may be "accept as is" with no rework or corrective action(s) required, as approved by owner, architect, consultant or building official, as applicable.

Pre-Punchlist / Final Inspection

Near the completion of all work areas or any increment thereof, the project superintendent will conduct an inspection of the work and develop a Batson Cook pre-punch list of items which do not conform to the contract documents. The punch list will include the estimated correction date to correct deficiencies. The project superintendent will make follow-up inspections to validate correction of all punch list items.

The following is a typical sequence of Pre-punch list / final inspection activities:

- Pre-punch by Batson Cook and trade partners
- Deficiency correction and verification – pre-final inspection
- Final inspection to include the owner's punch list
- Deficiency correction and verification sign-off by the owner or the owner's representative
- Delivery of as-built and warranties
- Instruction and training procedures

IV. Turnover and Closeout

Electronic Closeout

Batson Cook will submit a comprehensive electronic closeout package that includes:

- Project Directory & Contact List
- As-Builts (hyperlinked with all RFI's)
- O&M Manuals
- Manufacturer/Trade Partner Warranties
- Attic Stock
- Structionsite Photo Documentation Link
- Owner Training Documentation

Hard copies are available per request

Owner Training

Batson Cook will document all Owner Training. This includes sign in sheets and videos of training in closeout documentation (as noted above).

11-month warranty walkthrough

All Batson Cook projects conduct an 11-month walkthrough, typically conducted prior to the expiration of the one-year warranty walkthrough. This walkthrough allows Owner to identify any issues that need to be addressed by Batson Cook before the warranty expires.

Lessons Learned Meeting

For all Batson Cook projects, a lessons learned meeting is scheduled at the end of the project, aimed at identifying what went well, what didn't and what could be improved in future projects. These meetings are held with the entire project team and are vital for continuous improvement and knowledge sharing within the team and larger Batson Cook organization as well.